

Initial Modification Report No.12

Brexit Modifications

26th February 2021

Please find below Initial Modification Report No.12 to the NI Network Gas Transmission Code raised by the Transporter as required under Sections A2 and A3 of the Code Modification Rules.

A Description of the nature and purpose of the modification

Proposed Modification No.6 was prepared in 2019 to provide for the possibility of a no-deal Brexit and addressed the implementation of the EU (Withdrawal) Act 2018 and the publication of draft Statutory Instruments (or SIs), which were to have the effect of transferring EU law, as it existed on exit day, into UK Law. Despite the significance of this shift in the legislation, the impact on the NI Network Gas Transmission Code was minimal and Proposed Modification No.6 was considered a 'housekeeping' modification.

With the subsequent Brexit uncertainty, the Proposed Modification No.6 was not required to be approved during 2020. With the implementation of a Brexit deal at the end of 2020, the Government passed further relevant legislation, specifically the European Union (Withdrawal) Act 2020 and the Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020. These have the effect of modifying the earlier Brexit legislation so as to implement the transfer of EU law into UK Law as it existed at the end of the Brexit transition period (referred to as the implementation period in the legislation), instead of on exit day.

The changes mean that there is no dilution of the requirement to comply with the principles of the relevant EU regulations, but where relevant, references to certain legislation and references to EU institutions need to be updated. These are mainly changes to amend or remove references to the EU, EU bodies and institutions, and to deal with some other consequential changes within the text of the NI Network Gas Transmission Network Code.

This Proposed Modification is to update the NI Network Gas Transmission Code with appropriate references to the legislation which has now been enacted.

Some minor process changes are required as a result of Brexit, such as publishing the Auction Calendar, however they will not have a material effect on Shippers. This Proposed Modification is also therefore a 'housekeeping' modification, and differs from the previous Proposed Modification 6 in relation to the additional references to the 2020 legislation and a small typographical change in the term for the ten-year network development plan of the European Union.

B How the modification better facilitates the relevant objective

The Relevant Objective, (condition 2.4 of the Transporter Licences) will be better facilitated by the NI Network Gas Transmission Code as a result of this modification. This change will support the efficient operation of the network by ensuring that certain referencing and defined terms in the NI Network Gas Transmission Code are updated to reflect the post-Brexit legislative situation.

C The clauses of the NI Network Gas Transmission Code that require amendment

This proposal amends various sections of the NI Network Gas Transmission Code and adds, removes or amends certain defined terms, as shown in the details in section G.

D Impact on the networks of the Designated Pipeline Operators, Adjacent Transporters and/or relevant agreements in respect of the NI Network:

The Transporter has considered the impacts the modification may have and has concluded as follows:

Operation of the networks of the Designated Pipeline Operators: No impact

Adjacent Transporters: No impact

Relevant NI Agreements: No impact

E The date proposed for implementation

The Transporter proposes that this Modification should take effect on the date of its approval by the Authority.

F How to Respond

Please send responses by email no later than 29th March 2021 to:

shippercommunications@gmo-ni.com

G Explanation of Proposed Changes

Changes to the Legislative Framework

To date, the NI Network Gas Transmission Code and wider industry arrangements have been prepared to comply with relevant European Commission Regulations, in the form of Network Codes, specifically:

- Capacity Allocation Mechanisms: (EU) 2017/459
- Balancing Code: (EU) No 312/2014
- Interoperability Code: (EU) 2015/703
- Tariffs Code: (EU) 2017/460
- Security of Supply Regulation: (EU) 2017/1938

In 2019, the UK Government issued and then implemented Statutory Instrument (“the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019 No.531”), which it originally intended to pass in the event of ‘no-deal’, but which would also be required in the event of a deal. This had the effect of bringing the provisions of these network codes directly into UK law, whilst removing references to report to or comply with the requirements of EU bodies and institutions such as ACER, with effect from exit day.

