

Innovation Derogations Guidance Document
(for the Uniform Network Code)
Version Draft D0.1

Version Control

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Document control: Uniform Network Code Committee (UNCC) majority vote for amendments to this document, any necessary UNC Code changes will require a modification. For the avoidance of doubt, should this document and code become misaligned, code will take precedent.

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Overview

A derogation is a permission given by the Uniform Network Code (UNC) Modification Panel that relieves a UNC party from its obligation to comply with one or more paragraphs of the UNC. Within the UNC, derogations can only be requested if they are required in relation to facilitating net zero innovation project, trial or demonstration that is directly relating to net zero [‘non commercial research’, as defined by Imperial College London], and are usually time bound.

This document sets out the process for UNC parties to apply for a ~~Derogation-derogation~~ from a paragraph, or paragraphs of the UNC.

The UNC Modification Panel process requests and assess evidence and supporting documentation. This guidance is to aid both proposers of ~~Derogations-derogations~~ and UNC Modification Panel members with the derogation request and approval or rejection process.

Derogation requests are limited to innovation purposed relating to meeting the net zero government target. (See Energy White Paper: Powering our Net Zero Future, December 2020, CP337. Also Policy Paper: The ten point plan for a green industrial revolution, November 2020)

This guidance on derogations defines the type of information expected to be included in a request for a derogation, including, where appropriate, a quantitative and qualitative assessment of the impacts of the potential derogation on, amongst other things, competition, consumers, and where relevant, impact towards net zero.

Every Derogation decision will be published on the Joint Office Website, regardless of the outcome of the decision.

If it is identified that a UNC party would gain a competitive advantage or disadvantage, from a derogation, then a derogation would not be issued without UNC Modification Panel assessing what measures might be appropriate to offset that advantage. Such measures may also include requirements to monitor the impact of the derogation on the both the party making the application and other parties who may be affected. Where applicable, the UNC Modification Panel may make a specific request to the Performance Assurance Committee (PAC) to monitor, and report back to the UNC Modification Panel as requested, relevant impacts which fall under their remit, however it will be expected that the applying party would already have these steps in place as part of the application.

A derogation application may be for a set piece of UNC for a set period and may also be limited to a subset of a portfolio, for example a trial involving only 1 postcode out code. If a derogation is linked to an innovation project with specific stages and milestones, which have to be met before the next step of funding (for example) is approved, this can be noted in the additional application. The derogation will only be approved in line with relevant associated approvals (eg supporting HSE or licence derogation) also being approved. For the avoidance of doubt a derogation granted by UNC Modification Panel is not deemed valid until all associated approvals have been granted.

What is a derogation

UNC Parties (Shippers and Gas Transporters) are required to comply with the obligations as set out within the UNC. Compliance with codes is in the interests of gas parties and end consumers as a

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failure to comply can have a direct and adverse impact on the security and quality of gas supplied, and may have health and safety implications, or directly impact the cost of gas through the supply chain.

However, there may be occasions when, a party may find that adherence to a particular paragraph or paragraphs of the UNC may constrain the ability to carry out innovation trials, pilots or demonstrations to facilitate the pathway to net zero. In these circumstances, a UNC party may submit to the UNC Modification Panel, via the Joint Office of Gas Transporters (Joint Office), a request for Derogation from the paragraph or paragraphs requirements to comply with particular obligations in the UNC.

This document sets out the information the UNC Modification Panel requires in order to assess a request for a derogation, and outlines the factors the UNC Modification Panel members take into account in their assessment.

When would a derogation be required?

Continued compliance with the UNC is not only a code obligation but also ties into parties' licence obligations and is the responsibility of each relevant party. Failure to comply, unless permitted by a derogation, is a contravention of the UNC and therefore licence for which Ofgem may take enforcement action and consequently issue an order and/or impose a penalty. However, as noted above, UNC Modification Panel recognises there may be occasions when there is a specific, justified requirement, that a UNC Party may not be in a position to comply with a particular paragraph or paragraphs whilst carrying out an innovation trials, pilots or demonstrations. Such a derogation is likely to be limited in location and timescale to allow for testing or trial to take place. Should the trial be successful a more permanent solution should then be sought by the UNC party.

