

To: All holders of a gas supply licence

**Gas Act 1986
Section 23(1)(b)**

Modification of the standard conditions of all gas supply licences

1. Each of the licensees to whom this document is addressed has a gas supply licence which has been granted or treated as granted under section 7A(1) of the Gas Act 1986 ('the Act').
2. Under section 23(2) of the Act the Gas and Electricity Markets Authority ('the Authority')¹ gave notice on 25 November 2022 ('the Notice') that we propose to modify standard condition 4B (alongside related licence modifications which proposed introducing a new SLC 4D (Protecting Domestic Customer Credit Balances) and SLC 30 (Protecting the Renewables Obligation)). We stated that any representations to the modification proposal must be made on or before 4 January 2023.
3. A copy of the Notice was sent to the Secretary of State in accordance with section 23(4)(b) of the Act, and we have not received a direction that the change should not be made.
4. We received 24 responses to the Notice, which we carefully considered. We have placed all non-confidential responses on our website. Our response to these comments is set out in the accompanying Decision Document letter.
5. It is necessary to make a number of alterations to the modifications set out in the Notice. These alterations are shown in the attached Schedule 1 as (see key for more details):
 - a. underlined and strikethrough to show proposed modifications that have now been removed; and
 - b. double underlined and yellow highlights to show new modifications.
6. The reasons for any differences between the proposed modifications set out in the Notice and the modifications reflected in Schedule 1 are to address issues raised in consultation responses (for example, we have brought the requirements regarding the Trigger Points and Annual Adequacy Self-Assessment from the Guidance document into the licence to make clear the monitoring and reporting requirements for suppliers).
7. Substantive amendments have been raised for further consultation and their proposed modifications have been removed from this Notice. These alterations relate to:
 - a. The common minimum capital requirement; and
 - b. Customer Credit Balances.
8. We are making the licence changes set out in the Schedule attached to this Notice because recent events in the energy market have exposed that some retail

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

businesses had insufficient capital to manage the business of supply and pursued unsustainable strategies with low downside risk to investors. These suppliers are more vulnerable to market shocks and therefore more likely to fail and exit the market due to insolvency. Where they do fail, that market exit results in Mutualised² costs which are ultimately passed on to consumers. As such, the ultimate objective of the full package of measures is to ensure the recapitalisation of the sector, enhance resilience to external shocks and put the retail market on a solid foundation to deliver the innovation, high standards and consumer outcomes needed to achieve our principal duty to protect the interests of existing and future consumers.

9. Further detail as to why the Authority is making these licence modifications has been published by the Authority in the accompanying Decision Document letter.
10. The effect of the modifications to SLC 4B will be to improve supplier financial resilience by clarifying the financial resilience requirements of suppliers and to change the culture of risk reporting, such that it is more proactive and focused on risk mitigation. In turn visibility of financial distress at an individual supplier level will be increased, which will enable swifter and more targeted intervention by the Authority where required (which will reduce the level of supplier failures and therefore the risk of Mutualised costs). These effects will be achieved through:
 - a. broadening the focus of the Financial Responsibility Principle; and
 - b. introducing monitoring and reporting requirements, such as the Trigger Point framework and requirement for an Annual Adequacy Self-Assessment.
11. The modifications also reinstate SLC 4B.4 (previously SLC 4B.2), in order to make clear the requirement for suppliers to have adequate financial arrangements in place to meet their costs at risk of being Mutualised.
12. Further detail as to the effects of the modifications of SLC 30 and the proposed SLC 4D have been published by the Authority in the accompanying Notices for SLC 30 and SLC 4D and are available on the website.
13. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 23B of the Act, Rule 5.7 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules³ 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 23(10) of the Act sets out the meaning of 'relevant licence holder'.

Under the powers contained in section 23(1)(b) of the Act, we hereby modify the standard licence conditions for all gas supply licences in the manner specified in attached Schedule 1. This decision will take effect from May 31st 2023.

This document is notice of the reasons for the decision to modify the gas supply licences as required by section 38A of the Act.



Cathryn Scott

² As defined in SLC 1 of the gas supply licence.

³ CMA70 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655601/energy-licence-modification-appeals-rules.pdf

Schedule 1 – Modifications to standard condition 4B of all gas supply licences.

Below we have included SLC 4B which shows the modifications that are being made, alongside any changes to the proposed modifications made in November 2022. A key has been provided for ease of reference.

