

# Consultation

## Statutory consultation on proposals to modify licence conditions related to the Switching Programme

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<b>Response deadline:</b>	24 <sup>th</sup> Jan 2022	<b>Team:</b>	Switching Programme
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We are consulting on proposals to modify standard licence conditions required for the Faster and More Reliable Switching Programme (the Switching Programme). The Switching Programme will transform current gas and electricity switching arrangements, resulting in faster, more reliable switching for consumers.

This is a statutory consultation in accordance with the Gas Act 1986 and Electricity Act 1989, concerning our proposals to modify the following licences:

- Standard conditions of Electricity Supply Licence
- Standard conditions of Gas Supply Licence

These proposals have been through consultation with industry in the lead up to this Statutory Consultation, including through the Switching Programme governance, in particular the Regulatory Design User Group (RDUG).

We would like views from holders of these licences. We would also welcome responses from any other interested stakeholders and the public, although areas of this consultation are technical in nature and might require a degree of specialist

knowledge around the detail of energy licence conditions and retail codes framework in order to fully engage.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses.

We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

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## Executive summary

This consultation requests views on the modifications that we propose to make to the Gas and Electricity Supply Standard Licence Conditions (SLCs), required for the implementation of the business rules proposed by the Faster and More Reliable Switching Programme (Switching Programme).<sup>1</sup> The Switching Programme will transform current gas and electricity switching arrangements, resulting in faster, more reliable switching for consumers.

Our licence modification proposals were consulted on in June 2019<sup>2</sup> and updated proposals were then consulted on in November 2020.<sup>3</sup> These proposals were then further reviewed with stakeholders, including at the Switching Programme Regulatory Design User Group (RDUG) and Regulatory Group through 2020 and 2021. This document sets out our further updated thinking, and represents our statutory consultation on the changes to the SLCs required for the Switching Programme.

The objective of the Switching Programme is to improve consumers' experiences of switching, leading to greater engagement in the retail energy market, by designing and implementing a new switching system and process that is reliable, fast and cost-effective. This will build consumer confidence and facilitate competition, delivering better outcomes for consumers.

We would like to use this opportunity to thank the industry for the constructive engagement in the consultation process over the duration of the Switching Programme to date.

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<sup>1</sup> Link to the [Switching Programme homepage](#) on the Ofgem website

<sup>2</sup> Link to the [2019 consultation](#) on the Ofgem website here

<sup>3</sup> Link to the [2020 consultation](#) on the Ofgem website here

## 1. Introduction

### Background

1.1. We last consulted on the licence changes proposed for the Switching Programme in November 2020, as part of our joint consultation with proposed licence changes for Retail Code Consolidation (RCC).<sup>4</sup> The November 2020 consultation proposed changes to a total of six licences:

- Standard conditions of Electricity Supply licence
- Standard conditions of Gas Supply licence
- Standard conditions of Gas Shipper licence
- Standard conditions of Gas Transporter licence
- Standard conditions of Electricity Distribution licence
- Smart Meter Communication licence

1.2. We then published a statutory consultation to introduce the licence changes required for RCC in April 2021.<sup>5</sup> Following our decision on 2 July 2021, those licence changes entered into force in September 2021, in order to reflect the changes brought about by RCC and the coming into effect of version 2.0 of the Retail Energy Code (REC v2.0).<sup>6</sup>

1.3. **This statutory consultation only relates to the licence changes required for the Switching Programme, and impacts only on two licences:**

- Standard conditions of Electricity Supply Licence
- Standard conditions of Gas Supply Licence

We will issue separate statutory consultations on proposed changes to other licences impacted by the Switching Programme in quarter one of 2022.

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<sup>4</sup> Link [here](#) to the Ofgem website

<sup>5</sup> Link [here](#) to the Ofgem website

<sup>6</sup> Link [here](#) to the Ofgem website

1.4. We had first consulted on proposed licence modifications for the Switching Programme in June 2019.<sup>7</sup> Following analysis of responses received and through subsequent review with stakeholders, in particular through the Switching Programme Regulatory Design User Group, we further refined our thinking for our November 2020 consultation. With that in mind, at that point we asked stakeholders two key questions:

*Q) 1.1 - Do you agree with the proposed standard licence condition modifications as drafted in Appendix 3 for the Gas Supply Licence?*

*Q) 1.2 - Do you agree with the proposed standard licence condition modifications as drafted in Appendix 2 for the Electricity Supply Licence?*

1.5. At that point we also introduced additional new proposals related to the five working day “backstop” and the “cooling off” arrangements for customers cancelling switches. With that in mind we asked stakeholders an additional three specific questions (questions 1.3 to 1.5 below). For detailed background information regarding these proposals, please refer to paragraphs 1.7 to 1.31 in the November 2020 consultation document:<sup>8</sup>

*Q) 1.3. Do you agree with our proposal to modify the five working day switching regulatory backstop by introducing a 5pm cut off on a working day, after which, if a consumer signs up, the start of the five working day period will be counted as the next working day?*

*Q) 1.4. Do you agree with our proposals to measure the start of the grace period, from which Supplier B must continue to supply the customer on the same tariff after the consumer has switched and cancelled, from the point that Supplier B sends notice to the consumer of their options and that the grace period should be 15 working days?*

*Q) 1.5. Do you agree with our proposals to measure the start of the period over which Supplier A must offer to take a customer back on equivalent terms from the*

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<sup>7</sup> Link [here](#) to the Ofgem website

<sup>8</sup> Link [here](#) to the Ofgem website

*switch date? Do you agree that the period that Supplier A must maintain this offer is 16 working days from the switch date?*

1.6. We have published the non-confidential responses on our website alongside the original consultation document and supporting documents.<sup>9</sup> We received ten representations in response to question 1.1 and 1.2, 12 representations on 1.3, and eight on 1.4 and 1.5. Following review of the responses, and for the reasons outlined in the 2020 consultation and below, we intend to progress with the licence text as proposed in the 2020 consultation with only one material change being made to what was previously proposed (namely, a revised definition of “Relevant Date”, and a consequential change). Further details can be found below in Chapter Two.

## **What are we consulting on?**

1.7. We are setting out our final proposed licence changes to the gas and electricity supply standard licence conditions which we consider are required for the successful “Go Live” of the Switching Programme. Subject to stakeholder feedback and the consultation responses we receive, we expect these changes to enter into force at the “Go-Live” date for the new Central Switching Service (CSS). The “CSS Go-Live Date”, as defined in the REC, is the date and time to be designated by the Authority, and is currently anticipated to be 18<sup>th</sup> July 2022.

## **Context and related publications**

1.8. This consultation is part of Ofgem’s Switching Programme, details of which can be found on the Ofgem website.<sup>10</sup>

1.9. We first consulted on proposed licence modifications for the Switching Programme in June 2019 as part of our consultation ‘*Switching Programme and Retail Code Consolidation: Proposed changes to licences and industry codes*’. That consultation document, supporting documentation and stakeholder responses are available on our website.<sup>11</sup>

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<sup>9</sup> Link [here](#) to the Ofgem website

<sup>10</sup> Link [here](#) to the Ofgem website

<sup>11</sup> Link [here](#) to the Ofgem website

1.10. We then further consulted on licence changes in November 2020 as part of our consultation '*Switching Programme and Retail Code Consolidation: Proposed licence modifications*'. That consultation document and supporting documentation are available on our website.<sup>12</sup>

1.11. We also consulted on the code drafting that we proposed to implement through the Retail Code Consolidation SCR in December 2020, in our publication '*Retail Energy Code v2.0 and Retail Code Consolidation*'. That consultation document, supporting documentation and stakeholder responses are available on our website.<sup>13</sup> Those particular code changes are now complete and the Retail Code Consolidation SCR has closed.<sup>14</sup>

1.12. Finally, we issued a statutory consultation to implement the required licence changes for Retail Code Consolidation in April 2021. That consultation document, supporting documentation and stakeholder responses are available on our website.<sup>15</sup> We published our decision letter and supporting documentation in July 2021.<sup>16</sup>

## Consultation stages

1.13. This is a statutory consultation. We invite stakeholders to submit representations by no later than 5pm on Monday 24<sup>th</sup> January 2022.