Application Process

A request for a derogation should be submitted in writing to the Joint Office of Gas Transporters, who are the Code Administrator for the UNC, and should include sufficient information to enable the UNC Modification Panel to make a decision, including a comprehensive, and where possible, quantitative and qualitative assessment, of the impact of the proposed derogation.

[Where the Application identifies a potential cross code impact, the Joint Office of Gas Transporters will advise the relevant code body in accordance with CaCoP principles.](#)

Parties should, where possible, include copies of any 'innovation pack' that they may have had to put together for submission in relation to their funding application or other related applications. [Commercially sensitive information may be redacted; however this needs to have no bearing on the actual nature and impact of the derogation being requested.]

Parties applying should also include the benefits of the derogation (and the outcomes of any related projects) for the both the individual party/parties but also the wider industry. As well as stating the impact in relation to the path to net zero.

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UNC Parties are asked to apply as soon as the possible after the need for a derogation becomes apparent.

The Joint Office of Gas Transporters will use the same distribution list as per new UNC Modification requests, to notify industry of a new request for derogation.

Submitting a request

Where a UNC Party has identified that it will require a derogation from a relevant obligations in a paragraph or paragraphs of code in order to progress an net zero related trial or test, the UNC Party should make a written request using the relevant form (see appendix A) to the UNC Modification Panel care of the Joint Office of Gas Transporters (enquiries@gasgovernance.co.uk) requesting for a derogation from the UNC requirement to comply with such obligations.

All technical terms should be fully explained, and the request should be presented in as clear a manner as possible to avoid unnecessary delays in UNC Modification Panel's assessment of the request.

Minimum requirements of the request

The derogation request should include as a minimum:

- Details of the applicant (typically the [Company Secretary]), including the full name and address of the UNC Party concerned, as well as their 3 digit UK Link short code;
- A clear description of the non-compliance including reference and text of paragraph or paragraphs that the derogation from is required
- The reason for the derogation request including a clear description of the reasons why the non-compliance is expected to occur.
- A comprehensive and, wherever possible, quantitative and qualitative assessment, of the impact of the non-compliance 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 (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)
 - National Grid Transmission
 - Gas Shippers
 - Any other parties affected by the non-compliance
 - Health and safety and the associated risk management measures including derogation from HSE or other standards as appropriate.
 - Details of any impacts to other codes including confirmation of application timeline for derogation requests from these codes, where relevant.
- Details of actions to mitigate risks to consumers or parties while the non-compliance exists
 - Details of any PAC reporting that is required

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- Where applicable, a description of the proposal for restoring compliance including timetable of works
- A description of the alternative actions that have been considered
- The proposed duration of the derogation requested including the proposed start and end dates
- Any restrictions to the derogation based on locality
- Any known or suspected impacts to other codes including identifying where IGT sites are included in the innovation trials, pilots or demonstrations are taking place.

Some or all of the above requirements may already be met within the Innovation Funding Application Pack, and should be clearly referenced as such on the application form.

A derogation cannot be retrospective in nature.

Applications can only be made by the UNC party that the derogation will apply to.

Only one party can be named as seeking a derogation per request, however a second party may submit an associated derogation requests to be considered (for example joint innovation projects with trials occurring on different networks, on the same, or differing timelines). The association should be noted in the request.

Applications will only be considered where the derogation request relates to a net zero related innovation trial, pilot or demonstration that is directly relating to net zero [‘non commercial research’, as defined by Imperial College London].

Supporting Evidence

Should the derogation request also require derogations from other codes, licence or standards, for example HSE, details of application timelines will be expected to be included. Whilst non UNC derogations may not have to have yet been granted, in order for the UNC Modification Panel to reach a decision, any derogation granted by UNC Modification Panel that also requires additional derogations in UNC or other standards will not be deemed to be valid unless these other derogations are also granted. The party applying for the UNC derogation will be expected to update the UNC Modification Panel via the Joint Office of the granting, or denial of these additional derogations as applicable.