Key

- No format = current wording in the licence that is being kept
- Strikethrough = proposed modification to remove wording from licence that is being kept
- Underlined = proposed modification that is being kept
- Underlined + strikethrough = proposed modification but not being kept
- Dashed underlined = proposed to be removed but being reinstated now
- Double underlined + yellow = modification not previously proposed but being introduced now

Condition 4B. Financial responsibility principle

4B.1 The licensee must ensure that it maintains Capital and Liquidity of sufficient amount and Quality that it is able to meet its reasonably anticipated financial liabilities as they fall due on an ongoing basis.

4B.2 The licensee must ensure that, were it to exit the supply market (due to insolvency, licence revocation or in any other circumstances), ~~said exit would be an Orderly Market Exit~~ its operational and financial arrangements are such that any Supplier of Last Resort or special administrator appointed would be able to efficiently and effectively serve its customers and that the exit would result in minimised Mutualised costs.

~~4B.1~~ 4B.3 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~~ 4B.4 The licensee shall at all times have adequate financial arrangements in place to meet its costs at risk of being Mutualised.

~~4B.4 If the licensee supplies to Domestic Premises, with effect from 31 March 2025, the licensee must, at all times, maintain the 2025 Minimum Capital Requirement.~~

~~4B.3~~ 4B.5 Where the licensee uses a Material Economic and Operational Asset to meet any of its obligations under this condition, the licensee must have Sufficient Control over it.

~~4B.4~~ 4B.6 The licensee shall not liquidate, sell or otherwise dispose of Material Economic and Operational Assets it uses to meet any of its obligations under this condition, if doing so risks an increase in costs at risk of being Mutualised.

~~4B.7 If the licensee does not, at any point in time after the effective dates at 4B.4, hold the 2025 Minimum Capital Requirement as required by standard condition 4B.4 or If any of the Trigger Points have occurred, the licensee~~ it must notify the Authority 28 days before making any payment, providing any loan or transferring any asset to any third party unless that payment, loan or transfer is one that it is essential to the licensee's operation as a supplier of gas to consumers. The licensee must continue to notify the Authority in respect

of such payments until the Authority has confirmed in writing that such notification is no longer required.

Directing the Protection of Domestic Customer Credit Balances

4B.8 The Authority may direct the licensee to Protect a proportion of its Domestic Customer Credit Balances in accordance with standard condition 4D where the Authority's Supervisory Financial Monitoring data, any data or information the Authority receives by way of notification under standard condition 4B.13 and/or any other relevant data that the Authority receives or obtains indicates that: (i) the licensee is not meeting the financial resilience standards set out at the following standard conditions; or (ii) there is a Material risk that it will not meet the financial resilience standards set out at the following standard conditions within the next 12 month period:

- 4B.1;
- 4B.2;
- 4B.3 in circumstances where Gross Credit Balances net of Unbilled Consumption exceed 50% of Total Assets, or where the supplier forecasts that they will exceed that level;
- 4B.4;
- 4B.5; and
- 4B.6 in circumstances where there is a risk of a Material increase in costs at risk of being Mutualised.

4B.9 A direction under standard condition 4B.9 will in particular provide the Adjustment Percentage the licensee must apply for the purposes of standard condition 4D. Said Adjustment Percentage will be no less than 0% and no more than 100%. In determining the Adjustment Percentage, the Authority will consider Consumer Interests and will review the Supervisory Financial Monitoring data that it has in relation to the licensee and any other relevant data that it has obtained or received from any other sources, and direct an Adjustment Percentage which:

- will not have an adverse effect on the licensee's ability to finance its activities such that the level of the Adjustment Percentage is likely to cause the licensee to exit the market due to insolvency; but
- if the licensee were nevertheless to exit the market or have its licence revoked, minimises, as far as is possible, the Mutualised costs that would be caused by any such market exit or licence revocation.

4B.10 Before giving a direction under standard condition 4B.8 the Authority must inform the licensee of its intention to do so in a Notice that:

- a) states the date on which it is propose that the direction should take effect;
- b) sets out the Authority's reasons: (i) for the direction; and (ii) for the level of Adjustment Percentage;
- c) specifies the time (which must not be less than a period of 7 days from the date of the Notice) within which representations with respect to the proposed direction may be made;

And must consider any representations that are duly made by the licensee and not withdrawn.

4B.11 The Authority's power to give a direction under standard condition 4B.8 includes the power to revoke that direction upon notice to the licensee following consultation.