1.14. We expect to publish a decision on these proposals sometime in Spring 2022, with the finalised licence modifications taking effect, if made, from the Go-Live date for the CSS (and following the mandatory 56 day minimum standstill period). The CSS Go-Live Date, as defined in the REC, is the date and time to be designated by the Authority, and which is currently anticipated to be 18<sup>th</sup> July 2022.

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<sup>12</sup> Link [here](#) to the Ofgem website

<sup>13</sup> Link [here](#) to the Ofgem website

<sup>14</sup> Link [here](#) to the Ofgem website

<sup>15</sup> Link [here](#) to the Ofgem website

<sup>16</sup> Link [here](#) to the Ofgem website



## How to respond

1.15. We want to hear from anyone interested in this consultation. Please send your response to [switching.programme@ofgem.gov.uk](mailto:switching.programme@ofgem.gov.uk) by **no later than 5pm on Monday 24<sup>th</sup> January 2022**.

1.16. We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

1.17. We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

## Your response, data and confidentiality

1.18. You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

1.19. If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

1.20. If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union (UK GDPR), the Gas and Electricity Markets Authority will be the data controller for the purposes of UK GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 2.

1.21. If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

## **General feedback**

1.22. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?


Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk)

## **How to track the progress of the consultation**

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations.](https://www.ofgem.gov.uk/consultations)


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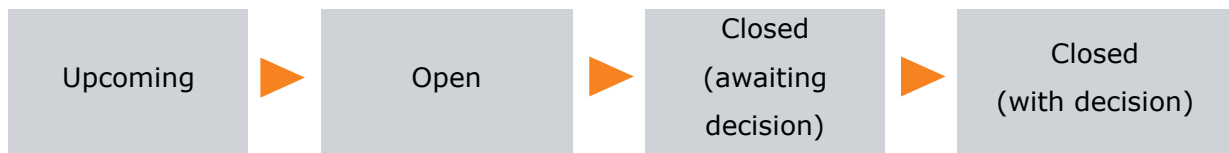
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## 2. Stakeholder feedback on November 2020 policy consultation and Ofgem response

### Section summary

This section sets out details of the responses we received to our November 2020 policy consultation “Switching Programme and Retail Code Consolidation: Proposed licence modifications”.<sup>17</sup> We provide justification for why we are, or are not, proposing changes to the licence text as a result of representations received in response to that consultation.

2.1. As noted in Chapter 1, we received ten representations in response to question 1.1 and 1.2, 12 representations on 1.3, and eight on 1.4 and 1.5. We have published the responses on our website.<sup>18</sup> We have carefully considered these responses.

2.2. In some instances, the comments we received in response to one question were equally or more applicable to a different question, and have been considered as such. In some cases, we address a comment or issue below in relation to a different question than that to which the comment was attributed by the respondent. Our view is that we have addressed all substantive comments received to all questions over the course of the chapter.

**Q) 1.1 - Do you agree with the proposed standard licence condition modifications as drafted in Appendix 3 for the Gas Supply Licence?**

**Q) 1.2 - Do you agree with the proposed standard licences condition modifications as drafted in Appendix 2 for the Electricity Supply Licence?**

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<sup>17</sup> Link [here](#) to the Ofgem website

<sup>18</sup> Link [here](#) to the Ofgem website

2.3. Because the provisions of the conditions of the gas and electricity licences on which we proposed changes are largely identical, the majority of the comments we received in response to questions 1.1 or 1.2 were equally applicable to both licences. We will therefore address comments received to both questions together.

### **“Enter into contract”**

2.4. We received a number of responses to our proposal, as set out in paragraph 1.15 of the consultation document, to amend the SLC14A definition of “Relevant Date”, which is the trigger point for calculating the start of the period within which a switch must take place. We had previously proposed that the Relevant Date should be defined as the day on which a customer enters into a contract or, where they do so after 5pm on a working day, the next working day.

2.5. We recognised in the consultation that there was ambiguity on when a consumer is deemed to have entered into a contract for the purposes of SLC14A. Our view had been that it should be considered from a consumer’s perspective, i.e. when they believe they have provided sufficient information to enable the switch to take place,<sup>19</sup> and do not expect to have to provide any further information. We also noted that a consumer “entering into a contract” is a concept already applied in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the Cooling Off Regulations), and that Ofgem expects to use this interpretation for SLC14A compliance and monitoring purposes.<sup>20</sup>

2.6. We received comments comparing our proposal with the provisions in the Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015 (GSoP Regulations).<sup>21</sup> For the purposes of the GSoP Regulations, a gaining supplier must complete a request to switch to them within 15 working days of that supplier receiving sufficient information to:

- (i) confirm the switch relates to the customer who requested it, and

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<sup>19</sup> To the supplier or its representative, such as a Price Comparison Website with whom the supplier has a relationship

<sup>20</sup> Link [here](#) to the Cooling Off Regulations

<sup>21</sup> Link [here](#) to the standards on the Ofgem website

- (ii) identify the meter point or meter points to which the switch request relates.

If a supplier breaches the GSoP Regulations then it must pay compensation to the relevant consumer. We received representations concerned that “sufficient information to initiate the switch” may be reliant on the supplier receiving information from, for example, a Price Comparison Website (PCW). The concern was raised that PCWs may not have time to validate data from a consumer with the supplier before the supplier must initiate the switch under SLC14A, and that reliability issues, including more delayed, failed or erroneous switches, may result as suppliers attempted to meet the timescales of the proposed new licence requirements. One respondent stated that, to mitigate this, it could mean that suppliers and their representatives need to include additional steps and verification requirements during the initial “quote and join” process in order to avoid errors, making the process burdensome to consumers which may discourage them from engaging in the switching process.

2.7. With all of this in mind, the point was made that Ofgem should instead include within the definition of *Relevant Date* the requirement that the supplier has sufficient information to process the switch.

**Ofgem response:**

2.8. We recognise the concerns stakeholders raised around the definition of “Relevant Date”. In response to these comments, and after undertaking a full review, we are now proposing the following definition, which we believe mitigates against these concerns and provides greater clarity. This wording has been discussed with stakeholders at our Switching Regulatory Design User Group (RDUG):

*“Relevant Date” means*

*(a) the day on which a Customer*

*i. has entered into a Contract with a new Electricity Supplier; and*

*ii. has provided the Supplier or its Representative with sufficient information to conduct the switch; and*

*iii. the Customer would reasonably expect the switch to take place without further action on their part*

*Or,*

*(b) where a Customer enters into a Contract with a new Electricity Supplier after 5pm on a Working Day, or on a day that is not a Working Day, the next Working Day following the day specified in paragraph (a) above*

2.9. We think this revised definition, which includes the requirement for the supplier to have in their possession the sufficient information for the switch to take place, is proportionate and will enable suppliers to meet the five day switching Service Level Agreement (SLA). We consider that this revised definition acknowledges that the point of contract formation and the point of having sufficient information to conduct a switch (and for a customer to reasonably expect that switch to take place) may well vary depending on the circumstances.

2.10. As a consequential impact of this change, we are also now proposing to remove condition 14A.3(c) from the licences. This condition provides the licensee with an exemption from completing a switch “as soon as reasonably practicable and, in any event, within five Working Days of the Relevant Date” in the event that it “does not have all of the information it requires in order to complete the Supplier Transfer”. However, as we have now included the condition that the supplier must have sufficient information to conduct the switch within the definition of Relevant Date itself, it therefore follows that the above exemption is redundant.

2.11. We expect the REC Performance Assurance Board (PAB) to monitor supplier performance in terms of meeting the five Working Day SLA, including ensuring that parties retain relevant evidence and to intervene as necessary if appropriate.

### **Debt hopping / short billing periods**

2.12. We received a number of comments setting out concerns around the Cooling Off Period, specifically the risk of short billing periods and “debt hopping”. The point was made that, if consumers were able to switch supplier every few days and cancel within the defined Cooling Off Period with no termination fee applicable, they may constantly move from supplier to supplier running up relatively small bills in each case, which may not be economic for an individual supplier to recover. This could lead to suppliers facing a high volume of small unpaid charges, which would likely then be spread across other consumers through increases to their bills.

