

# **Gas Retail Governance – Further Consultation**

## **A Response by British Gas**

### **Introduction**

1. British Gas has been a strong advocate of the initiative to create a more robust governance structure for gas retail processes and has been at the heart of discussions regarding the development of the Supply Point Administration Agreement (SPAA). The current draft of the SPAA is a product of extensive discussions between suppliers, Ofgem and other interested parties over a period of nearly two years. In pursuit of achieving an agreement that can be deemed acceptable for all initial signatories and Ofgem, many compromises and allowances have been made by many suppliers during the course of the industry discussions. It is in this spirit of co-operation that the SPAA should be considered and as a critical first step to realise a gas retail governance structure that will benefit all parties. A failure to take this step now and formally sign on to the SPAA and to the licence conditions that support its creation and operation, will risk the delivery of any industry driven credible retail gas governance regime in the immediate future.
2. Accordingly, British Gas very much welcomes this consultation to bring the lengthy, intensive discussions to a conclusion and move into the delivery phase of the SPAA.
3. British Gas comments on the issues are broadly in the same order as presented in the consultation. However, comments are not made on Chapters 3 and 4, which merely provide an overview of industry responses to previous consultations and the major provisions of the SPAA. Detailed comments on the drafting of SPAA are also not included in this response and will be passed separately to the SPAA drafting team established under GIGG.
4. British Gas is happy for this response to be placed in the public domain in order to facilitate the debate.

### **Rationale**

5. For the introduction of domestic gas competition, it was logical and expedient to look to the monopoly gas transporter i.e. Transco, to provide the governance arrangements to support the transfer process. An added advantage was that Transco also provided bundled services for key activities such as meter operation and meter reading. However, as the market has matured, and elements of the monopoly service have been disaggregated e.g. independent gas transporters (IGTs) and competitive meter operation, it has become apparent that the governance structure needs a radical review.

6. In addition, suppliers who effectively deliver competition to customers have become increasingly frustrated that they have limited influence in the governance of key elements of the gas retail market baseline i.e. the transfer process. The current debate on improvements to the transfer process, as supported by Ofgem and energywatch, has illustrated that it is no longer feasible to leave key stakeholders i.e. suppliers, at the periphery of the decision making process with regard to retail aspects of the market.
7. It soon became abundantly clear in discussions with the industry that any new arrangements would require compliance by all parties if those arrangements were to be effective. The development of an agreement mandated by a licence condition has been seen as the most feasible approach to achieve a governance structure that is robust, and at the same time flexible enough to encompass and manage the changing nature of the competitive market and its customers. The SPAA has been developed to meet these two aims e.g. the use of mandatory, elective and voluntary schedules, and provides an unique chance to migrate to a new set of retail gas governance arrangements in a well ordered manner via a transparent and equitable change control mechanism. In this way, it also presents an opportunity for new suppliers (in the short term) and independent transporters (in the medium term) to influence the way in which gas retail processes are developed to a much greater extent than the current governance procedures allow.

### **The SPAA – Ofgem's views**

8. British Gas broadly accepts the principles of good governance as suggested by Ofgem in the document and considers that the current version of the SPAA meets those principles.

### **Effectiveness**

9. In order to be effective, the SPAA will not only need to provide a credible governance structure but be seen to operate in line with the other principles set out i.e. efficiency, transparency, participation, accountability and consistency. In addition, however, British Gas acknowledges Ofgem's point that compliance with the SPAA will also provide the required credibility. Clearly, making SPAA compliance a licence condition will present strong incentives on parties to comply – indeed British Gas believes that credibility will be lost without such a licence obligation. While it is important to have an intermediate breach process prior to referring the matter to the Authority, such a process can only support the strong sanctions available to the Authority that a licence condition will enable.
10. Ofgem also suggest attributing contractual financial liabilities to the SPAA. While this appears to have merit at first sight, experience has shown that agreeing such liabilities are fraught with difficulties. For example, when the MRA was being developed, it took six months of intensive discussions to reach agreement over a set of MPAS liabilities. In reality, these liabilities

have been rarely invoked, and not at all in the last two years, suggesting the compromise agreed resulted in “soft” targets. While British Gas are happy to discuss liabilities further with other SPAA parties, it believes better use could be made of the limited industry resources by developing and enhancing the scope and operation of the SPAA i.e. expansion to SPA processes.

