

To: All holders of a gas supply licence

**Gas Act 1986
Section 23(2)**

**Notice of statutory consultation on a proposal to modify the standard conditions
of all gas supply licences**

1. The Gas and Electricity Markets Authority ('the Authority')¹ proposes to modify the standard conditions of all gas supply licences granted or treated as granted under section 7A(1) of the Gas Act 1986 (the Act) by amending the following standard licence conditions (SLCs) under section 23(1)(b) of the Act:
 - Condition 19AA. (Additional reporting requirement)
 - Condition 28C. (Milestone assessments)
2. We are proposing these modifications to increase regulatory scrutiny of supplier growth and to strengthen checks on significant commercial and personnel developments.
3. The effect of these proposed modifications is to temporarily constrain a supplier's ability to grow when it reaches certain customer thresholds while checks are conducted thereby protecting consumers from potential harm caused by unchecked, unsustainable supplier growth. The proposed modifications are set out in Appendix 1 to this notice. The effect of these proposed modifications is also to temporarily pause suppliers' significant commercial and personnel developments while the Authority conducts assessments aimed at guarding against these developments leading to consumer harm
4. We intend our proposed modifications to function together as part of a package. We expect these modifications will protect consumers by mitigating the harmful effects associated with unchecked and unsustainable supplier growth, and poor supplier business practices.
5. This notice of statutory consultation is published alongside a consultation. A detailed description of the reasons for and the effects of these licence modifications has been published by the Authority in the accompanying consultation, which can be found on our website. Alternatively, they are available from foi@ofgem.gov.uk.
6. Any representations with respect to the proposed licence modifications must be made on or before **17 January 2022** by email to: RetailFinancialResilience@ofgem.gov.uk.
7. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
8. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.

¹ The terms "the Authority", "we" and "us" are used interchangeably in this document.

**Neil Barnes,
Deputy Director, Retail Policy & Innovation**

**Duly authorised on behalf of the
Gas and Electricity Markets Authority**

15 December 2021

Appendix 1

Proposed modifications to the standard conditions of all gas supply licences

Deletions are denoted with a ~~strike-through~~ and new text denoted with double underlining.

Condition 19AA. Additional reporting requirement Notification requirements regarding significant commercial/personnel developments

19AA.1 The licensee must notify the Authority of any change in any of the matters listed in ~~19AA.2 SLC 19AA.5~~, promptly and within a reasonable timescale.

~~19AA.2~~ Unless the Authority otherwise directs, the licensee shall:

- a) not enter into a binding agreement for a Trade Sale or Trade Purchase;
- b) not conclude arrangements which, if carried into effect, will result in the creation of a Relevant Merger Situation;
- c) take all reasonable steps not to allow a change in Person with Significant Control in respect of the licensee; or
- d) take all reasonable steps not to allow a change in person with Significant Managerial Responsibility or Influence in respect of the licensee.

until such time as the licensee has provided any information required by the Authority (whether identified in any guidance issued under this SLC 19AA or in response to a notification from the licensee) to complete its SLC 19AA Assessment and the Authority has notified the licensee that it has completed a SLC 19AA Assessment.

~~19AA.3~~ The licensee must have regard to the findings of any SLC 19AA Assessment conducted pursuant to this SLC 19AA and notified to it.

~~19AA.4~~ The licensee is not required to comply with SLC 19AA.2 to such extent and subject to such conditions as the Authority may from time-to-time direct.

~~19AA.2~~~~19AA.5~~ The matters referred to in ~~paragraph~~ SLC 19AA.1 are the following:

- a) whether the licensee is entering into a binding agreement for a Trade Sale or a Trade Purchase, and for the avoidance of doubt, the notification should take place in accordance with the number of days required for notification as specified in or determined under guidance issued by the Authority on this SLC 19AA before the licensee enters into such an agreement;
- b) the address of the licensee's registered office;
- c) the e-mail address of the licensee's regulatory contact;
- d) whether the licensee is an Active Supplier in respect of Domestic Customers and / or Non-Domestic Customers;
- e) whether there is a reasonable prospect that a Relevant Merger Situation ~~has arisen~~ will arise in respect of the licensee and for the avoidance of doubt, the notification should take place in accordance with the number of days required for notification as specified in or determined under guidance issued by the Authority on this SLC 19AA before the licensee concludes the relevant arrangements;