The applying party is required to submit a copy of the [Innovation Funding Application Pack] (commercially sensitive nature may be redacted, as long as this information is not required to assess materiality of any impacts on other parties).

UNC Modification Panel is more likely to consider that a derogation request is justified if:

- An assessment has been provided by the applicant that demonstrates that there are **no**:
 - significant risks associated with the non-compliance to the applying party, other relevant UNC parties or connected suppliers or end customers.
 - avoidable adverse impacts (immediately or in the longer term) on the applying party, other relevant UNC parties or connected suppliers or end customers.
 - additional measures that could be taken to further mitigate the impact of the non-compliance on the applying party, other relevant UNC parties or connected suppliers or end customers for its duration.

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- outstanding objections from other parties who are materially affected by the derogation.
- competitive advantages to the applying party arising from the derogation that cannot be addressed that are not offset by a suitable mechanism.
- other reasonable options to address the non-compliance (that have not been considered).
- Where relevant the applicant has presented a robust case that supports the action that it considers necessary to address any impacts of non-compliance.
- Where relevant the applicant has presented a realistic and comprehensive implementation plan that defines, at the very least, the works required to restore compliance.
- Any measures to mitigate the risks to other parties that will be (or have been) taken until the non-compliance is restored.
- Any relevant PAC, or other reporting, is stated and has been agreed.
- The applicant has produced any other supporting information that is relevant to a specific request, including on the materiality of the issue.

Where an applicant is unable to satisfy all the above relevant criteria, the UNC Modification Panel will assess how far the applicant's ability to satisfy the criteria is deemed sufficient to justify the granting of a derogation. It is noted that a justified derogation request would not necessarily need to meet all of the listed criteria. The UNC Modification Panel would use its judgement in assessing any derogation requests and would advise any applicant of additional information requirements that were not included in the original request.

Should an application be made by additional parties for the same trial, pilot or demonstration at the same time, they may indicate that the evidence from the lead proposer is also relevant to their request. They will only be required to submit any additional evidence that relates to paragraphs of code being requested to be derogated from if this differs from the lead parties request. At UNC Panels discretion these associated applications may then be considered as a suite. However each request will be voted on individually, and approval or rejection of the lead application does not automatically result in the same outcome for associated applications in the suite.

UNC Modification Panel Assessment

The UNC Modification Panel will consider the derogation request in two stages. The initial consideration will be to confirm that the derogation request contains the minimum required evidence to allow for it to proceed to consultation. The second consideration will be to consider the merit of the derogation request based on evidence and consultation responses. It is at the second consideration where the UNC Modification Panel will vote to approve, or reject, the derogation request.

Each derogation request is assessed by the UNC Modification Panel individually on its merits in terms of meeting the minimum requirements set out in this document and the likely effect on other UNC Parties, wider industry, and consumers. It will also consider the likely effect for other UNC parties to continue to comply with their obligations under the UNC. It will also consider the intended outcome of the trial and project as a whole in relation to further progress towards net zero targets.

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

- Consumers

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- UNC Modification Panel will consider the extent to which the non-compliance impacts on consumers, for example through increased costs, or risks of failure of supply
- Competition
 - for example, any competitive advantage that may arise from granting the derogation
- Other parties affected by the non-compliance, including where relevant, but not limited to
 - Central Data Systems Provider
 - Distribution Network Operators (including Independent Gas Transporters (IGT))
 - National Grid Transmission
 - Gas Shippers
 - Any other parties (eg Suppliers) impacted by the derogation

Affected parties: Statements of the impact from these parties should be included in the application. Where relevant, UNC Modification Panel reserve the right to contact any of these parties to seek the views of affected. This is also extended to parties, not identified in the application should the UNC Modification Panel decide that there may also be an impact on these.

UNC Modification Panel may also take into account the impact on the relevant Distribution Network or National Transmission Systems to effectively and efficiently operate its system if a derogation were granted.

UNC Modification Panels assessment will also take into account:

- The nature of derogations already granted by UNC Modification Panel.
- The effect of the decision on future derogation requests.
- The impact of the derogation (and overall project) in relation to net zero
- Any other relevant information.