### Efficiency

11. One of the key aims during the development of the SPAA was to ensure efficiency of the procedures contained within it. For example, provisions within the SPAA allow voting for change proposal via e-mail rather than requiring a meeting to be convened. That is not to say that parties cannot hold meetings to discuss proposed or potential changes prior to a vote taking place but it does not have to form part of the process. However it is envisaged that discussions between parties will be held beforehand to consider changes and their potential impacts. That said, it would probably be prudent to extend the voting period to, say, 20 working days<sup>1</sup> to ensure full impact assessments can be conducted. This is particularly important for changes that impact IT systems.
12. British Gas believe Ofgem’s suggestion to rename a change requiring immediate attention to “urgent” is sensible to ensure consistency and to avoid any misunderstanding. In addition, British Gas agree that it would be useful to publish criteria to provide guidance on what should be treated as urgent. It is suggested that this task should fall to SPAA Executive Committee (EC) to fulfil rather than placing the criteria in the SPAA itself.

### Transparency

13. As stated earlier, British Gas considers transparency as an important contributor to the effectiveness of the SPAA. Accordingly, Ofgem suggestions i.e. availability of SPAA & schedules (subject to IPR), changes and associated responses on the website, are sensible tools to achieve a good degree of transparency. In line with this ethos, British Gas welcomes the open approach regarding derogations proposed in the SPAA with the right of appeal. As suggested by Ofgem, this ethos should extend to decisions by Ofgem with regard to SPAA changes or appeals – however, unlike some of the decision letters for the Network Code, this transparency should be sufficient to allow parties to fully understand the reasoning behind the decision made.
14. Turning to the introduction of schedules into the SPAA, British Gas strongly believes that the status of a schedule i.e. voluntary, elective or mandatory, should be proposed at the time of its introduction. That is not to say that the status of that schedule could be amended in the future but it is very inefficient to have to go through two change proposals i.e. first

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<sup>1</sup> There are current discussions under the MRA to revise the impact assessment timescales. It would be sensible to take this into account when considering the gas timescales to enable alignment.

voluntary, then elective/mandatory, when, in a number of cases, it would be clear from the outset that a schedule should be mandatory or elective. It appears far more transparent to British Gas to make clear the intended final status of the schedule, if known, rather than placing every schedule into the SPAA as voluntary and then propose a change in status.

15. On a related note regarding schedules, British Gas considers a further review would be helpful to determine whether the use of elective schedules would aid transparency or effectiveness. While it is not opposed to the intention behind the inclusion of elective schedules, it needs to be considered whether the benefit of such schedules outweighs the associated added complexity.

### Participation

16. *Customer representation* - As noted by Ofgem, participation will be effectively mandated by the scope of the licence condition. However, British Gas recognises and accepts the benefits of widening participation to those parties not covered by that condition, specifically energywatch. Customer views must be taken into account when considering any change that potentially affects any customer, however limited the impact - any supplier that ignores the wishes of its customers is likely to lose customers via the competitive market. That said, energywatch are well placed to contribute and comment on customer issues and so it is right, as proposed in the SPAA, that energywatch has full access to Executive papers and change proposals.
17. Ofgem state there is a case for energywatch to be able to propose change directly. While British Gas is willing to consider such a suggestion, energywatch should be cognisant of the potential commercial impact of any change it raises i.e. the implementation of any change will undoubtedly incur costs and this needs to be weighed against the benefits that may be realised from any change. In addition, any right to propose modifications granted to energywatch must not be married with a right of appeal. Such a right would undermine the whole governance structure as modifications could be raised, appealed and imposed onto SPAA parties without any effective participation of those parties i.e. energywatch raise a modification and if rejected, irrespective of the voting of SPAA signatories, appeal to Ofgem to determine<sup>2</sup>.
18. *Ofgem's role* - The primary purpose of the SPAA is to provide a governance structure to enable the industry to demonstrate that self-regulation can work effectively. This approach goes hand-in-hand with Ofgem's stated intention to withdraw from prescriptive regulation. The proposed scope of the protected provisions as stated in the SPAA are already extensive, focusing on the key clauses that could potentially impact competition. The additional clauses suggested by Ofgem extend