2.13. Two stakeholders made the point that, if Ofgem does proceed with the proposed arrangements, we should go beyond our stated commitment to monitor the issue of abusive switching and instead commit to intervening if levels of bad debt arising through these practices go beyond a certain pre-defined threshold, to be defined at CSS Go-Live. Another stakeholder called for Ofgem to conduct a cost-benefit analysis as soon as possible to assess the impact of debt hopping.

**Ofgem response:**

2.14. We recognise the risk that short switching periods may lead to increased bad debt through debt hopping. However, we are also mindful that one of the key intents of the reforms of the Switching Programme is to allow customers to switch as quickly as possible. As we set out in paragraph 1.194 of our Outline Business Case (OBC),<sup>22</sup> we will monitor the issue and, should significant evidence arise of debt hopping that is operating to the detriment of the market and other consumers, we will look to act to bring in measures to manage any identified issue of large-scale debt hopping.

**Complexity and Consumer Engagement**

2.15. Three respondents raised the need for clear communications to help customers navigate through what will be a complex new cooling off process. The point was made that there will be several options available to a consumer if they cancel during the Cooling Off Period, which if not clearly understood could lead to customer disengagement and an increase in complaints. The situation will become even more complex if several contracts are cancelled by an individual consumer in close succession. Potential issues were also raised around the understanding of expected switching timeframes and concepts like the Cooling Off Period. The point was also made that consumers could become even more confused if they receive conflicting messages on these issues from different suppliers, PCWs and other third parties.

2.16. In order to mitigate against these issues, respondents called for Ofgem to move away from a principles-based approach and consider issuing clear and common guidance for consumers to explain key information relating to the new process. This could include standardised scripting which suppliers, PCWs and other third parties could use to engage with consumers.

**Ofgem response:**

2.17. We recognise the importance of clear and effective customer communications to the success of the reforms. However, we believe that suppliers will be well placed to formulate their own messaging around these concepts, building on the expertise they will have developed in-house through the myriad communications they already use with their

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<sup>22</sup> Link to the OBC on the Ofgem website [here](#)



customers, including in relation to cooling off rights. We do not believe that the communications required here are materially more complex or difficult to deliver to consumers than those which suppliers are already required to provide.

2.18. We also recognise the value in consistent messaging being provided to consumers across different suppliers and PCWs. We would take the opportunity to highlight to parties delivering these communications the value in sharing best practice with one another, and would encourage them to consider doing so, noting the need to comply with any relevant anti-competition regulations. We note that the RECCo has established a successful Consumer Journey forum, which has successfully fostered collaboration between domestic industry parties regarding consumer matters. We believe that if further collaboration on consumer messaging is required then a forum similar in nature to this would be an appropriate and effective forum for industry to share best practice.

### **Equivalent terms**

2.19. A number of respondents raised concerns around the provisions in the licence for a customer to return to their previous supplier "on equivalent terms", following the cancellation of a switch during the Cooling Off Period.

2.20. One respondent called for greater clarity around the intent of equivalent terms with regards to the metrics suppliers were expected to consider as equivalent terms as part of the offer. The example given was a customer who had switched away from a fixed term contract, to then return following cancellation of the switch. The respondent queried whether the customer would only be able to benefit from those terms for the period of time they would otherwise have had remaining on the contract (eg 3 months remaining on a 12 month term), or whether they would be free to restart the contract from the beginning of the defined term (eg the full 12 months). The respondent also raised the similar query as to whether the period of time spent away would be factored in, for example if the customer switched away with two weeks remaining on a fixed term contract only to cool off with the new supplier and return 12 working days later, would they return to the terms of the fixed term contract for the period of time that remained when they switched away, ie two weeks in this case, or would they return to the deemed contract that they would otherwise have been rolled over onto by that time? We have addressed this below.

2.21. Another respondent queried the approach for a customer returning with a different metering setup, for example if they switched away from a credit meter to a prepay meter,

would they then need to be returned to their original credit metering set up once they returned following cancellation of the switch?

2.22. Another respondent called for the definition of equivalent terms to be broadened to protect against customers facing detriment through returning to their old supplier. Examples given included reimbursement of any exit fees that the customer faced when originally switching away, and whether they would requalify for benefits they may previously have enjoyed such as Warm Home Discount eligibility. The respondent suggested that the definition could be amended to refer instead to "Estimated Annual Cost", such that the customer would return to terms equivalent to or better than the contract they left on an annualised basis. Finally, the respondent also called for the maintenance of other consumer benefits to be retained as part of equivalent terms, including for example access to old meter readings or accrual of loyalty points and other similar benefits.

2.23. Another respondent raised concerns around how the process would work in practice. They noted that, given there is no defined process by which supplier B would notify supplier A that the customer had chosen to return to them, supplier A would not be able to proactively make an equivalent terms offer to the consumer, as the respondent feels that the wording in the licence requires. Instead, the respondent suggests the obligation on supplier A to make an offer should instead be a reactive one, ie an equivalent terms offer must be made "if requested by the Domestic Customer".

2.24. Finally, one respondent argued that our proposals for protections for domestic customers cancelling switches during the Cooling Off Period are incompatible with consumer protection law. The respondent raised the point that if a consumer was to return to their previous supplier on an equivalent terms contract, they would be reinstating a cancelled contract, which they feel the supplier would not be under obligation to do in line with the provisions of consumer protection law, including the Cooling Off Regulations.

**Ofgem response:**

2.25. We note the concerns raised around the scope of the equivalent terms provision for returning customers following a cancelled switch, and have re-considered the wording of the condition carefully. However, we consider that the proposed definition as set out in the licence is proportionate and clear in terms of reflecting the policy intent, that the consumer be placed in a similar position to that which they would have been in had they not switched, ie *"A Contract.... that has terms and conditions that are similar in nature to the Contract or Deemed Contract that would have been in place had the Domestic Customer not undergone a*

*Supplier Transfer or taken any other action to amend the terms of that Contract...". We consider that "terms and conditions that are similar in nature", together with the supplementary information provided in the list at paragraphs (a) and (b) of the proposed definition, give a clear indication and realisation of that policy intent.*

2.26. In response to the scenarios posed in the representations summarised above, in our view the equivalent terms requirement in practice would – following the policy intent - be expected to reflect the amount of time that, for example, was remaining on the customer's fixed tariff prior to them being rolled on to a default tariff (if that would have been the default course of action had the customer not switched away in the first place). We would highlight, however, that this is just an example for illustrative purposes, and the supplier may of course wish to offer the customer a better tariff than the default at the end of the fixed term contract should that customer choose to return within the "equivalent terms" window.

2.27. We note the specific concern around the example given of a customer returning with a different metering setup to that which they had before they switched. The proposed definition of "Equivalent Terms Contract" does list certain terms and conditions which would be deemed to fall within this definition, and that list includes the customer's "previous Relevant Meter Type". We appreciate that the particular circumstances of any returning customer, and what that might require of the supplier, will vary case by case, including around metering. We consider that the wording of the "Equivalent Terms Contract" definition is wide enough and appropriate in terms of achieving the policy intent that the consumer be offered the opportunity to return to a similar contractual position to that which they would have been in had they not switched.

2.28. On the point about the equivalent terms offer being proactive or reactive, we consider that the wording in the licence is proportionate, that is that the supplier must offer an equivalent terms contract once they have received notice from the customer that they have cancelled their new contract within the Cooling Off Period. Whilst we note the concern, we do not feel that the suggested amendment to the licence to include "if requested by the customer" is necessary.

