

To: All holders of a gas supply licence

[Note: This is an interim draft of proposed amendments to licences on which there is an ongoing consultation. These have been provided for the purposes of sharing emerging thinking following some early comments from consultees and do not reflect a decision by Ofgem to make modifications on these or any other terms.]

Gas Supply Licence

Condition 1: Definitions

Last Resort Supply Payment	means a sum of money payable to the licensee <u>or any LRSP Permitted Assignee</u> to compensate for any additional costs incurred by the licensee in complying with a Last Resort Supply Direction;
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LRSP Permitted Assignee	<u>means in relation to any valid claim in respect of which the Authority has granted consent or approval, a person specified as an "LRSP Permitted Assignee" thereunder a person to whom the licensee has assigned or otherwise disposed of all or any of its rights in relation to or arising from a Last Resort Supply Payment pursuant to Condition 9, with the Authority's consent.</u>
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Condition 9. Claims for Last Resort Supply Payment

Ability to make claim

- 9.1 If the licensee has received the Authority's consent under paragraph 9.5, it may make a claim for a Last Resort Supply Payment, under standard condition 48 (Last Resort Supply: Payment Claims) or standard special condition A48 (Last Resort Supply: Payment Claims) of the Gas Transporter Licence, from each Relevant Gas Transporter.
- 9.2 The licensee must not make a claim for a Last Resort Supply Payment if, and to the extent that, it has waived its ability to do so by Notice given to the Authority before the Authority gave it a Last Resort Supply Direction.

Process for making claim

- 9.3 If the licensee intends to make a claim for a Last Resort Supply Payment, it must:

- (a) give notice to the Authority of its claim; and
- (b) give the Authority a calculation of the amount claimed with information to support that calculation,

no later than a date notified to it by the Authority or, in the event that no such date is notified, five years after the date on which the Last Resort Supply Direction to which the claim relates stops having effect.

Commented [RP1]: Same amendment as in Transporter licence

- 9.4 The total amount of the Last Resort Supply Payment (for this condition only, “the relevant amount”) to be claimed by the licensee must not exceed the amount by which:
- (a) the total costs (including interest on working capital) reasonably incurred by the licensee in supplying gas to premises under the Last Resort Supply Direction and a reasonable profit,
plus
 - (b) any sums paid or debts assumed by the licensee to compensate any Customer in respect of any Customer Credit Balances,
plus
 - (ba) any additional (actual or anticipated) interest and finance costs associated with an arrangement approved in accordance with Clause 9.7C,
are greater than:
 - (c) the total amounts recovered by the licensee through Charges for the Supply of Gas to premises under the Last Resort Supply Direction (after taking all reasonable steps to recover such Charges).
- 9.5 If the Authority considers it appropriate in all the circumstances of the case for the licensee to make the claim notified to it in accordance with paragraph 9.3, the Authority will give its consent to the licensee.
- 9.6 The Authority may determine that:
- (a) an amount other than the one calculated by the licensee is a more accurate calculation of the relevant amount; and
 - (b) the period over which the relevant amount should be paid should be longer than a single financial year in order to mitigate the impact on consumers.
- 9.7 If the Authority makes a determination of a more accurate amount under paragraph 9.6 (a), the amount specified by it must be treated as the relevant amount for the purpose of paragraph 9.8.

Transfer of rights in relation to **valid** claims

- 9.7A The licensee may assign or dispose of all or any of its rights under the licence or otherwise in relation to or arising from a valid claim provided that the licensee has obtained the Authority's prior written consent to the proposed assignment or disposal and identity of the person to whom the assignment or disposal is made.
- 9.7B If the licensee proposes to assign or otherwise dispose of all or any of its rights in relation to or arising from a valid claim, it shall give the Authority reasonable notice of its intention to assign or otherwise dispose of such rights together with such further information as the Authority may request relating to: the identity of the proposed assignee or acquirer, the circumstances of such intended assignment or disposal, the costs relating to such assignment or disposal; and/or the intentions in regard thereto of the person proposing to acquire such rights. The notice shall also state the licensee waives any and all interest in or right to receive any monies in relation to the claim and this statement of waiver shall be provided to the transporter to whom the claim was originally submitted.

Commented [RP2]: The only mention of valid claims, is in this new section. In the current licence drafting valid claims are only mentioned in the transporter licence condition not the Supplier licence condition.

There are three stages to the process

- 1) Application for consent made by SoLR to Ofgem
- 2) Claim made by Supplier to Transporter following Ofgem issuing consent
- 3) Transporter validates claim

9.76C The licensee may include within any notice provided pursuant to paragraph 9.7B a revised notice (or revocation of a previous notice and provision of a new notice) in accordance with paragraph 9.3 for determination by the Authority, to exclude the licensee's interest on working capital and to include the costs of the financing arrangement, the anticipated interest to be charged by the proposed assignee and any other adjustment mechanisms (all of which require the approval of the Authority) provided that:

(a) unless the Authority consents, the licensee has not already submitted the valid claim to Relevant Gas Transporters; and

(b) the licensee procures from the proposed assignee or acquirer an undertaking on terms acceptable to the Authority relating to the calculation of such interest and other adjustments over the repayment term of the relevant amount, the sharing of any re-financing gains and the provision of information and other matters relating to conditions of the Authority's approval of the licensee's claim (pursuant to paragraph 9.3) or of the assignment or disposal of the licensee's rights (pursuant to paragraphs 9.7A to 9.7C) .