Prior to this, the European Union (Withdrawal) Act 2018 had also been implemented. This Act set out the approach by which EU law would be transferred into UK law on the departure of the UK from the EU including through the use of SIs and, in particular contained the definition of ‘Retained EU Law’.

In 2019, the UK Government also issued and then implemented Statutory Instrument (“the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 No.530”) to amend existing primary and subordinate UK legislation which was already derived from EU law, in particular where it enacted the requirements of the Third Energy Package (the Directive 2009/73/EC and the Regulation EC No. 715/2009).

The function of SI No.530 was to update the relevant legislation for the change in status of the UK with respect to the EU. Primarily the SI was to substitute references to the EU with references to GB and/or Northern Ireland whilst removing provisions which currently give the EU institutions a role. The relevant NI legislation (for gas) is listed below:

- The Gas (Northern Ireland) Order 1996
- The Energy (Northern Ireland) Order 2003

The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 No.530 has now been revised by the Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020 No.1016. This has the effect of replacing references to ‘exit day’ in the 2019 instrument to ‘IP completion day’ (i.e. the end of the 2020 transition period).

The original European Union (Withdrawal) Act 2018 has similarly been modified by the European Union (Withdrawal) Act 2020 in respect of replacing ‘exit day’ with ‘IP completion day’.

In preparing the NI Network Gas Transmission Code to date, the general approach has been not to include references to the legislative framework except where absolutely necessary. Consequently, there are only a few minor changes required to address the change in the legislative framework. These are set out and explained in the summary table which follows.

The proposed legal text of this Proposed Modification No.12 only differs from Proposed Modification No.6 by adding the references to the 2020 legislation, where it has the effect of modifying earlier Brexit legislation, specifically in the definitions of Retained EU Law and the definition of FDAUIOLI.

Summary of Proposed Changes

Section	Outline of Change	Explanation
2.4.2(b)	Amend the definition of Auction Calendar to remove reference to publication by ENTSOG	Shippers are able to continue to use the PRISMA platform. However, the obligation on ENTSOG to publish the Auction Calendar no longer applies in respect of the GB and Northern Ireland jurisdictions. The schedule of dates remains entirely in line with those published by ENTSOG, but the obligation to publish the calendar under the SI falls to the GB and NI Transporters instead of ENTSOG
2.8.14	Remove references to UTC	No changes to the use of UTC (Universal Co-ordinated Time) have been required, but the SIs remove references to UTC and just refers to the relevant times. This change is for consistency with the legislation
4.2.11	Re-phrase to reflect the wording of the requirement in the relevant SI	The current wording of the relevant obligation in the CAM Code requires the Transporter to consider the EU Ten Year Development Plan. The relevant SI No.531 amended this obligation to refer to the Transporter considering the obligation on an Adjacent Transporter to take the EUTYNDD into account. In the context of the Republic of Ireland, the EUTYNDD will still be relevant to Gas Networks Ireland. Hence the change rewords the obligation in the NI Network Gas Transmission Code to incorporate both the general intent of the SI and to acknowledge the specific consideration of the EUTYNDD by the Adjacent Transporter
16.2.7	Remove reference to ENTSOG and to ACER	In line with the SIs, this change simply removes the obligation on Shippers to comply with information requests from ACER or ENTSOG
“Competent Authority”	Remove reference to the European Union (including any Member State thereof)	In line with the SIs, this change removes the European Union as a Competent Authority in the context of the Northern Ireland Gas Transmission Network Code
“ENTSOG”	Removal of definition	ENTSOG will no longer be directly relevant to the NI Network Gas Transmission Code, specifically in its role in publication of the Auction Calendar. See also section 2.4.2(b)
“EUTYDP”	Amendment of term to give European Union in full and to amend the acronym to “EUTYNDD”	This acronym still required (as it remains relevant to Gas Networks Ireland as Adjacent Transporter in the ROI), so this change is simply to give the definition in full in the Defined Terms in Appendix 1, and also to insert an ‘N’ within the acronym to refer more precisely to the nature of the plan (i.e. a Network Development Plan)