2.29. Finally, in terms of compatibility with consumer protection law, cooling off rights are a construct of the Cooling Off Regulations rather than of the supply licence. We do not consider that the proposed changes are incompatible with the Cooling Off Regulations. As explained above, we are proposing a regulatory requirement to maintain "equivalent terms" for a reasonable and clear time period (16 working days from a defined point in time), not to reinstate a cancelled contract. The intent behind the cooling off concept is also relevant in our

view, particularly in the context of supply of energy being an essential service. In that context, such intent would in our view include allowing domestic consumers in certain transactions to change their minds and, so far as possible, to be put back into the position they were in had they not switched. We consider that the proposed requirements in relation to equivalent terms, as set out in the proposed SLC 14A, provide for that possibility in the energy supply context in a fair, proportionate and, for the “Old Supplier” subject to the equivalent terms requirement, appropriately time-limited manner.

### **Cancellation not actioned**

2.30. One stakeholder disagreed with our proposed SLC14A.14 wording which provides that, where a domestic customer cancels their contract within the Cooling Off Period prior to supply having commenced, but the gaining supplier fails to action the switch, the customer should be presented with the same options as if the supplier had already commenced supply. The point was made that this is a clear error on the gaining supplier’s part which the customer should not have to take action to remedy. Instead, in their view the proposed switch should be marked up as an erroneous transfer, with no action on the customer required.

### **Ofgem response:**

2.31. We note the concern raised. Under the scenario presented, the gaining supplier would be obliged to continue supplying the customer until they either agree to a new contract with them (supplier B), or agree to a new contract with either their old supplier (supplier A) or a third party supplier (supplier C). We think this approach for protecting consumers and ensuring continuity of supply is proportionate. Furthermore, as we set out in paragraph 1.193 of our OBC, our consumer research indicates that consumers in this situation would welcome being given this choice.

### **Switch annulments**

2.32. Two respondents made the point that mitigating measures should be put in place to protect against the misuse of the annulment process, whether the misuse was intentional or otherwise. One stakeholder stressed the importance of the REC Performance Assurance Board (PAB) monitoring the process, whilst another highlighted the need for the REC Registration Services Schedule, which will contain the provisions for the annulment process, to be clearly worded and well signposted in order that all suppliers can easily follow the process.

2.33. One stakeholder felt that the switch annulment process should be extended in its use to also cover other forms of erroneous transfer (ET), and not just be limited for use on occasions where a customer has informed their supplier that they have not entered into a new contract with another supplier.

2.34. Another stakeholder questioned what benefit the annulment process would have in an environment of one day switching, when the supplier in such circumstances will not have any time to make use of the process.

**Ofgem response:**

2.35. We agree that the REC PAB should closely and carefully monitor any priority risks to consumers, including monitoring the use of the annulments process, particularly for large industrial and commercial consumers where the potential for misuse may be greater. We also recognise the importance of the REC Registration Services Schedule being clearly worded to ensure compliance is as straight forward for parties as possible.

2.36. Regarding the possible extension of the annulments process, we do not believe it should be able to be used for any other circumstances given the potential for misuse, for example to attempt customer win-backs or to artificially lengthen the Cooling Off Period.

2.37. Finally, we do recognise that the annulments process may have limited practical use when we move to an environment of one day switching. However, we note that not all switching will occur next day, as consumers retain the right to elect the day that they wish to switch on. We also think it will have value in circumstances where the gaining supplier has made errors during the registration process, or where they have, for example, engaged in mis-selling practices.

**Misuse of erroneous transfer flag**

2.38. Similarly, one respondent highlighted the potential for the erroneous transfer flag to be misused by gaining suppliers, and called for provision in the licence for an objection to be raised by the losing supplier to protect against this.

**Ofgem response:**

We acknowledge the point made here, and agree that we must be cognisant of instances of misuse of the erroneous transfer flag. However, we consider that the REC PAB has adequate

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powers to monitor any apparent or actual misuse of this process, and to take action if necessary. We would expect cases of misuse of the erroneous transfer flag to be subject to relevant monitoring and enforcement action, and will raise this suggestion with RECCo.

### **Non-domestic objections**

2.39. Two respondents felt the proposed drafting for condition 14.1A in the gas supply SLC, which sets out the process for when suppliers should raise objections either under the REC or under the Uniform Network Code (UNC) via a request to the shipper, was unclear and may potentially lead to confusion. One respondent felt that the licence should clearly define which gas sites are within scope of the Central Switching Service to avoid confusion. Another respondent questioned whether the condition was really required, given its potentially confusing nature and the limited circumstances under which the provisions will ever be required.

#### **Ofgem response:**

2.40. We note the comment, and in response have reflected on the drafting of gas supply SLC 14.1A and the reasons for its inclusion. The purpose of retaining the ability for objections to be raised under the UNC within the gas supply licence is to cover off instances where, by describing objections solely in relation to the REC, some sites, for example those not covered by the supply licence SLCs, may no longer be adequately protected. We therefore remain of the view that it is prudent to include this provision.

### **Objection process**

2.41. One respondent raised the concern that the circumstances under which a supplier can make a request to prevent a switch are too limited in scope, being limited to instances where either the customer owes the losing supplier outstanding charges, or the customer informs the losing supplier that they have not entered into a contract with another supplier. The respondent raised the concern that this creates the risk of other scenarios of erroneous transfers not being protected against by the regulations.

#### **Ofgem response:**

2.42. We note the comment raised. However, we believe the new provisions are appropriate in that the losing supplier is only able to annul a switch on grounds of outstanding debt on the part of the customer, or if the customer indicates that they have not entered into a contract

with a new supplier. We have removed the right for the losing supplier to object to the switch in the event that the gaining supplier agrees that the switch was initiated in error. Instead, under the new arrangements, the losing supplier is now expected to use the annulment process to prevent erroneous switches, whilst the new supplier can use the Switch Withdrawal process up until the switch is 'secure active', and following this to switch the consumer back to the correct supplier. We provide more detail in paragraph 1.40 of the policy consultation document, and in paragraph 3.5 and 3.6 of this statutory consultation document.<sup>23</sup>

### **Consequential changes to other SLCs**

2.43. Two stakeholders recommended that we review the impact of five day switching on a number of other conditions in the SLCs in order to ensure consistency. These conditions relate to grace periods for consumers following changes to their terms and charges, within which they are permitted to switch away without being exposed to the effect of the change. Such conditions include 22D – continuation of dead tariffs, 23.6 – notification of a disadvantageous change to contract terms or charges, and SLC 24.10 – notification at the end of a fixed term contract. One stakeholder noted that these provisions were already very complex and challenging for suppliers to manage from a systems perspective without further uncertainty being added.

#### **Ofgem response:**

2.44. We have carefully considered these points in the course of reviewing the SLCs referred to above. We agree that there could be merit in considering an amended grace period for the relevant provisions of those SLCs, but we do not consider that such modifications are within scope of the Switching Programme.

### **Microbusiness Strategic Review**

2.45. One respondent noted that some of the licence changes being proposed for Faster Switching relate to areas of the licence also being considered for amendment by Ofgem under the Microbusiness Strategic Review (MBSR).<sup>24</sup> The respondent raised the concern that both

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<sup>23</sup> Link here to the [Nov 2020 consultation document](#) on the Ofgem website

<sup>24</sup> Link [here](#) to details of the Microbusiness Strategic Review on the Ofgem website

sets of changes must be considered in a holistic manner to aid understanding and to prevent unintended consequences.

**Ofgem response:**

2.46. We note the concern raised and agree that licence changes being proposed across Ofgem projects should be aligned so far as possible; however, we are confident that changes being proposed under both sets of reforms – Switching and MBSR - are compatible with one another.

**Switches under Five Working Days**

2.47. A number of stakeholders raised points around Ofgem’s intent to allow suppliers who wish to switch customers faster than the five working day requirement within the transition period, to do so.

2.48. Two respondents called for guidance to set out the kinds of levels that suppliers should go to in order to ensure that they are duly qualified to go above and beyond the five working day requirement, and what assurances Ofgem would be looking for from suppliers under these circumstances should a switching error occur. The point was made that suppliers satisfying themselves that they are adequately prepared to move faster than required would be difficult in the absence of agreed defined standards and processes.

2.49. Another respondent felt that the option to switch faster than five working days should only be available for DCC-enrolled smart meters. The stakeholder noted that non DCC-enrolled smart meters and “dumb” meters take longer to switch and could therefore result in detriment both to the consumer, and to the losing supplier through settlement inaccuracy.

