

Final Modification Report	At what stage is this document in the process?
<h1 data-bbox="121 353 501 450">IGT153:</h1> <h2 data-bbox="121 488 1086 689">Aligning the IGT UNC with licence changes following the UK leaving the EU</h2>	<div data-bbox="1182 342 1449 667"> <div style="border: 1px solid #ccc; padding: 5px; margin-bottom: 5px; display: inline-block;">01 Modification</div> <div style="border: 1px solid #ccc; padding: 5px; margin-bottom: 5px; display: inline-block;">02 Workgroup Report</div> <div style="border: 1px solid #ccc; padding: 5px; margin-bottom: 5px; display: inline-block;">03 Draft Modification Report</div> <div style="border: 1px solid #ccc; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #f4a460;">04 Final Modification Report</div> </div>
<p data-bbox="121 801 496 835">Purpose of Modification:</p> <p data-bbox="121 864 1433 1048">Following the triggering of Article 50, the UK departed from the EU on 31st January 2020 where it entered an Implementation Period. This Implementation Period ceased on 31st December 2020, when a Deal was agreed by Parliament and the EU Commission to outline the arrangements for the UK to leave the EU. It is proposed that we align the Code with both the proposed licence changes and to the UNC, which has raised UNC0735VS to modify existing references to EU regulations the EU reference to UK amendment regulations.</p>	
	<p data-bbox="240 1077 847 1111">Panel consideration was on 28th May 2021</p> <p data-bbox="240 1122 1342 1155">The Panel determined that this self-governance modification be implemented.</p>
	<p data-bbox="240 1218 421 1252">High Impact:</p> <p data-bbox="240 1263 293 1296">N/A</p>
	<p data-bbox="240 1348 469 1382">Medium Impact:</p> <p data-bbox="240 1393 293 1426">N/A</p>
	<p data-bbox="240 1473 411 1507">Low Impact:</p> <p data-bbox="240 1529 568 1563">Transporters, Shippers</p>

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Timeline

The Proposer recommends the following timetable:

Initial consideration by Workgroup	8 th April 2021
Amended Modification considered by Workgroup	dd month N/A
Workgroup Report presented to Panel	23 rd April 2021
Draft Modification Report issued for consultation	28 th April 2021
Consultation Close-out for representations	20 th May 2021
Variation Request presented to Panel	N/A
Final Modification Report available for Panel	26 th May 2021
Modification Panel decision (late paper)	27 th May 2021

1 Summary

What

The IGT UNC contains a small section of Code with references to EU entities, which are largely ring fenced within a small section of code (Part L – Modification Rules). These are no longer applicable since the UK's exit from the EU and coming out of the Implementation period (IP).

Why

Following an agreement with Parliament and the EU Commission, the UK left the European Union (EU) on the 31st January 2020, following the triggering of Article 50 on 20th March 2017. The UK entered an Implementation period in order to provide continuity and certainty, with EU law applied in the UK as it always had done, which ended on IP completion day, the 31st December 2020.

Whilst EU regulations are no longer applicable in the UK and do not have to form the basis of UK policy and legislation, the UK Government, immediately after IP completion day and adhering to the Withdrawal Agreement Act of 2020 (which incorporates EU law into UK Law), introduced Statutory Instruments to correct or remove any inoperable provisions of EU Regulations, to align with the UK's exit of the EU.

Ofgem worked closely with Code Administrators in the build up to the withdrawal date to ensure that all Codes were prepared and would not be operationally affected after the agreed exit date. Included in this work with Ofgem, was a complete review of the IGT UNC to identify areas of the Code that are now redundant following the UK leaving the EU and existing EU references requiring modification from EU regulations to UK amendment regulations to maintain compliance.

Following publication of Ofgem's proposed licence changes, the IGT UNC was scrutinised more closely and it was believed that the Code was largely compliant with these new licence changes. However, it was advised to introduce a new definition in Section M to comply with Ofgem's new distinction between legacy legislation following the UK's exit.

It is important that these references are introduced to the IGT UNC to promote efficient governance of the Code. These changes also align with other industry Codes that are making similar changes to comply following the UK's exit, in particular, aligning the IGT UNC to the UNC.

