



Making a positive difference
for energy consumers

To: All holders of a gas supply
licence

Email: RetailFinancialResilience@ofgem.gov.uk

Date: 20 June 2022

Gas Act 1986

Section 23(2)

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

1. Each of the companies to whom this notice is addressed holds a gas supply licence granted, or treated as granted, pursuant to section 7A of the Gas Act 1986 ('the Act').
2. The Gas and Electricity Markets Authority ('the Authority')¹ gives notice that it proposes to modify the standard conditions of all gas supply licences granted or treated as granted under section 7A of the Gas Act 1986 by amending Standard Licence Conditions (SLC) 4A and 4B in the manner set out in the schedule attached to this notice and described in the statutory consultation 'supplier control over material assets' accompanying this notice.²
3. We are proposing modifications to SLC 4A to require a licensed energy supplier to have sufficient control over the material economic and operational assets to run its business.
4. We are proposing that a licensed energy supplier must have sufficient control over assets used to meet its obligation under SLC 4B.

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

² The accompanying consultation documents can be found on our website

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5. The effect of the proposed modifications is to address the problem whereby some energy companies either have in place, or are considering putting in place, arrangements in which a licensed energy supplier does not own, control or have the economic or legal rights to its material assets. We consider this places unfair and disproportionate risk on energy consumers as the arrangement may give a parent or other group company the ability to retain assets that could otherwise have helped offset the contributions from consumers and taxpayers following a supplier's failure.
6. Further detail as to why the Authority proposes to make these licence modifications has been published by the Authority in the following accompanying document:
Statutory Consultation – Supplier control over material assets.
7. Any representations with respect to the proposed licence conditions must be made before 19 July 2022 to Jonathan Blagrove, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU, or by email to RetailFinancialResilience@ofgem.gov.uk.
8. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
9. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.

Cathryn Scott

Director – Enforcement and Emerging Issues

Duly authorised on behalf of the Gas and Electricity Markets Authority

20 June 2022

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The Office of Gas and Electricity Markets

10 South Colonnade, Canary Wharf, London, E14 4PU Tel 020 7901 7000

www.ofgem.gov.uk

Schedule 1 – Draft of proposed modifications to the standard conditions (SLCs) of all gas supply licences.

These are 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 Register³.

Deletions are shown in ~~strike through~~ and new text is double underlined. We have only shown those licence conditions where modifications are proposed.

Condition 4A. Operational capability

4A.1 The licensee must ensure it has and maintains robust internal capability, systems and processes to enable the licensee to:

- (a) efficiently and effectively serve each of its customers;
- (b) efficiently and effectively identify likely risks of consumer harm and to mitigate any such risks; and
- (c) comply with relevant legislative and regulatory obligations.

Meeting the operational capability principle

4A.2 The licensee must have Sufficient Control over the Material Economic and Operational Assets used or needed to run its supply business.

Guidance

4A.3 The licensee must have regard to any guidance on standard condition 4A (including in respect of definitions which appear in standard condition 1) which, following consultation, the Authority may issue and may from time to time revise

Condition 4B. Financial responsibility principle

³ <https://epr.ofgem.gov.uk/Document>

4B.1 The licensee shall at all times manage responsibly costs that could be Mutualised and take appropriate action to minimise such costs.

Meeting the financial responsibility principle

4B.2 The licensee shall at all times have adequate financial arrangements in place to meet its costs at risk of being Mutualised.

4B.3 Where the licensee uses a Material Economic and Operational Asset to meet obligations under this condition, the licensee must have Sufficient Control over it.

4B.4 The licensee shall not liquidate, sell or otherwise dispose of Material Economic and Operational Assets it uses to meet its obligations under this condition, if doing so risks an increase in costs at risk of being Mutualised.

Guidance

4B.5 The licensee must have regard to any guidance on standard condition 4B (including in respect of definitions which appear in standard condition 1) which, following consultation, the Authority may issue and may from time to time revise.

Definitions

For the purpose of condition 4A and 4B:

“Sufficient Control” means having either direct ownership or legally enforceable rights over Material Economic and Operational Assets so that the licensee can legally rely on them and enjoy the benefit of them.

“Material Economic and Operational Assets” are those assets, mechanisms or arrangements used or needed by a supplier: to run its supply business and meet its obligations with regards to customers; to manage responsibly its costs at risk of being Mutualised; as adequate financial arrangements to meet its costs at risk of being Mutualised, with such assets, mechanisms or arrangements including, but not limited to, premises, facilities, staff, equipment, IT system, brand name and hedging contracts.

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