“FDA UIOLI”	Amendment of term to refer to the relevant legislative instruments	This reference to the Third Package Regulation is updated to also refer to the SIs
“Licence”	Amendment of term to reflect the fact that the relevant legislation will be updated	The term already refers to the Gas (Northern Ireland) Order 1996 (as amended). This change simply adds ‘from time to time’
“Recognised Standard”	Amendment of term to remove references to EU standards, and to include reference to standards in the Republic of Ireland	In line with the SIs, general EU standards will no longer be relevant to the NI Network, but in the case of the South North Interconnection Point, which is physically located in the Republic of Ireland, relevant standards in ROI will remain relevant. The proposed change reflects this
“Retained EU Law”	New term, referring to the relevant statutory instruments	This new term is required to support the amended definition of FDA UIOLI

H: Proposed Legal Text

Amend Section 2.4.2 (b) to read as shown below:

2.4.2 For the purposes of this Code:

- (a) “**Auction**” means an auction of IP Capacity of a single Class, IP Capacity Duration, IP Capacity Period and Flow Direction and which is either Bundled or Unbundled and “**Auctions**” shall be construed accordingly save that references to “**Auctions**” in sections 2.8.43 to 2.8.49 have the meaning given to them in section 2.8.42;
- (b) “**Auction Calendar**” in relation to an Auction Year is the auction calendar published ~~by~~ **ENTSOG** for that Auction Year on the Transporter’s Website;

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Amend section 2.8.14 to read as follows:

2.8.14 The Bid Windows shall be determined as follows:

- (a) no Bid Window shall start before 08:00(~~UTC~~) or end after 17:00 (~~UTC~~);

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Amend section 4.2.11 to read as follows:

4.2.11 The Market Demand Assessment Report shall take into account:

- (a) whether ~~the EUTYDP or~~ the Ten Year Statement, any UK network development plan or national development plan relevant to the network of an Adjacent Transporter including the EUTYNDP indicate a demand requirement in a reasonable peak demand scenario which the offer of Incremental Capacity could fulfil;

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Amend section 16.2.7 to read as follows:

16.2.7 Shippers agree to respond within a reasonable timeframe to any additional requests for forecast (or other) information made by the Transporter at any time where necessary for the purposes of compliance with information requests from ~~ENTSOG, ACER,~~ the Authority and/or any other reasonable purpose.

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Appendix 1: Definitions and Interpretation

Amend, add or remove, as applicable, the following defined terms to read as shown below:

“Competent Authority”	means the Authority, the Office of Gas and Electricity Markets in Great Britain, or any local, national or supra-national agency, authority, department, inspectorate, official, court, tribunal or public or statutory person (whether autonomous or not) of the European Union (including any Member State thereof) which has jurisdiction over the Individual Transporters or a Shipper regarding the subject matter of this Code;
“ENTSOG”	means the European Network of Transmission System Operators for Gas, an ‘Association Internationale Sans But Lucratif’ established under Belgian law;
“EUTYNDP”	means the EU-wide ten-year network development plan <u>of the European Union</u> ;
“FDA UIOLI”	means the firm day-ahead use-it-or-lose-it mechanism set out in point 2.2.3 of Annex 1 to Regulation (EC) No. 715 / 2009, as amended by a commission decision of 24 August 2012 <u>and (as a component of Retained EU Law) as amended by Schedule 2 of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 and section 3 of the Electricity and Gas etc, (Amendment)(EU Exit) Regulations 2020</u> ;
“Licence”	means the licence (as amended from time to time) to convey gas granted to an Individual Transporter under Article 8 (1) (a) of the Gas (Northern Ireland) Order 1996 (as amended <u>from time to time</u>);
“Recognised Standard”	means any technical, engineering or other standard, issued or published by any governmental body of professional or other institution, and generally recognised as applying to the gas industry in the United Kingdom <u>or, as relevant to the South North Interconnection Point, the Republic of Ireland</u> or the European Union , as from time to time applicable;
“Retained EU Law”	has the meaning given to it in section 6(7) of the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement Act) 2020;