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<sup>2</sup> Note that neither energywatch nor Ofgem are intended to be SPAA signatories or bear any of the costs of the SPAA or any change instigated under that Agreement.

that scope wider and, with perhaps the exception of Clause 14, duplicate the protection that already exists. Table 1 details this further.

**Table 1**

<b>Suggested Additional protected clause(s)</b>	<b>Existing relevant protected clause(s)</b>	<b>What protection is afforded under the existing drafting?</b>	<b>Comments</b>
Cl. 4.2 Additional Parties	Cl. 4.4	This clause allows a party to appeal to the Authority if its accession to SPAA is rejected	The key issue is whether a party is admitted to SPAA not what form should be used (to which Cl.4.2 refers).
Cl. 5.1-5.5 Mandatory, elective or voluntary status	Cl. 9.1	This clause requires the Authority's consent on any schedule that is to be mandatory.	5.1 establishes the binding nature of the Agreement (already intended to be mandated by a licence condition) and Cl. 5.5 merely states that an elective status may be designated - it is hard to see how this could be changed to adversely affect suppliers or the market. Cl. 5.2 to Cl. 5.4 solely relates to mandatory schedules, which is covered by Cl. 9.1.
Cl. 9 Change Control	Cl. 9.1 & 9.2	These clauses already give "protection" to ensure maintenance of protected status of identified clauses, appeals, any change to SPAA Products, addition/change to a mandatory schedules.	The remainder of Cl.9 is focused on the administrative aspects of the change process that is at a level of detail where Ofgem prescription is unnecessary.
Cl. 14 Derogations	Cl. 14	This section sets out the procedure for granting derogations including Ofgem's involvement.	It is understood that this section could be potentially amended to impact the market i.e. make it easier to grant derogations. As such, there is case to be made to extend protection for this clause.

19. British Gas, in conjunction with industry, would like to discuss with Ofgem why it considers the existing extent of protected provisions to be insufficient. Accordingly, it would be helpful to have greater transparency of Ofgem's reasons to inform that debate.
20. While British Gas notes Ofgem's reluctance to be bound by timescales with regard to determination of modification proposals, one of the concerns around the current Network Code process is the delay in decisions being made by Ofgem. Earlier discussions with Ofgem suggested that it would consider a side letter regarding the timeframe for issuing determinations – British Gas would encourage Ofgem to issue such a letter.
21. *Appeals* - While British Gas understands the potential difficulty in Ofgem's dual role as approver and arbiter on inclusion of, or changes to, a mandatory schedule, it seems inappropriate to remove the right of appeal for such an important amendment to the SPAA. In practice, such an amendment would need to have passed through the necessary change procedure including an opportunity to appeal to the SPAA Forum and ultimately Ofgem before the Authority would be asked to approve the amendment. Accordingly, if an appeal has been raised with Ofgem and, if it was determined in the appeal that the change should go ahead, Ofgem could issue an approval at the same time as the determination.

#### Consistency

22. British Gas believes that the creation of SPAA is an excellent opportunity to implement more robust governance arrangements around key interfaces between suppliers and, in the medium term, with SPA service providers. However, it is also recognised that liaison with existing agreements is crucial to ensure consistency and clarity of obligations. This will be particularly relevant regarding metering and SPA processes and British Gas agree there will need to be close liaison between SPAA, Network Codes and metering contract changes. This liaison should be inherent in each of these contracts where there is potential duplication or an amendment to one contract has an impact on another.