**Ofgem response:**

2.50. As noted in paragraph 1.11 of the policy consultation,<sup>25</sup> our expectation is that the switch speed should be faster than five working days once the initial bedding-in process has completed. Whilst we note the request for guidance, we are confident that suppliers should be able to satisfy themselves that they have the right systems in place in order to switch

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<sup>25</sup> Link here to the [Nov 2020 consultation document](#) on the Ofgem website



customers faster than the five day requirement within the transition period, if they choose to do so, and should be reporting this through the Switching Programme Readiness Assessments for Go Live. We do not think it is necessary to set out any specific requirements or guidance for suppliers in this position.

2.51. In terms of non-DCC enrolled smart meters, we think suppliers should be able to implement the requisite business processes in order to ensure that these meters can be switched faster than the five day regulatory backstop without resulting in detriment to the losing supplier or the consumer. We note again that the reforms proposed as part of the Switching Programme will apply to all relevant meter types, not just smart meters.

### **Consequential changes to reporting requirements**

2.52. Two respondents requested that necessary consequential changes to reporting and evidence requirements, such as Guaranteed Standards and Performance Assurance are actioned as soon as possible, ideally within the main CSS delivery for efficiency.

### **Ofgem response:**

2.53. Whilst we agree that these reporting requirements will need to be aligned with the licence drafting for the Faster Switching programme, and the sooner these are amended after CSS Go Live the better the experience for consumers, we are confident that they can be consulted on and brought into force after go-live if necessary. We will discuss these changes with stakeholders in due course.

### **Related Metering Points:**

2.54. Two respondents raised concerns about the removal of the right of suppliers to object to a switch on the grounds that it would result in Related Metering Points being split across more than one supplier. Whilst one respondent noted the progress that has been made with the data cleanse work in linking these metering points where possible ahead of CSS go-live, they point out that those remaining will be more difficult to resolve. The respondent noted that removing this right for suppliers to object before the data cleanse is complete may result in split metering remaining after CSS Go-Live, and calls for its removal to be delayed to a later date.

2.55. One of the respondents noted that, without a legal basis to raise an objection, suppliers should not be penalised in the event that Related Metering Points are switched independently in error due to data inaccuracies or processing issues.

**Ofgem response:**

2.56. As we noted in our policy consultation document, we consider that industry have made good progress with their data cleanse activities, and we are working with industry to ensure that they complete their data cleanse activities by CSS Go-Live. Whilst we stated our position that we would update our policy if new evidence came to light, we do not consider that we have received such evidence and do not therefore intend to delay the removal of this right to objection in the licence text. However, this is something we would expect the REC PAB to monitor going forward, and to intervene as appropriate.

***Q) 1.3 - Do you agree with our proposal to modify the five working day switching regulatory backstop by introducing a 5pm cut off on a working day, after which, if a consumer signs up, the start of the five working day period will be counted as the next working day?***

2.57. Respondents were generally supportive of the proposal for a 5pm cut off to define the start of the five working day switching period.

2.58. Some stakeholders again highlighted the need for clear communications around switching timeframes, which they felt could potentially be confusing for consumers. One respondent also called for a renewed effort to improve engagement between TPIs and suppliers in order to ensure that switches occur within the required timeframes, particularly as TPIs play such a central role in the switching process.

2.59. Some respondents raised concerns around the definition of "Relevant Date" in the context of the 5pm working day cut-off. Please refer to paragraphs 2.4 to 2.9 above for details of our response and proposed drafting changes on this point which we believe address the concerns raised.

**Ofgem response:**

2.60. We are proposing to proceed with the proposal for the 5pm working day cut-off as set out in the consultation. We agree with the points raised around the need for good customer communication and for efficient engagement between suppliers and their representatives, including TPIs, and expect industry parties to act accordingly to develop these communications for consumers. We note that the RECCo has established a successful Price Comparison Website engagement forum, which has successfully fostered collaboration between industry and third party intermediaries, and welcome such engagement continuing into the future.

***Q) 1.4. Do you agree with our proposals to measure the start of the grace period, from which Supplier B must continue to supply the customer on the same tariff after the consumer has switched and cancelled, from the point that Supplier B sends notice to the consumer of their options and that the grace period should be 15***

***working days?***

***Q) 1.5. Do you agree with our proposals to measure the start of the period over which Supplier A must offer to take a customer back on equivalent terms from the switch date? Do you agree that the period that Supplier A must maintain this offer is 16 working days from the switch date?***

2.61. Because questions 1.4 and 1.5 are similar in nature, given they propose provisions that are related to one another, we received a number of responses that applied to both. We will therefore address comments received to both questions together.

2.62. Some respondents agreed that the trigger points for, and lengths of, the grace period and equivalent terms period were appropriate.

2.63. One respondent felt that both periods were too short. They made the point that the 15 day grace period marks a significant reduction from the 30 working day period as described in the OBC, and is significantly shorter than the defined time periods within which consumers are able to make other decisions related to switching elsewhere in the licence. The respondent called for Ofgem to clearly set out the rationale for the shorter 15 working day window, to include an explanation of the downsides of a period such as 30 days. They also suggested that Ofgem go further and set out the requirement for suppliers to provide repeat notifications to consumers at defined intervals within the grace period, to increase consumer engagement with the process and to help them make informed choices over their options.

2.64. On the equivalent terms period, the same respondent argued that 16 working days as defined may be insufficient, pointing out that if a consumer cancelled on the final day of the cooling off window, they would only be left with seven days in which they are able to take advantage of the equivalent terms offer. This period would be further shortened if the new supplier delayed informing them of their options. The respondent called for the equivalent terms period to be sufficiently longer than the grace period, such that a customer cancelling on the final day of cooling off would still have access to the equivalent terms offer for the full grace period. The respondent felt this would also make the customer journey, and associated communications from suppliers, simpler and more straight-forward.

2.65. The same respondent also called for clarity on occasions when the grace period could be extended in the interests of treating customers fairly (as required in SLC 0), such as with vulnerable consumers too ill to take the necessary action within the 15 working day period, or

where the customer experiences difficulties in communicating in a timely manner with the old supplier.

2.66. Another respondent noted that the 15 working day grace period was the minimum possible term that would allow for those who receive notifications by post enough time to take action.

2.67. One respondent argued that a 15 working day grace period poses a risk to suppliers of running up increased bad debt by increasing the length of potential unpaid bills. The respondent suggested that the grace period instead be 10 working days, which they regarded would be sufficient for consumers to take the required actions, whilst provisions could also be included to cap the value of bad debt that could be accrued in this way. The respondent went on to call for a commensurate shortening of the equivalent terms period to 11 working days, in order to remain aligned with the proposed shorter grace period.

2.68. One respondent raised concerns over the lack of consistency in how the trigger points for the periods are defined, that is that the 15 working day grace period begins when the customer receives notice of their options (provision of which will be at the supplier's discretion), whilst the 16 working day equivalent terms period begins earlier on the switch date. The respondent argued that this would be very confusing for consumers in terms of understanding their rights. Instead, for consistency the respondent believes that both periods should begin at the same point, allowing the customer the option of choosing between supplier A on equivalent terms, supplier B, or supplier C within the same time period. They propose that both periods should commence on the switch date and each be 15 working days long, which could be achieved by requiring supplier B to issue the notice setting out the customer's options if cancelling during cooling off on the switch date itself.

**Ofgem response:**

2.69. We have considered these comments. We believe that the proposals as drafted strike a fair balance between ensuring consumers are appropriately protected and providing a proportionate regulatory regime for suppliers.

2.70. In terms of the length of the Supplier B grace period, as set out in paragraph 1.27 of the consultation document,<sup>26</sup> we consider that 15 working days is a reasonable period for the customer to have received notice of their options, make a decision on next steps, contact a new supplier if required and for a switch to take place, before Supplier B is able to apply deemed contract terms. We consider that the point at which the customer receives notice of their options from Supplier B following cooling off is the appropriate trigger point for the beginning of this period.