How

References to European legislation are largely ring fenced to one section of Code and therefore will be straightforward to include this small addition. We will align the Code to the UNC, which has raised UNC0735VS to modify existing references to EU regulations the EU reference to UK amendment regulations.

2 Governance

Justification for Self-Governance Procedures

The Proposer of this modification determines that this should be progressed as a Self-Governance change. The modification seeks to amend Code to the IGT UNC following changes in legislation. The changes are not material and do not require Authority direction. This also aligns with other codes, including the UNC which this modification seeks to align with. The Proposer considers that the change could meet the criteria set out for Fast-Track status, however, feels this should proceed to one Workgroup meeting for a discussion to ensure no unintended consequences are overlooked.

Requested Next Steps

This modification should:

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

Workgroup Comments

The Workgroup agreed with the proposers view that this Modification should be Self-Governance.

3 Why Change?

In 2015 through an Ofgem Significant Code Review Ofgem introduced the concept of a 'European Modification' (IGT066) which could be enacted by Ofgem at any time dependant on changes in legislation within the EU. To date this type of modification has never been raised within the IGT UNC and therefore the section of Code has never been used. In 2016 the UK held a referendum on the UKs potential exit from the EU and the UK voted to leave the EU with a majority of 52% of the nations' vote. The UK government proposed a Withdrawal bill and left the EU on 31st January 2020, following a consensus by Parliament.

The IGT UNC has undergone a thorough review and does not believe there to be any operational impacts on IGT UNC parties following the UK leaving the EU. Ofgem carried out proposed licence changes for existing EU legislation and the changes look to retain references to the European Commission. Therefore, the IGT UNC will largely still comply with these changes with minimal amendments needed. New references have been introduced with a reference and definition to 'Retained EU Law', an extension of the existing clause for 'European Commission' and the introduction of the EU Exit Regulations 2019.

It is proposed that we align the Code to the UNC, which has raised UNC0735VS, to amend relevant references and introduce additional defined terms on 'legally binding decisions' and 'Retained EU Law'.

4 Code Specific Matters

Technical Skillsets

Knowledge of Brexit principles

Reference Documents

Ofgem – Brexit and the transition period

<https://www.ofgem.gov.uk/about-us/ofgem-and-europe/brexit-and-transition-period>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85421/7/WAB_Fact_Sheet_-_IMPLEMENTATION_PERIOD.pdf

Ofgem's Annex 8. EU Exit. Notice of proposed licence modifications to the licence conditions of the Gas Transporter Licence

https://www.ofgem.gov.uk/system/files/docs/2019/01/annex_8_gas_transporter_licence.df

Special meeting of the European Council (Art. 50), 25/11/2018:

<https://www.consilium.europa.eu/en/meetings/european-council/2018/11/25/>

5 Solution

The Proposal is to add the following to the IGT UNC in order to be fully compliant following the UK leaving the EU on the 31st January 2020 and IP completion day on 31st December 2020

- Add a defined term to 'legally binding decisions of the European Commission'.

The proposed solution is to point across to the UNC's defined term for 'legally binding decisions' as below;

“legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators” means any relevant legally binding decisions of the European Commission and/or the Agency, but a binding decision does not include a decision that is not, or so much of a decision as is not, Retained EU Law

It is therefore proposed that the IGT UNC points across this this reference in order to incorporate all changes needed to comply with the proposed licence changes.

Workgroup Comments

The Workgroup agreed that the solution delivered the intention of the Modification.

6 Impacts & Other Considerations

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

N/A

Consumer Impacts

None – implementation is not expected to have any impacts on consumers.

Cross-Code Impacts

All other codes are submitting equivalent modifications; this modification does not impact any other codes.

Environmental Impacts

None identified.

Workgroup Impact Assessment

The Workgroup agreed with the Proposers views on potential 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	Positive
(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 Code	Positive
(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

By ensuring that the Code is aligned with the proposed licence changes will provide a positive impact to Relevant Objective F), by promoting efficiency in the implementation and administration of the Code and by promoting good governance. There may also be positive impacts on Relevant Objective C) by carrying out the efficient discharge of the licensee's obligation, however, licence changes have removed several references to European bodies.

Workgroup Comments

The Workgroup agreed with the Proposers view that this Modification better facilitated Relevant Objects C and F.

8 Implementation

As soon as practicable following modification approval.