#### Accountability

23. The provisions within the SPAA are mindful of the need for accountability and places great store on ensuring arrangements are appropriate to provide for representation and an ability to escalate decisions that a party believe are incorrect. That principle is also applied to SPAA EC members with clear responsibilities set out in the Agreement i.e. Clauses 6.46 to 6.48.
24. *Derogations* - Ofgem outlines the process for the granting of derogations in their document which includes informing the Authority of any derogation applications. The SPAA also requires all non-confidential responses to be published on the website. Although it is unclear how Ofgem believe this

process should be amended, British Gas would have no problem in the Authority having early sight of the responses. In addition, it would be incumbent on the EC to fully consider the representations made, including those from the Authority, before any decision is made.

25. *Voting* - The industry had extensive, prolonged discussions in relation to the SPAA voting arrangements and many of the principles now set out by Ofgem were a key element of those discussions. In particular, one of principles defined by Ofgem is participation and voting is obviously the primary route to exercise this. However, it is a party's right to decide whether to vote on a change. While this is wholly appropriate, a decision not to vote should not stifle change approved by parties who participated in the voting process. As such, calculating voting percentages in relation to votes cast is the correct approach. As a safeguard, if a party after the vote is concerned with the outcome, irrespective of whether that party voted, there is the provision to appeal the matter to the SPAA Forum or ultimately Ofgem.

### **The SPAA licence condition**

26. British Gas strongly believes that a licence condition is required to underpin and mandate the signing of, and compliance with, the SPAA. Without such a condition, the SPAA would not be able to secure a key aim of its creation i.e. a comprehensive governance structure to ensure the effective interoperability of gas retail processes. The same rationale requires that the condition applies to both domestic and I&C suppliers. However, British Gas is acutely aware that some I&C suppliers have reservations over such a licence condition and would not wish to see the SPAA be delayed, or even prevented, because a sufficient proportion of I&C suppliers object to the Section 23 notice. Accordingly, if this is likely to be the case (and responses to this consultation will inform this) the licence modification should be initially limited to domestic. This would not prevent, however, I&C suppliers who wish to participate in the SPAA from voluntarily signing the agreement.

27. Another reason to include an obligation within the gas suppliers licence is to overcome the Competition Act issues as identified in Ofgem's document i.e. to fulfil the definition of legal requirement thereby providing exclusion to Chapter I prohibition.

### **Establishing the SPAA**

28. British Gas do not believe that the SPAA is likely to have any anti-competition effects – on the contrary, adherence to the governance principles as set out by Ofgem and the creation of an agreement which facilitates a more effective interoperation and transfer process will enhance competition. Accordingly, this will be of benefit to all suppliers including new entrants.

### Draft licence condition

29. British Gas does not have major concerns regarding the approach adopted in the current drafting of the proposed licence condition although clearly it would have to be tailored according to the agreed scope of the initial SPAA parties. However, the following comments apply:

- ◆ 4b) – this clause duplicates Clause 4.4 in the SPAA. This is a protected provision and so cannot be amended without Ofgem's approval. Accordingly, this clause in the licence appears unnecessary.
- ◆ 5 – the proposed objectives seem to be drawn very wide especially in a) as this could include any provision in the suppliers licence e.g. ranging from powers of entry to security deposits. British Gas suggest its scope should fall in line with the contents i.e. related to the change of supplier process.
- ◆ 7c) – British Gas do not agree that energywatch/bodies designated by the Authority should have the right of appeal against any proposed modifications (see paragraph 15);
- ◆ 8 – This clause seeks to ensure timely implementation of changes. While British Gas do not object to this in principle, the implementation of any changes must be cognisant of the relevant factors e.g. timescales for system development and testing or consistency with electricity change implementation dates. In addition, British Gas would expect the same principle to apply to the decisions made by Ofgem i.e. made in a timely manner.