2.71. In terms of the length of the Supplier A equivalent terms window, again as set out in paragraph 1.27 of the consultation document, we believe the 16 working day period is a reasonable period of time for the customer to cancel their contract with the new supplier, to receive notice of their options, and to make a decision as to whether they would like to request a return to their original supplier on equivalent terms. We feel that the switch date is the appropriate trigger point for this window as it is a measurable event known to both the supplier and customer.

2.72. We note the scenario whereby a customer cooling off towards the end of the cooling off window may be left with only a short period of time within which to take advantage of the equivalent terms offer from their original supplier, as the trigger points for the equivalent terms window and grace periods are based on different events which may occur a number of days apart. However, even in the scenario described, we do still feel that the consumer will have adequate time within which to make informed decisions, and make a request to return to their original supplier if that is their preference.

2.73. In accordance with SLR 0.3(a) we would expect suppliers to be able to satisfy themselves that they are acting fairly in circumstances where discretionary amendments to the permitted time windows may be appropriate, such as with a vulnerable consumer who may not be in a position to make the necessary decisions within the required timeframes.

2.74. We would again take the opportunity here to reiterate the importance of clear and consistent messaging from suppliers and their representatives to help customers navigate through the process, and to understand their options such that they are able to make informed choices.

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<sup>26</sup> Link to the [November 2020 consultation](#) on the Ofgem website here

### 3. Electricity Supply and Gas Supply Standard Licence Conditions – Ofgem decision on proposed amendments

#### Section summary

This section consults on our proposals to modify the Electricity Supply Standard Licence Conditions (SLCs) and the Gas Supply SLCs in order to introduce the requirements for the Switching Programme. This follows on from our initial consultation in June 2019 and subsequent consultation in November 2020.

#### Questions:

**Question 1: Do you agree that the proposed changes to the Electricity Supply Standard Licence Conditions will ensure the licence reflects the necessary conditions for implementation of the Switching Programme?**

**Question 2: Do you agree that the proposed changes to the Gas Supply Standard Licence Conditions will ensure the licence reflects the necessary conditions for implementation of the Switching Programme?**

3.1. This consultation proposes amendments to the gas and electricity supply Standard Licence Conditions (SLCs) required for the Switching Programme.

3.2. As described in chapter 2, Ofgem's analysis of responses to our November 2020 consultation is that stakeholders were supportive of the proposed changes to the Electricity Supply Licence and Gas Supply Licence. Following review, and taking account of the representations received and explored in chapter 2, we are now progressing with consulting on the text as set out in the 2020 consultation, with the exception of the amendment to the definition of *Relevant Date* and the consequential change, as described above in paragraphs 2.8 to 2.10.

3.3. Redlined versions of the licences, incorporating these proposed changes, are provided on our website alongside this consultation document.<sup>27</sup> More detail is provided in Appendix One.

## Summary of proposals - Electricity Supply SLCs

3.4. This section summarises the changes being proposed. The list focuses first on the substantive changes, with more minor / housekeeping amendments described below.

### Condition 1. Definitions for Standard Condition

(condition 1.3)

- Moved definitions of “New Supplier” and “Old Supplier” from SLC 50 to SLC 1.

These terms were previously applied in SLC 50 of the Electricity Supply Licence only. Given that these terms are now also used in SLC 14A, we have moved them to SLC 1 which applies the relevant definitions more generally across the licence. We have proposed this change in response to suggestions made at RDUG.

- Removed definition of “Related Metering Points”.

The term "Related Metering Points" is only used in the context of objections in SLC 14. As we are proposing to remove the right to object in circumstances where not all of the Related Metering Points are being switched (see below), this definition is therefore no longer required.

- Removed definition of “Supply Effective From Date”.

This term will no longer be needed. This term was used in SLC 14.2(c) and 14.4(d), which link to the ability to object if the meter point in question has Related Meter Points which are not being included as part of the proposed switch. As above, as related metering points are expected to be formally linked within central systems, so

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<sup>27</sup> Link [here](#) to the Ofgem website



that they cannot be switched independently, this process, and therefore this term, is no longer required.

### **Condition 14. Customer Transfer Blocking**

#### **Non-domestic and Domestic Customer transfer blocking**

(non-domestic customers: conditions 14.2 to 14.3)

(domestic customers: conditions 14.4 to 14.11)

- Removed the condition that allowed a switch to be cancelled if both the old and new suppliers were in agreement that it had been initiated in error.

Instead, under the new arrangements the new Annulment or Switch Withdrawal processes should be used instead. This applies to both domestic and non-domestic customers.

- Removed the condition that allows the old supplier to cancel a switch if the meter point in question has Related Meter Points which are not being included as part of the proposed switch.

Under the new arrangements, all related Meter Point Administration Numbers (MPANs) are expected to be formally linked within central systems, so that they cannot be switched independently. This applies to both domestic and non-domestic customers.

- Included a new condition allowing the old supplier to cancel a switch if the non-domestic customer informs them that they have not entered into a new contract with the new supplier, and do not want the switch to proceed.

This change applies to non-domestic customers only, as the provision already exists for domestic customers. This reflects our decision on annulment policy set out in Appendix 1 of the OBC (paragraph 1.18).<sup>28</sup>

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<sup>28</sup> Link here to the [Outline Business Case](#) on the Ofgem website

- Removed the condition that an old supplier can prevent a switch if the customer remains bound by the provisions of a particular kind of contract that ends after the date of the proposed switch.

This change applies to domestic customers only. Note, this condition ceased to have effect on 01 April 2008, so removing the condition as part of this process is a formality.

- Extended the condition that requires suppliers to retain evidence of an annulment request for a domestic customer switch for a period of 12 months, to also include non-domestic customer switches.

This proposed amendment is intended to align the requirements on retaining evidence of annulment requests for non-domestic and domestic customer switches.

- Removed the condition that requires the old supplier to notify the new supplier when an annulment has taken place.

Under the new arrangements, this notification will be sent automatically through the Central Switching Service.

## **Condition 14A. Customer Transfer**

### **Obligation to complete a Supplier Transfer within a defined period of time**

(conditions 14A.1 to 14A.6)

- Removed condition 14A.3(c), which provides the licensee with an exemption from completing a switch “as soon as reasonably practicable and, in any event, within five Working Days of the Relevant Date” in the event that it “does not have all of the information it requires in order to complete the Supplier Transfer”.

As set out in paragraph 2.10, as we have now included the condition that the supplier must have sufficient information to conduct the switch within the definition of Relevant Date itself, this exemption is redundant.

- Changed all conditions referencing the requirement for a switch to be completed within 21 calendar days to “as soon as reasonably practicable, and in any event, within five Working Days of the Relevant Date” to reflect the intended policy position.

Our intention here is to reflect the revised regulatory backstop provision moving from 21 calendar days to five working days and the programme expectation that customers will be switched more quickly than that. We expect that after an initial transition period following go-live, domestic customers will be switched the next-day, and non-domestic customers the day after, unless they have chosen a longer switch period. There is a consequential amendment made to SLC 14A.7 as noted below.

- Included a new condition in order to reflect the intended policy position setting out that if a domestic customer, having been prompted by the new supplier, does not agree to taking supply from the new supplier before the end of the Cooling Off Period, the five working day switch requirement does not apply. In this case, the switch must then be completed within five working days of either the end of the Cooling Off Period or the end of the 14 day period following the start of the contract, whichever is sooner.

This is to reflect the position that the licence should not place any obligation on a supplier to switch a customer within the Cooling Off Period where, having been asked, the customer does not agree to take a supply before the end of this period.

### **Obligation to improve switching systems**

(condition 14A.7)

- Amendment of the condition setting an obligation on licensees to improve their switching systems.

The new condition requires licensees to take all reasonable steps to maintain and improve the required systems, processes and data that facilitate the switching process, in order that they can meet the requirements of fast and reliable switching, including next day switching. Reference to the 21 day period has been removed to reflect the intended policy position of switches being completed within 5 working days.