UNC Modification Panel may consult with the UNC Party making the request initially to clarify points

relating to the derogation request and satisfy itself that there is a need for a derogation. A representative for the derogation request is expected to attend the relevant UNC Modification Panel where the derogation is to be discussed to facilitate this. The UNC Modification Panel may also contact the proposer in writing, via the Joint Office, to ask for additional information or clarity.

As part of its consideration of the request, the UNC Modification Panel may consult with other parties as required in accordance with the following checklist:

Set out below is UNC Modification Panel's procedure for considering an application for derogation and the criteria that UNC Modification Panel proposes to apply when considering a derogation request.

- Is broader industry consultation (eg an impact assessment) required to inform the UNC Modification Panels decision?
 - Where relevant UNC Modification Panel will consider the appropriate manner in which to consult with industry and affected parties.
- Have directly affected UNC Parties been identified?
- Are there other relevant factors?
 - UNC Modification Panel can seek or request the proposer to provide, independent expert external advice if required.

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UNC Panel Decisions

Any valid, completed requests for derogations received more than [10] business days prior to a scheduled UNC Modification Panel meeting will be considered at that scheduled meeting.

UNC Modification Panel members have discretion [based on majority vote] to defer consideration of any derogation request to the next scheduled Panel (or specifically convened Panel) meeting for any application/s with a large volume of supporting documentation, or of a more complex nature.

UNC Modification Panel members discretion to request additional supporting information, where deemed relevant, [based on majority]. Where this cannot be provided at the time by the proposer, this process would result in the deferral of the vote to approve the derogation request to the next scheduled Panel meeting (Panel have the discretion to manage this by extraordinary Panel meetings).

If UNC Modification Panel considers that the derogation request is justified then UNC Modification Panel will issue a derogation to the applying party granting the necessary relief from the relevant obligations for a time period specified in the derogation. A copy will also be placed on the Joint Office's Website and Derogations Register.

- Any notice will be issued as subject to appeal procedures, with the derogation only being deemed approved, after the expiry of a 16 business day window, subject to no appeal being upheld by, or remaining outstanding with, Ofgem.
- Any approval notice issued will only be 'deemed approved', with approval subject to any additional derogations required as stated under 'Evidence' above, also being approved by the relevant bodies.

Derogation approval is subject to the voting as stated in the UNC for approval, this is repeated here for clarity, For the avoidance of doubt, should this document become misaligned with the UNC, then the voting as stated in the UNC will take precedent.

A derogation will only be granted where there is a [unanimous] vote of support from UNC Modification Panel members recorded as present. Should any vote not be [unanimous] the vote will be deemed to have resulted in non-support for the request, and the derogation will not be granted.

[UNC Modification Panel may reserve the right to revoke a derogation and/or may grant a derogation which is time limited with additional extension subject to certain conditions being satisfied (eg interim reporting), either by the party to which the derogation applies or in respect of the wider system. Should UNC Modification Panel impose additional requirements, they will make available to the applying party, details as to their reasoning]

There is no right of appeal to UNC Modification Panel for a derogation request that has not been approved.

- A derogation request that has not been granted may not be resubmitted to UNC Modification Panel for re-consideration unless it contains material changes.
 - Whether changes to a resubmitted application are deemed material in nature is subject to [majority] vote by UNC Modification Panel

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- Should UNC Modification Panel deem that the changes are not of material nature, the derogation will not progress further and will be rejected as an invalid application without proceeding to vote.

A derogation granted to a UNC party cannot be transferred to another UNC Party, regardless of association.

Should a UNC party change name, but retain the same company number, the derogation will remain valid, however the party is required to write to the UNC Modification Panel with a minimum of [30 days] advance notice of this name change.

If UNC Modification Panel considers that the derogation request has not been sufficiently justified, then the UNC Modification Panel may

- Request additional information from the applicant
 - This can be provided during the panel, or afterwards. For the later, and former where appropriate, the panel will defer the decision until the following panel meeting.
- Refuse the derogation request.
 - Where UNC Modification Panel refuses a derogation request and believes that non-compliance with the UNC may still occur or that impacts to Settlement, Allocation or Unidentified Gas (UIG), they may notify PAC, who may take any action in accordance with their existing remit.