Monitoring and Reporting

~~4B.12~~ **4B.8** The licensee must notify the Authority in writing: (i) as soon as reasonably practicable **but no later than 7 days** after it becomes aware that there is **a Material risk that it will not hold the 2025 Minimum Capital Requirement (as appropriate) or that there is a Material risk that any of the Trigger Points set out in sub-paragraphs (a) to (c) will occur;** and (ii) as soon as reasonably practicable **but no later than 7 days** after it becomes aware that it does not hold the 2025 Minimum Capital Requirement or that any of the **following Trigger Points have occurred:**

- a) any reduction in the licensee's Access to Funds, where this may impact the licensee's ability to meet standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6;**
- b) any changes with respect to the licensee's contractual arrangements with counterparties, where this may impact the licensee's ability to meet standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6; or**
- c) any change that could have a Material adverse effect in respect to the cash position of the licensee.**

4B.9 Where the licensee notifies the Authority in accordance with standard condition 4B.8, it must, along with the notification, explain the impact that the relevant change will have, may have or has had on its ability to meet standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6.

~~4B.13~~ Unless and so far as the Authority otherwise consents, the licensee must:

- ~~a) comply with the Guidance on standard condition 4B, a document that will be incorporated into this licence by way of direction under paragraphs 4B.14 to 4B.19;~~
- ~~b) record the information detailed in the Guidance ("Specified Information"); and~~
- ~~c) provide such Specified Information to the Authority in respect of such periods and within such timeframes as are specified in the guidance document.~~

Annual Adequacy Self-Assessment

4B.10 The licensee must submit an annual assessment ("the Annual Adequacy Self-Assessment") at least once every 12 calendar months.

4B.11 The Annual Adequacy Self-Assessment must set out the how the licensee:

- a) has complied with standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6 over the previous 12 calendar months; and**
- b) intends to comply with standard conditions 4B.1, 4B.2, 4B.3, 4B.4, 4B.5 and 4B.6 for the next 12 consecutive calendar months.**

4B.12 The first Annual Adequacy Self-Assessment must be submitted to the Authority no later than 31 March 2024.

4B.13 The licensee must, within 28 days of this standard condition taking effect, notify the Authority of the date on which it will submit the Annual Adequacy Self-Assessment (the "submission date") for the purpose of standard condition 4B.10.

4B.14 The licensee may notify the Authority of a revised submission date for the purpose of standard condition 4B.10 provided that the revised submission date will not result in the licensee submitting information relating to a period of more than 12 consecutive months.

4B.15 The licensee must submit a signed declaration of financial and operational adequacy ("Certificate of Adequacy") with the Annual Adequacy Self-Assessment. The Certificate of Adequacy must be signed by the licensee's Chief Financial Officer or a senior official of the licensee with equivalent responsibility.

Guidance

~~4B.5 4B.16 The licensee must have regard to any the Guidance issued on standard condition 4B (including respect of definitions which appear in standard condition 1) which, following consultation, the Authority may issue and may from time to time revise.~~

~~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.~~

~~4B.14 The Authority will issue and amend the Guidance by direction.~~

~~4B.15 The Authority will prepare and publish the Guidance on the Authority's website. The Authority may amend the guidance document from time to time in accordance with paragraph~~

~~4B.16. 4B.16 The Guidance will make provision for:~~

~~4B.17 how the Authority intends to monitor and assess in respect of the licensee's financial circumstances, including~~

- ~~a) guidance on the Minimum Capital Requirement and how licensees should meet this;~~
- ~~b) the form, manner and/or the frequency with which the Specified Information must be provided to the Authority; and~~
- ~~c) an explanation of why the Specified Information is required.~~

~~4B.18 Before issuing the Guidance document by direction, the Authority will publish on the Authority's website:~~

- ~~a) the text of the proposed Guidance;~~
- ~~b) the date on which the Authority intends the Guidance document to come into effect;~~
- ~~and~~
- ~~c) a period of not less than 10 days during which representations may be made on the content of the Guidance.~~

~~4B.19 Before amending the Guidance document, the Authority will publish on the Authority's website:~~

- ~~a) the proposed text of the new or amended Guidance document;~~
- ~~b) the date on which the Authority intends the new or amended Guidance document to come into effect;~~
- ~~c) the reasons for the amendments to the Guidance document; and~~
- ~~d) a of not less than 10 days during which representations may be made on the amendments to the Guidance document.~~

~~4B.20 4B.17 Definitions:~~

2025 Minimum Capital Requirement

~~means licensee Net Assets of XX per Domestic Electricity Customer and YY per Domestic Gas Customer or access to an alternative source of funding with equivalent effect such as, but~~

