

Final Modification Report	At what stage is this document in the process?
<h1>IGT151:</h1> <h2>Revisions to User Termination Provisions</h2>	<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="border: 1px solid #ccc; padding: 2px; display: flex; align-items: center; gap: 5px;">01 Modification</div> <div style="border: 1px solid #ccc; padding: 2px; display: flex; align-items: center; gap: 5px;">02 Workgroup Report</div> <div style="border: 1px solid #ccc; padding: 2px; display: flex; align-items: center; gap: 5px;">03 Draft Modification Report</div> <div style="border: 1px solid #ccc; padding: 2px; display: flex; align-items: center; gap: 5px; background-color: #f4a460;">04 Final Modification Report</div> </div>
<p>Purpose of Modification:</p> <p>Changes are required to the IGT UNC (and UNC) following the implementation of the Corporate Insolvency and Governance Act 2020 ('CIGA'). Whilst CIGA does not directly mandate change to the IGT UNC, it has the effect of limiting the circumstances in which a Termination Notice can be issued to a User. Therefore, it is appropriate to acknowledge these limitations in the IGT UNC.</p>	
	<p>Panel consideration is due on 23rd April 2021</p> <p>The Panel determined that this self-governance modification be implemented.</p>
	<p>High Impact:</p> <p>N/A</p>
	<p>Medium Impact:</p> <p>N/A</p>
	<p>Low Impact:</p> <p>Shippers, Transporters</p>

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Timeline

The Proposer recommends the following timetable:

Initial consideration by Workgroup	N/A
Amended Modification considered by Workgroup	N/A
Workgroup Report presented to Panel	N/A
Draft Modification Report issued for consultation	29 th March 2021
Consultation Close-out for representations	20 th April 2021
Variation Request presented to Panel	N/A
Final Modification Report available for Panel	21 st April 2021
Modification Panel decision	23 rd April 2021

 Any questions?

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1 Summary

What

The IGT UNC Section K7 enables a Transporter to issue a Termination Notice to a User where a User Default has occurred. The events that constitute a User Default are listed in Section K7.1, and include where:

- (i) the Defaulting User is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986, but subject to Clause 7.2), or any voluntary arrangement is proposed in relation to it under Section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of a bona fide solvency reconstruction or amalgamation); or
- (ii) the Defaulting User has a receiver (which expression shall include an administrative receiver within the meaning of Section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
- (iii) the Defaulting User has an administration order under Section 8 of the Insolvency Act 1986 made in relation to it;

With effect from 25th June 2020, a Transporter is not able to issue a Termination Notice where the User Default is triggered by the occurrence of one or more of the three events listed above.

Why

The CIGA was implemented with effect from 25th June 2020. Section 14 of this Act provides that a provision in a contract for the supply of goods and services that would terminate the contract or supply or provide the supplier with the entitlement to do so, ceases to have effect where the relevant company becomes subject to a 'relevant insolvency procedure'.

A 'relevant insolvency procedure' includes where;

- a voluntary arrangement takes effect in respect of the company;
- an administrative receiver of the company is appointed; and
- the company enters administration.

How

It is proposed that the relevant triggers for User Default and the consequential rights for Transporters to issue a Termination Notice are revised to reflect that these triggers and rights are subject to the relevant provisions of the CIGA

2 Governance

Justification for Urgency, Self-Governance or Fast Track Self-Governance

Application of Self-Governance procedures is sought because the changes proposed are unlikely to have a material effect on competition in the shipping, transportation or supply of gas conveyed through pipes or any commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes. This is because the nature of the change is to align the IGT UNC to current 'live' legislation as CIGA overrides the provisions of the IGT UNC to the extent the IGT UNC conflicts with CIGA. There is no

consequential change to the actions Transporters are able, or not able, to take in respect of User Default and Termination Notices post implementation but the IGT UNC will be in alignment with the new legislation.