The Joint Office will maintain a register of derogations that have been requested, including

- Date Derogation granted
- Paragraph references the derogation applies to
- Start date
- End Date
- Duration
- Any additional restrictions (eg locale)
- Name of applicant party

Ofgem powers in relation to UNC derogation requests

The Authority (Ofgem) have the ability to overrule any UNC Modification Panel decision within 15 days of the date of the UNC Modification Panel decision (notification of any outstanding appeal within this time frame will defer the implementation until Ofgem have advised of their decision). Any party impacted by the derogation who wishes to appeal to Ofgem should do so, in writing to Ofgem, and providing a copy to the UNC Modification Panel, to be received no later than the 15th day following the UNC Modification Panel decision.

Amendments to existing approved derogation requests

Requests for amendment of an existing approved derogation request may only be made by the licenced party who the original derogation is granted to. Amendment requests must include details of why the amendment is required along with a statement as to the impact if the amendment is not approved. Applications will also be required to confirm whether the amendment changes any of the consequential impacts, and if so, what these are.

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Should UNC Modification Panel not approve an amendment, then the existing derogation will remain valid.

Should a party who has successfully had a derogation granted cease to be a valid UNC party before the start of the derogation, the derogation will fall away without being implementable.

Should a party who has successfully had a derogation granted cease to be a valid UNC party during the terms of the derogation, UNC Panel will manage these on a case by case basis. UNC Modification Panel will take into account the steps needed to reverse any system changes etc, and will also consider whether any appropriate UNC Party has, or is in the process of, formally taking over the innovation project, trial or demonstration.

Timeline and Process Map

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Appendix A (application form)

Derogation Application Form (This form can be downloaded as a word document at www.gasgovernance.co.uk)

UNIFORM NETWORK CODE
APPLICATION FOR DEROGATION FOR INNOVATION PURPOSES
This document should be completed in accordance with the Innovation Derogation Guidance Document (which can be found at)
Completed forms, along with any accompanying evidence should be sent to: enquiries@gasgovernance.co.uk
UNC Party Applying for derogation: Company UK Link short code: Company Name: Company Address: Company Registered Number Signature (Company Secretary or other Authorised person): Name (please print): Position within company Contact Details: Tel: E-mail: Date of application: Applicant's Reference:
<u>Is this Derogation Part of a Suite. (delete as applicable) STANDALONE / LEAD / ASSOCIATED</u>
DEROGATION DETAILS
1. Summary of derogation – details of the specific obligation(s) to which you are seeking a derogation, quoting relevant UNC paragraphs

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2. Reason for Application – details of the justification for seeking this derogation (*include any alternative actions that have been considered, and reason that these are not being pursued*):

3. Conditions – description of the conditions of this derogation (ie location, or other restrictions):

4. Timescale – period of time for which the derogation is sought (please include start and end dates):

5. Associated Derogations or similar – details of any previous or current derogations or permissions (for example licence, HSE, other codes) which are related to this one. *These can be pending decision, however any approval of derogation within the UNC will be subject to relevant derogations or permissions also being granted*

5a Does the derogation request include meter points on one or more Independent Gas Transporter (IGT) networks

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5b If this derogation is part of a suite, please advise of the UNC Party submitting the lead application.

6. Corrective Action – Where relevant, details of the action you will take to become compliant with the obligation to which you are seeking a derogation including dates of any key milestones associated with these actions (including, where relevant, consumer compensation):

7. Effect on other Parties – details of the requested derogation’s anticipated impact on the costs and operations of other parties (see guidance document for additional information):

8. Supporting documentation – description of any attached supporting documents: (Please clearly reference and list all attachments)

FOR JOINT OFFICE OF GAS TRANSPORTERS USE ONLY:

UNC derogation Reference Number:

Date Received:

Date/Reference of UNC Modification Panel Meeting:
.....

Outcome:

Actions/Timing:

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