Submissions to Relevant Gas Transporters

9.8 A claim by the licensee for a Last Resort Supply Payment from each Relevant Gas Transporter referred to in paragraph 9.1 must specify:

- (a) the respective proportion of the relevant amount to be paid by that Relevant Gas Transporter (being the same as the number of premises directly connected to its pipeline system when expressed as a proportion of the total number of premises directly connected to the pipeline systems -of all the Relevant Gas Transporters in question);
- (b) whether payment is to be made by quarterly or monthly instalments and confirmation of whether the licensee or any LRSP Permitted Assignee will be responsible for requesting payment by issuing invoices;
- (c) the account(s) into which the relevant amount should be paid (which may include the account of an LRSP Permitted Assignee);
- (d) the period over which the relevant amount should be paid;
- (e) the Authority's determination of the ~~profile of the payments of the~~ relevant amount in each year or for a procedure for the Authority to determine the same in the future; and
- (f) if payment is to be made to an LRSP Permitted Assignee, a statement from the licensee regarding any retained interest in and to, the valid claim and the related relevant amount.

9.9 Unless the Authority consents otherwise pursuant to an arrangement approved under paragraph 9.7A and 9.7C, a claim for a Last Resort Supply Payment will lapse if the licensee does not make it within six months after the Authority has given its consent under paragraph 9.5.

Definitions for condition

9.10 In this condition:

"Closed Credit Balance"	means any Credit owed, on the date on which a relevant Last Resort Supply Direction took effect, by the other supplier to any Customer for whom the responsibility for the supply of gas had
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Commented [Dentons3]: We note the drafting issue with the existing condition that was highlighted. We are currently considering whether the proposed change can be made under the current consultation.

Commented [RP4]: Deleted to make clear the Authority only directs the yearly totals

Commented [Dentons5]: Comments have been received that it is important that networks know that the SoLR has no retained rights. It seems appropriate that this sort of confirmation is provided in any notice of the assignment (i.e. the SoLR/Lender to networks). We are conscious that some arrangements contain buy back provisions so would welcome feedback on the extent to which the licence should indicate the content of the statement to be included with the valid claim provided to networks.

Commented [RP6R5]: DNs regard this as important so which is why we have added text in 9.7 to bolster this point and is why we have asked for a complementary statement in the policy letter as this is directed to transporters.

	either transferred from the other supplier to another Gas Supplier or had otherwise terminated on or before the date on which the relevant Last Resort Supply Direction took effect;
"Customer Credit Balances"	means Closed Credit Balances and Open Credit Balances;
"Credit"	<p>means an amount by which the payments made by a Customer to the other supplier under or in accordance with a Domestic Supply Contract exceeds the sum of:</p> <p>a) the total amount of Charges which were due and payable by that Customer to the other supplier under the relevant Domestic Supply Contract on or before the date on which the relevant Last Resort Supply Direction took effect;</p> <p>b) the total amount of Charges relating to gas supplied to that Customer by the other supplier on or before the date on which the relevant Last Resort Supply Direction took effect that would have fallen due and payable under the relevant Domestic Supply Contract but for that Last Resort Supply Direction; and</p> <p>c) the sum of any amounts equivalent to those described in (a) and (b), above, either that:</p> <p style="padding-left: 40px;">(i) were due and payable; or</p> <p style="padding-left: 40px;">(ii) would have been due and payable but for a direction issued by the Authority under standard licence condition 8 of a Electricity Supply Licence,</p> <p>by that Customer to the other supplier under any contract for the supply of electricity to domestic premises, insofar as that sum exceeds the amounts paid by the Customer to the other supplier under a contract for the supply of electricity.</p>
"Open Credit Balance"	means any Credit owed by the other supplier to a Customer on the date of the relevant Last Resort Supply Direction.
<u>"valid claim"</u>	<u>means a claim for which a licensee has been given a consent by the Authority pursuant to standard condition 9 (Claims for Last Resort Supply Payment) of the standard conditions of the gas supply licence.</u>

9.11 For the purposes of this condition, the term "licensee" in the definition of "Charges for the Supply of Gas" may refer to either the licensee or the other supplier, or both (as the context requires).

Commented [RP7]: This differs from the definition in the Transporter licence as the Transporters need to validate the claim submitted by the Supplier against 3 points.

- 1) That the claim is no greater than the value consented by Ofgem
- 2) That the legal entity named in the claim is the same as that in the consent
- 3) That the claim was submitted by the due date in the GT licence.