

To: All holders of an electricity supply licence

Electricity Act 1989

Section 11A(1)(b)

Modification of the standard conditions of all electricity supply licences

1. Each of the licensees to whom this document is addressed has a supply licence which has been granted or treated as granted under 6(1)(d) of the Electricity Act 1989 (the Act).
2. Under section 11A(2) of the Act the Gas and Electricity Markets Authority ('the Authority')¹ gave notice on 20 June 2022 ('the Notice') that we propose to modify standard conditions 4A Operational Capability and 4B Financial responsibility principle.
3. We stated that any representations to the modification proposal must be made on or before 20 July 2022.
4. A copy of the Notice was sent to the Secretary of State in accordance with section 11A(4)(b) of the Act, and we have not received a direction that the change should not be made.
5. We received 5 responses to the Notice, which we carefully considered. We have placed all non-confidential responses on our website. Our response to these responses is set out in the accompanying Decision document.
6. None of the responses suggested changes to the proposals set out in the Notice, and we have decided not to make any changes.

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

7. We are making these licence changes to enshrine in the licence the key components of the guidance accompanying the Financial Responsibility Principle (FRP) and the Operational Capability Principle (OCP) updated in May 2022 which relate to ownership or control of the material assets needed for a licenced supplier to run their business.
8. These licence conditions will require suppliers to have sufficient control over the material economic and operational assets required to run their supply business and comply with obligations under the FRP. This is necessary to prevent arrangements where 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.
9. Enshrining these key components of the FRP and OCP guidance in the licence will ensure that suppliers are clear that there is a direct obligation to comply with these requirements and signals the enforcement action Ofgem can take in the event of a failure to comply. We consider that it is prudent, and supports our principal objective to protect the interests of consumers to do this.
10. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 11C of the Act, Rule 5.7 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules² requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-sensitive notice setting out the matters required in Rule 5.2. The attached Schedule 2 provides a list of the relevant licence holders in relation to this modification. Section 11A(10) of the Act sets out the meaning of 'relevant licence holder'.

Under the powers set out in section 11A(1)(b) of the Act, we hereby modify the standard licence conditions for all electricity supply licences in the manner specified in attached Schedule 1. This decision will take effect from 21 October 2022. This document is notice of the reasons for the decision to modify the electricity supply licences as required by section 49A(2) of the Act.

² CMA70 [Energy Licence Modification Appeals: CMA Rules \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

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Cathryn Scott

Director – Enforcement and Emerging Issues

Duly authorised on behalf of the Gas and Electricity Markets Authority

26 August 2022

Schedule 1: modifications to the standard conditions of all electricity supply licences

Deletions are shown in ~~strike through~~ and new text is double underlined.

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

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.

Schedule 2: list of the relevant licence holders in relation to this modification

Electricity Supply licence holders are listed at: [List of all electricity licensees including suppliers | Ofgem](#)