Requested Next Steps

This modification should:

- be subject to self-governance
- be assessed by a Workgroup

3 Why Change?

The IGT UNC Section K7 enables a Transporter to issue a Termination Notice to a User where a User Default has occurred. The events that constitute a User Default are listed in Section K7.1, and include where:

- (i) the Defaulting User is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986, but subject to Clause 7.2), or any voluntary arrangement is proposed in relation to it under Section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of a bona fide solvency reconstruction or amalgamation); or
- (ii) the Defaulting User has a receiver (which expression shall include an administrative receiver within the meaning of Section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
- (iii) the Defaulting User has an administration order under Section 8 of the Insolvency Act 1986 made in relation to it;

The CIGA was implemented with effect from 25 June 2020. Section 14 of this Act inserts a new section into the Insolvency Act 1986, this being section 233B 'Protection of goods and Services'. Paragraph (3) of this section states that a provision in a contract for the supply of goods and services that would terminate the contract or supply or provides the supplier with the entitlement to do so, ceases to have effect where the relevant company becomes subject to a relevant insolvency procedure.

Paragraph (2) of Section 233B lists those circumstances that constitute a 'relevant insolvency procedure' and these circumstances include where:

- A voluntary arrangement takes effect in respect of the company (paragraph (2)(d) of Section 233B);
- An administrative receiver of the company is appointed (paragraph (2)(c) of Section 233B); and
- The company enters administration (paragraph 2(b) of Section 233B).

It is worthy of note that the making of an 'administration order' constitutes entering into administration (see Schedule B1 of the Insolvency Act 1986).

Where the relevant contractual provision ceases to have effect under paragraph (3), paragraph (5) the provider of the goods or service (the Transporter in this case) may still terminate the contract if:

- The company or the office holder consents to the termination (paragraphs (5)(a) and (b) of Section 233B); or
- A court is satisfied that continuation would cause the provider hardship (paragraph (5)(c) of section 233B)

Where the relevant contractual provision ceases to have effect under paragraph (3), paragraph (6) affords the provider with the entitlement to terminate the contract if the company becomes subject to a further relevant insolvency procedure.

This change impacts both Transporters (as providers of services) and Users (as recipients of services).

The CIGA limits the ability of Transporters to issue a Termination Notice where the User in question is subject to a relevant insolvency procedure. To enhance consistency of the IGT UNC with the new legislation it is desirable for the IGT UNC to acknowledge this limitation.

If the IGT UNC is not modified as proposed, there will be an inconsistency between the new legislation and the IGT UNC in terms of the latter currently providing an unconditional right for the Transporter to issue a Termination Notice to a User where a User Default has occurred. Regardless of whether the IGT UNC is modified, due to the prevalence of the provisions of primary legislation over the terms of contracts, this right is not enforceable where the User is subject to a relevant insolvency procedure, including the three instances listed in the prevailing terms of the IGT UNC.

4 Code Specific Matters

Technical Skillsets

Knowledge of the Termination process and legal requirements around insolvency would be beneficial.

Reference Documents

[Insolvency Act 1986](#)

[Corporate Insolvency and Governance Act 2020](#)

5 Solution

It is proposed that the following provisions relating to User Termination (Section K7) are amended to reflect that they are subject to section 233B of the Insolvency Act 1986:

- K7.1 – events or circumstances constituting a User Default, specifically including those that are relevant insolvency procedures under section 233B of the Insolvency Act 1986 (as amended by CIGA); and
- K7.3 – entitlement for a Transporter to issue a Termination Notice to a Defaulting User

6 Impacts & Other Considerations

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

This Modification does not impact an SCR nor a significant industry change.

Consumer Impacts

This Modification is not expected to have any direct impact to consumers as primary legislation is already in place and this change is merely to bring the UNC in line.

Cross-Code Impacts

This Modification relates to UNC Modification 0743S, although is not intrinsically linked to it.

Environmental Impacts

This Modification is not expected to have any environmental impacts.