- f) whether there is a reasonable prospect that there will be a change in any Person with Significant Control in respect of the licensee (whether by virtue of one or more persons ceasing to have Significant Control and/or by virtue of one or more person who does not have Significant Control acquiring it) and for the avoidance of doubt, the notification should take place in accordance with the number of days required for notification as specified in or determined under guidance issued by the Authority on this SLC 19AA before the licensee makes such change;
- g) whether there is a reasonable prospect that there will be a change in any Person ~~person~~ with Significant Managerial Responsibility or Influence in respect of the licensee (whether by virtue of one or more persons ceasing to have Significant Managerial Responsibility or Influence and/or by virtue of one or more person who does not have Significant Managerial Responsibility or Influence acquiring it) and for the avoidance of doubt, the notification should take place in accordance with the number of days required for notification as specified in or determined under guidance issued by the Authority on this SLC 19AA before the licensee makes such change;
- h) whether the licensee supplies any Customers through a White Label Tariff;
- i) any significant changes that may affect how a licensee operates.

19AA.6 The licensee must have regard to any guidance on SLC 19AA (including in respect of definitions which appear in standard condition 1) which, following consultation, the Authority may from time-to-time revise.

Definitions for condition

~~19AA.3~~19AA.7 For the purposes of this condition:

Person with Significant Control has the same meaning as under section 790C of the Companies Act 2006.

Relevant Merger Situation has the same meaning as under section 23 of the Enterprise Act 2002.

SLC 19AA Assessment means an assessment of significant commercial/personnel developments by the Authority against the requirements set out in guidance issued by the Authority on this SLC 19AA and (subject to the licensee's provision of information required by the Authority) to be carried out within the period specified in such guidance.

Condition 28C. Milestone Assessments assessments

28C.1 The licensee must notify the Authority, in writing, when there is a reasonable prospect that it will imminently reach, or at the latest when it reaches its first 50,000 Domestic Customers, or such other number of Domestic Customers as directed by the Authority, for the purpose of undergoing the relevant milestone assessment.

28C.2 The licensee must notify the Authority, in writing, when there is a reasonable prospect that it will imminently reach, or at the latest when it reaches its first 200,000 Domestic Customers, or such other number of Domestic Customers as directed by the Authority, for the purpose of undergoing the relevant milestone assessment.

28C.3 The licensee must notify the Authority, in writing, when there is a reasonable prospect that it will imminently reach, or at the latest when it reaches such number of Domestic Customers as may be specified by the Authority in a direction, for the purpose of undergoing the relevant milestone assessment.

28C.4 From the earlier of the time at which the licensee either:

a) submits a notification to the Authority as required by SLC 28C.1, SLC 28C.2 or a direction issued by the Authority in respect of this SLC 28C; or

b) has reached the specified number of Domestic Customers specified in SLC 28C.1, SLC 28C.2 or a direction issued by the Authority in respect of this SLC 28C,

unless directed otherwise by the Authority, the licensee must not enter into any new Domestic Supply Contracts, unless that Domestic Supply Contract is a Deemed Contract or a Contract with a Domestic Customer with whom that Supplier already has a Contract, until such time as the Authority has notified the licensee that it has completed the relevant milestone assessment in line with the timescale set out by the Authority in any guidance issued on SLC 28C. To the extent that this SLC 28C.4 applies, the licensee shall not be obliged to comply with SLC 22.2.

28C.5 The licensee must have regard to the findings of any milestone assessment conducted pursuant to this SLC 28C and notified to it.

~~28C.3~~28C.6 The licensee must have regard to any guidance on ~~standard condition~~ SLC 28C (including in respect of definitions which appear in standard condition 1) which, following consultation, the Authority may issue and may from time-to-time revise.

28C.7 The licensee is not required to comply with SLC 28C.4 to such extent and subject to such conditions as the Authority may from time to time direct.