### **Obligations where a Domestic Customer has cancelled a contract with a licensee**

(conditions 14A.13 to 14A.17)

- Included a number of new conditions placing requirements on the new supplier (Supplier B) when a domestic customer cancels a switch during the Cooling Off Period, as follows:
  - If the supplier receives notification of the cancellation within the Cooling Off Period and prior to commencing the supply of electricity to the customer, the supplier must take all reasonable steps to prevent the switch from taking place
  - If the supplier receives notification of the cancellation within the Cooling Off Period and after commencing the supply of electricity to the customer, they must:
    - 1) Cancel the contract
    - 2) Not charge a termination fee
    - 3) Subject to (1) and (2) above, continue to supply the customer (on the same principal contract terms as immediately before the cancellation) until the earlier of:
      - a) The customer agreeing to a new contract with that supplier (Supplier B); or
      - b) The customer having agreed to a new contract with another supplier (Supplier C) and that supply has commenced; or
      - c) 15 working days after Supplier B has sent the information noted below to the customer setting out the customer's options and Supplier B's obligations
    - 4) As soon as reasonably practicable after receiving notice of cancellation from the customer, send information to the customer regarding:
      - a) the options the customer has, which are:
        - i) entering into a new contract with that supplier (Supplier B)

- ii) entering into an equivalent terms contract, as defined in the SLCs (see below), with the customer's previous supplier (Supplier A)
  - iii) entering into a new contract with another (third party) supplier (Supplier C)
  - iv) taking no action, in which case the customer will be entered into a deemed contract with Supplier B 15 working days after the information was sent from Supplier B to the customer
- b) the obligations on Supplier B to the customer

These proposed changes reflect our policy decisions as set out in Appendix 1 of the OBC.<sup>29</sup>

### **Obligations on a licensee as the Old Supplier**

(Conditions 14A.18 to 14A.19)

- Included a new condition setting out that where a domestic customer notifies the old supplier (Supplier A) that they have cancelled a switch to Supplier B during the Cooling Off Period, the old supplier must offer the domestic customer a contract on equivalent terms, as defined in the SLCs (see below), for a minimum period of 16 working days starting from the day that the customer's previous supplier became the "Old Supplier", which is to be defined as the supplier that was the customer's supplier immediately prior to the customer's most recent switch.

These proposed changes reflect our policy decisions as set out in Appendix 1 of the OBC.<sup>30</sup>

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<sup>29</sup> Link here to the [Outline Business Case](#) on the Ofgem website

<sup>30</sup> Link here to the [Outline Business Case](#) on the Ofgem website

## Definitions for Condition

(Conditions 14A.20)

- Included new definitions for “Cooling Off Period” and “Equivalent Terms Contract”.

We have included the definitions of Cooling Off Period and Equivalent Terms Contract in order to provide for the introduction of the new requirements on suppliers in circumstances where a domestic customer cancels a contract within the Cooling Off Period, as described above (Conditions 14A.13 to 14A.19).

These changes reflect our policy decisions as set out in Appendix 1 of the OBC.<sup>31</sup>

- Amended existing definitions of “Relevant Date” and “Valid Contract”.

The definition of Valid Contract is being amended to replace the use of the term “Transfer Request” with “application for a Supplier Transfer”, in order to align with the changes to the wording of the condition on Erroneous Transfers in condition 14A.10.

The changes to the “Relevant Date” definition, reflecting further changes following stakeholder feedback, have been explained above in paragraph 2.8.

## Other housekeeping changes

- Condition 14A.6 - Corrected “supply transfer” to “supplier transfer”, to reflect the defined term
- Conditions 14 and 14A - Corrected some minor formatting changes

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<sup>31</sup> Link here to the [Outline Business Case](#) on the Ofgem website

## Summary of proposals - Gas Supply SLCs

3.5. We are proposing amendments to the gas supply SLCs as follows:

### **Condition 1. Definitions for Standard Condition**

(condition 1.2)

- Moved definitions of “New Supplier” and “Old Supplier” from SLC 44 to SLC 1.

These terms were previously applied in SLC 44 of the Gas Supply Licence only. Given that these terms are now also used in SLC 14A, we have moved them to SLC 1 which applies the relevant definitions more generally across the licence. We have proposed this change in response to suggestions made at RDUG.

### **Condition 14. Customer Transfer Blocking**

#### **General Prohibition**

(conditions 14.1 to 14.1A)

- New condition setting out that any objections used in relation to switches raised under the Uniform Network Code (UNC) will be treated as if they were raised under the REC. This may for example affect sites directly connected to the National Transmission System or LNG sites.

This reflects the change from gas switching being a shipper led process under the UNC to a supplier led process under the REC.

- References to the licensee asking or permitting a gas shipper to prevent a Proposed Supplier Transfer have been replaced with references to the licensee making a request under the REC to prevent said transfer instead. This change has been made in various places throughout the licence.

This reflects the change from gas switching being a shipper led process under the UNC to a supplier led process under the REC. Note also that we are proposing to retain requirements covering objections under the UNC and Independent Gas Transporters (IGT) UNC. This is because while we expect that the vast majority of objections will focus on switching under the REC, we think that there may potentially be

circumstances where objections are used for switches that happened under the UNC, for example associated with sites directly connected to the National Transmission System (NTS) or Liquefied Natural Gas (LNG) sites. We therefore consider it prudent to retain a provision covering these instances so as not to reduce the level of protection afforded to these consumers after the introduction of the new switching arrangements.

### **Non-domestic and Domestic Customer transfer blocking**

(non-domestic customers: conditions 14.2 to 14.3)

(domestic customers: conditions 14.4 to 14.11)

- Replaced references to notices being sent under Uniform Network Code requirements with references to the REC instead.

This reflects the fact that gas switches will change from being a shipper led process under the UNC to a supplier led process under the REC.

- Removed the condition that allowed a switch to be cancelled if both the old and new suppliers were in agreement that it had been initiated in error.

Instead, the new Annulment or Switch Withdrawal processes should be used. This applies to both domestic and non-domestic customers.

- Removed the condition that gave non-domestic gas suppliers the right to prevent a transfer on grounds of debt or contract, for contracts entered into prior to 05 January 2004.

This is on the basis that such contracts are likely to have expired or contain provisions that would permit objections under SLC 14.2(a).

- Included a new condition allowing the old supplier to cancel a switch if the customer informs them that they have not entered into a new contract with the new supplier, and do not want the switch to proceed.



This change applies to non-domestic customers only, as the provision already exists for domestic customers. This reflects our decision on annulment policy set out in Appendix 1 of the OBC (paragraph 1.18).<sup>32</sup>

- Removed the condition that an old supplier can prevent a switch if the customer remains bound by the provisions of a contract that ends after the date of the proposed switch.

This change applies to domestic customers only. Note, this condition ceased to have effect on 01 April 2008, so removing the condition as part of this process is a formality.

- Extended the condition that requires suppliers to retain evidence of an annulment request for a domestic customer switch for a period of 12 months, to also include non-domestic customer switches.

This proposed amendment is intended to align the requirements on retaining evidence of annulment requests for non-domestic and domestic customer switches.

- Removed the condition that requires the old supplier to notify the new supplier when an annulment has taken place.

Under the new arrangements, this notification will now be sent automatically through Central Switching Services.

### **Condition 14A. Customer Transfer**

#### **Obligation to complete a Supplier Transfer within a defined period of time**

(conditions 14A.1 to 14A.6)

- Removed condition 14A.3(c), which provides the licensee with an exemption from completing a switch “as soon as reasonably practicable and, in any event, within five

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<sup>32</sup> Link here to the [Outline Business Case](#) on the Ofgem website

Working Days of the Relevant Date” in the event that it “does not have all of the information it requires in order to complete the Supplier Transfer”.

As set out in paragraph 2.10, as we have now included the condition that the supplier must have sufficient information to conduct the switch within the definition of Relevant Date itself, this exemption is redundant.

- Changed all conditions referencing the requirement for a switch to be completed within 21 calendar days to five working days or as soon as reasonably practicable (or equivalent drafting depending on the specific context of the condition) to reflect the intended policy position.