~~not limited to, long term unsecured debt or similar financial instruments, access to undrawn credit facilities, a guarantee from a third party provided that alternative source is notified to the Authority in writing no later than 12 weeks before the date provided for in standard condition [4B.6] and in respect of new market entrants within 28 days of the grant of the [gas/electricity] supply licence and meets the Alternative Source Conditions.~~

Access to Funds

~~Means any legally binding agreement which provides the supplier with capital or access to funding to be utilised for their licensable activities.~~

~~Examples of capital instruments include: unsecured shareholder loans, parent or group company working capital facilities and unconditional guarantees.~~

~~Examples of other financial instruments that provide access to funding include, but are not limited to: parent company guarantees, loans (including senior and subordinated, third party and intercompany), mezzanine finance, working capital facilities, trade finance facilities (including letter of credit, guarantee, factoring and invoice discounting), securitisation facilities, and guarantees.~~

Alternative Source Conditions

~~are:~~

~~that the alternative source must be sufficient to ensure that the licensee can meet any risks or liabilities that the licensee reasonably anticipates;~~

~~where the alternative source is held by the licensee (unsecured debts or similar financial instruments), it must not be secured on licensee assets by a fixed or floating charge or other security arrangements.~~

~~and where the alternative source is held by a third party:~~

- ~~— the licensee must have robust, legally enforceable, and clearly defined arrangements in place to ensure that it can draw on that funding at all times, including in times of financial stress.~~
- ~~— said arrangements should not be capable of termination without good cause and without sufficient notice to~~

~~enable the licensee to put in place arrangements to meet the Minimum Capital Requirement in another way. — the third party must have, an maintain, long term credit rating of not less than BBB by Standard and Poor's or equivalent rating by either Moody's or Fitch Ratings.~~

Adjustment Percentage

~~Has the meaning given to its at standard condition 4D~~

Capital

~~Means the elements of a supplier's equity and appropriate loss-absorbing debt liabilities. which rank behind general creditors, such as share capital and retained earnings, and subordinated debt.~~

Consumer Interests

~~means the likely impact of any adjustments on Resilience, Prices, Quality and Standards and Low Cost Transition to Net Zero.~~

Domestic Premises

~~Means premises at which a supply is taken wholly or mainly for domestic purposes.~~

Liquidity

~~Means the resources that suppliers can convert into 'cash' as soon as needed and with minimal loss in value to meet liabilities as they fall due, including under adverse circumstances.~~

Low Cost Transition to Net Zero

~~means the ability of gas / electricity supply licence holders to take the appropriate steps, at lowest cost to consumers, toward an energy system which relies on renewable, zero emission sources and [to] facilitate the use of zero emission technologies that are connected to the energy network~~

Material

~~means more than negligible (de-minimis).~~

Material Economic and Operational Assets

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, **shipping arrangements**, staff, equipment, IT system, brand name and hedging contracts.

<u>Mutualisation [/Mutualised]</u>	<u>Has the meaning given to it at standard condition 1</u>
<u>Net Assets</u>	<u>(fixed assets + current assets) – (current liabilities + long term liabilities)</u>
<u>Orderly Market Exit</u>	<u>An exit where the licensee has ensured that its operational and financial arrangements are such that: any Supplier of Last Resort or special administrator appointed will be able to efficiently and effectively serve its customers and the exit will not result in Material Mutualised Costs.</u>
<u>Prices</u>	<u>means Charges for the Supply of [Gas / Electricity]</u>
<u>Protect</u>	<u>means the steps the licensee takes to source and arrange one of the Credit Balance Support Arrangements set out in standard condition 4D.8(c).</u>
<u>Quality</u>	<u>Characteristics that make a source of funding best suited to allow a firm to absorb losses unambiguously on an ongoing basis, including under adverse circumstances.</u>
<u>Quality and Standards</u>	<u>means the extent of competition, innovation and level of customer service in the market</u>
<u>Resilience</u>	<u>means the proportion of the Market at Risk of Failure and the likely Mutualised cost that would result in the event of that failure occurring.</u>
<u>Sufficient Control</u>	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.
<u>Supervisory Financial Monitoring</u>	<u>means the processes by which the Authority obtains information about the financial position of licence holders with such information including, but not limited to, licensee hedging position, the level of assets and liabilities held by the licensee, and the licensee’s ability to meet its debts as they fall due.</u>

Trigger Point

Are indicators linked to supplier financial resilience in the three situations described in paragraphs a) to c) of standard condition 4B.8 set out in the Guidance.

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

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