Workgroup Comments

The Workgroup recommended implementation into the next available release following approval by the Panel.

9 Legal Text

Suggested Text

PART L

“Large Transporter Representative”: the individual, if any, from time to time notified to the Code Administrator by the Secretary of the UNC Modification Panel to represent National Grid Gas plc and DN Operators;

“legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators” shall have the meaning ascribed thereto in the UNC;

“Member”: an individual appointed to the IGT UNC Modification Panel;

“Modification”: any Modification of the IGT UNC or, as the case may be, an Individual Network Code, made pursuant to these Modification Rules;

Part M

Definitions

Retained EU Law - has the same meaning as that given by section 6(7) of the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement Act) 2020;

Legally binding decisions - shall have the meaning ascribed thereto in the UNC

Workgroup Comments

The Workgroup agreed that the Legal Text facilitates the Solution.

10 Consultation

Panel invited representations from interested parties on 17th May 2021. Two responses were received, both of which supported the Modification and agreed that the Modification be subject to self-governance. One respondent agreed that the Modification met both relevant objectives cited by the Proposer, whilst the other respondent only agreed that the Modification met Relevant Objective F. 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
BUUK	Support	C - Positive F – Positive	<ul style="list-style-type: none"> • BUUK support the modification, it is a necessary change to amend a small section of code (Part L – Modification Rules) as no longer applicable as a result of the UK’s exit from the EU and coming out of the Implementation period. The Code will be aligned to the UNC, necessary to maintain efficient administration. • BUUK agree IGT153 should be a Self-governance modification as changes are not material and purely seeks to amend Code following changes in legislation. • We agree with the Workgroup that Relevant objective, (C) ‘Efficient discharge of the licensee’s obligations’ and (F) though only minor will support the objective and ‘Promotion of efficiency in the implementation and administration of the code will be positively impacted as promotes good governance. • No anticipated costs. • Implementation as soon as possible following approval. • Satisfied that the legal text will deliver the intent of the modification
Indigo Pipelines Ltd	Support	C – No Comment F - Positive	<ul style="list-style-type: none"> • We support this proposal as it will ensure the Code remains compliant with any retained EU laws. • This should be self-governance as the proposal does not materially change the Code. • This proposal supports Objective F by ensuring Code accurately references Retained EU Law. • This proposal should be implemented in the next release following Panel approval. • Satisfied that the Legal text meets the objectives of the proposal.

11 Panel Discussions

Discussion

The Chair summarised the Modification and consultation responses, noting that two consultation responses were received, all by Pipeline Operators. The Chair noted that all of the responses were in support of the Modification, agreed with the Relevant Objectives cited by the proposer and that the modification met the self-governance criteria. The Chair noted that all parties were happy with the legal text and that this facilitated the Modification's solution and that the implementation for this Modification should be as soon as practicable following a Panel decision. The Panel discussed the consultation responses and unanimously agreed that this Modification should be subject to Self-Governance Procedures.

Consideration of the Relevant Objectives

The Panel unanimously agreed that the Modification met one or more of the Relevant Objectives (C and F).

Determinations

Please note that the Panel meeting was held as a Reconvened meeting, as per Part L6.10 of the IGT UNC where current quorum rules do not apply. As such there were three Pipeline Operator representatives (Jenny Rawlinson (BUUK), Cher Harris (Indigo Pipelines) and Heather Ward (Energy Assets)) and one Shipper representative (Kirsty Dudley (E.ON), nominated Alternate for Claire Roberts (Scottish Power)) present in the meeting.

- The Panel parties present voted unanimously in agreement that:
- The Modification should be subject to Self-Governance;
- The Modification better facilitates relevant objective (F) Promotion of efficiency in the implementation and administration of the Code or (C) Efficient discharge of the licensee's obligations; and
- Should be implemented, subject to the 15-day appeal window.

The Panel agreed that implementation should be included in the June 2021 release scheduled for 25th June. The Chair noted that the pre-release for June would be published imminently and that IGT153 could be included with the caveat that this is still subject to the 15 day appeal window.

The Panel agreed to proceed on that basis and include the drafting for IGT153 in the June pre-release.

12 Recommendations

Panel Determination Self-Governance

Members agreed:

- that Modification 153 should be implemented