Our intention here is to reflect the revised regulatory backstop provision moving from 21 calendar days to five working days and the programme expectation that customers will be switched more quickly than that. We expect that after an initial transition period following go-live, domestic customers will be switched the next-day, and non-domestic customers the day after, unless they have chosen a longer switch period. There is a consequential amendment made to SLC 14A.7 as noted below.

- Amendment of the clause that requires licensees to include a term in customer contracts regarding the switch speed, specifically removing references to the Electricity and Gas (Internal Markets) Regulations 2011.

Amongst other things these Regulations set out requirements on persons who are exempt from the need for a gas or electricity supply licence to enable customers to switch suppliers within 21 days. Given our proposal to amend the regulatory switch speed backstop for licensees to 5 Working Days, we think that the reference to the Regulations is unnecessary in the licence and potentially confusing.

- Included a new condition setting out that if a domestic customer, having been prompted by the new supplier, does not agree to taking supply from the new supplier before the end of the Cooling Off Period, the five working day switch requirement does not apply. In this case, the switch must then be completed within five working days of either the end of the Cooling Off Period or the end of the 14 day period following the start of the contract, whichever is sooner.

This is to reflect the position that the licence should not place any obligation on a supplier to switch a Customer within the Cooling Off Period where, having been asked, the Customer does not agree to taking supply before the end of this period.

### **Obligation to improve switching systems**

(condition 14A.7)

- Amendment of the condition setting an obligation on licensees to improve their switching systems.

The new condition requires licensees to take all reasonable steps to maintain and improve the required systems, processes and data that facilitate the switching process, in order that they can meet the requirements of fast and reliable switching.

### **Obligations where a Domestic Customer has cancelled a contract with a licensee**

(conditions 14A.13 to 14A.17)

- Included a number of new conditions placing requirements on the new supplier (Supplier B) when a domestic customer cancels a switch during the Cooling Off Period, as follows:
  - If the supplier receives notification of the cancellation within the Cooling Off Period and prior to commencing the supply of electricity to the customer, the supplier must take all reasonable steps to prevent the switch from taking place
  - If the domestic customer cancels their contract within the Cooling Off Period but the supplier either receives notification after starting to supply gas at the premises or failed to prevent the switch taking place, they must:
    - 1) Cancel the contract
    - 2) Not charge a termination fee
    - 3) Subject to (1) and (2) above, continue to supply the customer (on the same principal contract terms as immediately before the cancellation) until the earlier of:

- a) The customer agreeing to a new contract with that supplier (Supplier B); or
  - b) The customer having agreed to a new contract with another supplier (Supplier C) and that supply has commenced; or
  - c) 15 working days after Supplier B has sent the information noted below to the customer setting out the customer's options and Supplier B's obligations
- 4) As soon as reasonably practicable after receiving notice of cancellation from the customer, send information to the customer regarding:
- a) the options the customer has, which are:
    - i) entering into a new contract with that supplier (Supplier B)
    - ii) entering into an equivalent terms contract, as defined in the SLCs (see below), with the customer's previous supplier (Supplier A)
    - iii) entering into a new contract with another (third party) supplier (Supplier C)
    - iv) taking no action, in which case the customer will be entered into a deemed contract with Supplier B 15 working days after the information was sent from Supplier B to the customer
  - b) the obligations on Supplier B to the customer

These proposed changes reflect our policy decisions as set out in Appendix 1 of the OBC.<sup>33</sup>

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<sup>33</sup> Link here to the [Outline Business Case](#) on the Ofgem website

### **Obligations on a licensee as the Old Supplier**

(conditions 14A.18 to 14A.19)

- Included a new condition setting out that where a domestic customer notifies the old supplier (Supplier A) that they have cancelled a switch to Supplier B during the Cooling Off Period, the old supplier must offer the domestic customer a contract on equivalent terms, as defined in the SLCs (see below), for a minimum period of 16 working days starting from the day that the customer's previous supplier became the "Old Supplier", which is to be defined as the supplier that was the customer's supplier immediately prior to the customer's most recent switch.

These proposed changes reflect our policy decisions as set out in Appendix 1 of the OBC.<sup>34</sup>

### **Definitions for Condition**

(condition 14A.20)

- Included new definitions for "Cooling Off Period" and "Equivalent Terms Contract".

We have included the definitions of Cooling Off Period and Equivalent Terms Contract in order to provide for the introduction of the new requirements on suppliers in circumstances where a domestic customer cancels a contract within the Cooling Off Period, as described above (Conditions 14A.13 to 14A.19).

These changes reflect our policy decisions as set out in Appendix 1 of the OBC.<sup>35</sup>

- Amended existing definitions of "Relevant Date" and "Valid Contract".

The definition of Valid Contract is being amended to replace the use of the term "Transfer Request" with "application for a Supplier Transfer", in order to align with the changes to the wording of the condition on Erroneous Transfers in condition 14A.10.

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<sup>34</sup> Link here to the [Outline Business Case](#) on the Ofgem website

<sup>35</sup> Link here to the [Outline Business Case](#) on the Ofgem website

The changes to the "Relevant Date" definition, reflecting further changes following stakeholder feedback, have been explained above in paragraph 2.8.

### **Condition 17. Mandatory exchange of information**

#### **Information to Relevant Gas Shipper or Relevant Gas Transporter about premises**

(conditions 17.9 to 17.11)

- Removed the requirement on the new gas supplier to inform the relevant Shipper as to whether the premises are Domestic or Non-Domestic.

Reflective of the change of gas switching from a shipper led process to a supplier led process. Under the new switching arrangements, it will instead be a supplier requirement to provide this information to the CSS, which will in turn provide it to the Gas Retail Data Agent as part of its REC obligations.

### **Other housekeeping changes**

- Condition 14A.6 - corrected "supply transfer" to "supplier transfer"

This error was corrected in order to reflect the defined term

- Conditions 14 and 14A - corrected some minor formatting issues
- Conditions 22D.13(a), 23.6 and 24.10 - replaced instances of "the licensee receives Notice under the Network Code by way of the Relevant Gas Shipper" with "the licensee receives Notice under the Retail Energy Code".

This reflects the change from gas switching being a shipper led process under the UNC to a supplier led process under the REC.

## Appendices

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## Appendix 1 – Draft licence changes

The licence documents published alongside this consultation on our website set out the draft changes to the licences proposed in this consultation. These documents show the proposed changes against the up to date version of the consolidated licence conditions available on our website at the time of publishing, the definitive sources for which (not including the changes proposed in this consultation) are available on the Electronic Public Register.<sup>36</sup> They can be cross referenced against explanatory comments in chapter 3 of this document to support understanding of the proposed changes.

Subsidiary documents available on our website alongside this consultation:

- Gas Supply Standard Licence Conditions
- Electricity Supply Standard Licence Conditions

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<sup>36</sup> Link to the [Electronic Public Register](#) here



## Appendix 2 – Privacy notice on consultations

### Personal data

The following explains your rights and gives you the information you are entitled to under the UK General Data Protection Regulation (UK GDPR).<sup>37</sup>

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

#### 1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at [dpo@ofgem.gov.uk](mailto:dpo@ofgem.gov.uk)

#### 2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

#### 3. Our legal basis for processing your personal data

As a public authority, the UK GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

#### 4. With whom we will be sharing your personal data

Unless you indicate otherwise, we will make your response, as provided, available online. We are working with RECCo to develop the Retail Energy Code. As the changes to the licences are a reflection of what will be in the Retail Energy Code, we may require to share nonconfidential responses with RECCo and the REC Code Manager to enable us to develop the licence changes further in response to consultation responses, but will redact your personal data before doing so.

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<sup>37</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR), as retained in domestic law following the UK’s withdrawal from the European Union (UK GDPR)

**5. For how long we will keep your personal data, or criteria used to determine the retention period.**

Your personal data will be held for as long as an audit trail on decision-making relating to the questions discussed in this document should reasonably be available.

**6. Your rights**

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3<sup>rd</sup> parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**7. Your personal data will not be sent overseas**

**8. Your personal data will not be used for any automated decision making.**

**9. Your personal data will be stored in a secure government IT system.**

**10. More information** For more information on how Ofgem processes your data, click on the link to our "[Ofgem privacy promise](#)".