7 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
(A) Efficient and economic operation of the pipe-line system	None
(B) Co-ordinated, efficient and economic operation of (i) the combined pipe-line system; and/or (ii) the pipe-line system of one or more other relevant gas transporters	None
(C) Efficient discharge of the licensee's obligations	None
(D) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation agreements with other relevant gas transporters) and relevant shippers	None
(E) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers	None
(F) Promotion of efficiency in the implementation and administration of the	Positive

Code	
(G) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators	None

This Modification better facilitates Relevant Objective F by removing the conflict between legislation and the unconditional entitlement in the IGT UNC for a Transporter to issue a Termination Notice where a User Default has occurred.

8 Implementation

Implementation should be at the earliest opportunity after a Modification Panel decision to implement. This is because the primary legislation has been effective since 25 June 2020, therefore the current entitlement for a Transporter to issue a Termination Notice is not enforceable where the User is subject to a relevant insolvency procedure, including the three instances listed in the terms of the IGT UNC.

9 Legal Text

Text Commentary

The changes to paragraph:

- K7.1(c) means that the events or circumstances constituting a User Default, specifically including those that are relevant insolvency procedures, are subject to the provisions inserted into the Insolvency Act 1986 by the CIGA;
- K7.3 means that entitlement for a Transporter to issue a Termination Notice to a User is subject to the provisions inserted into the Insolvency Act 1986 by the CIGA;

Suggested Text

Part K – General

7 - Termination

Amend paragraph K7.1 as follows:

“(C) save if and to the extent the provisions of section 233B of the Insolvency Act 1986 apply, where:

Amend paragraph K7.3 as follows:

“Upon the occurrence of a User Default, and at any time after such occurrence at which the User Default is continuing, the Pipeline Operator may (subject to the provisions of section 233B of the Insolvency Act 1986) give notice ("Termination Notice") to the Defaulting User to the effect that the Pipeline User shall cease to be a Pipeline User with effect from the date (which may be any date on or after the date on which the notice is given) specified in the notice.”

10 Consultation

Panel invited representations from interested parties on 26th March 2021. The summaries in the following table are provided for reference on a reasonable endeavours basis only. We recommend that all representations are read in full when considering this Report. Representations are published alongside this Final Modification Report.

Representations were received from the following parties:

Organisation	Response	Relevant Objectives	Key Points
Indigo Pipelines Ltd	Support	F - positive	<ul style="list-style-type: none"> • We support implementation as it is beneficial to signpost the CIGA regulations to any Pipeline Operator who may be seeking to issue a Termination Notice to a User. • We agree this should be Self-Governance as it is not a material change to the Code, it simply alerts Parties to other Regulations that may impact the issuing of a Termination Notice. • We agree that this Mod facilitates Objective F by making parties aware that a Termination Notice must comply with both Code and the Insolvency Act. • Implementation should be at the earliest opportunity after a Modification Panel decision to implement. • We are satisfied with the legal text

11 Panel Discussions

Discussion

The Panel agreed that they had had sufficient time to review this modification and the associated papers and consultation responses and agreed to accept the modification as late business.

The Panel had no additional questions with regards to the modification, the legal drafting or the consultation response received.

Consideration of the Relevant Objectives

The Panel unanimously agreed with the proposer and the consultation respondent that the modification had a positive impact on relevant objective (F) Promotion of efficiency in the implementation and administration of the Code.

Determinations

Please note that the Panel meeting was held as a Reconvened meeting, as per Part L6.10 of the IGT UNC where current quoracy rules do not apply. As such there were two Pipeline Operator representatives (Rebecca Cailles (BUUK), the standing Alternate for Jenny Rawlinson (BUUK), and Ashley Foster (Indigo Pipelines), the Alternate for Cher Harris (Indigo Pipelines)) and One Shipper representative (Claire Roberts (Scottish Power) present in the meeting.

The Panel parties present voted unanimously in agreement that:

- i. The modification should be subject to Self-Governance.
- ii. The modification better facilitates relevant objective (F) Promotion of efficiency in the implementation and administration of the Code and
- iii. Subject to the 15-day appeal window, the modification be implemented in the 25th June 2021 scheduled IGT UNC Code Release.

12 Recommendations

Panel Determination [Self-Governance]

Members agreed:

- that Modification 151 should be implemented