### The Domestic Code of Practice

30. It has always been the intention right from the commencement of discussions that the sections within the Domestic Code of Practice (DCoP) would migrate to the SPAA. Indeed the DCoP Work Group has undertaken extensive work in assessing which sections are prime candidates for migration and ensure those sections are "fit for purpose" when the SPAA is initiated. The Work Group has recommended that not all existing sections need to be migrated as:

- ◆ some have outlived their initial purpose as the market has matured; and
- ◆ others are more guidance notes summarising obligations from other agreements or legislation and are therefore not appropriate to be duplicated in the SPAA.

31. Accordingly, the DCoP Work Group has recommended that of the existing fifteen sections of the Code, seven be migrated to the SPAA. It is important to recognise that these are purely recommendations and it would be for SPAA parties to decide whether to effect migration via the change control process.



32. It is British Gas' view that it would be unnecessary to retain the Code after migration although there may be a role for the retention of some guidance on specific issues. These could be informal papers maintained by the SPAA administrator, which would not form part of the SPAA obligations.
33. Turning the I&C Code of Practice, while it would seem sensible to include this Code in the SPAA, there is no great urgency for this especially if some I&C suppliers have reservations over the SPAA itself.

### **GT involvement in SPAA**

34. In order to reap the maximum benefits of the SPAA, it is imperative that GTs become parties to the SPAA. British Gas consider a primary potential benefit of the SPAA is consistency in SPA processes across all GTs and the ability for suppliers, who are effectively the customers of the SPA service (albeit via their shipper and on behalf of end consumers) to shape the characteristics of the transfer process. However, British Gas have always been, and remain so, a strong advocate of the phased implementation of the SPAA whereby suppliers initially become parties to the Agreement followed at a later date by GTs. This is because there are many fundamental issues to be discussed and agreed with GTs, not least funding and voting, that need to be resolved before accession by these parties. In addition, the complexity of migrating SPA processes to the SPAA from Network Codes should not be under-estimated.
35. Delaying SPAA's inception until these issues have been addressed would mean a significant deferment of the SPAA's creation and potentially risk the agreement ever becoming a reality. British Gas estimate that it will be at least a year until GT accession will be a possibility. At that time, British Gas consider that the SPAA should be mandated on GTs by a similar licence condition as proposed for suppliers. In fact, this must be a precursor to ensure full participation by all GTs.
36. The final report from the SPAA GT Forum made proposals on a number of key elements of SPAA including funding, voting and change control. The proposal on funding was that suppliers should meet secretariat costs, while transporters would finance attendance at meetings, and any changes would be funded on a "gain share basis". British Gas understands this gain share approach would seek to assess the benefits of each change proposal and then establish which constituencies would gain and to what extent. The funding would then be pro-rated according to extent of gain i.e. if suppliers are deemed to gain 75% of the benefit, they would pay 75% of the costs of implementing that change.
37. First, British Gas believes it is inequitable for transporters not to share the secretariat costs. The GTs will receive the same aspects of the service as other parties e.g. circulation of EC and Forum papers, management of change control and maintenance of the SPAA, and therefore should contribute to the costs in providing them. Second, the "gain share basis" approach is one that British Gas believe would be impossible to implement

in practice as agreement is unlikely to be reached on the benefit level for individual constituencies (except in perhaps a few isolated cases where it clearly only benefits a single constituency). While British Gas understands the concern of transporters that additional, unrecoverable costs will be placed on them, there are a number of reasons why that concern is unwarranted:

- ◆ Transporters, when they become parties to the SPAA, will clearly be able to participate in the change control process and reject changes where they believe they are not appropriate (the proposed process requires a change to be accepted by each constituency);
- ◆ As noted in Ofgem's document, suppliers, via their shippers, effectively already pay for the costs of change within transportation charges; and
- ◆ Funding for the implementation of changes under the MRA are paid by the party incurring those costs irrespective of the perceived benefit. Distributors seem to believe they have sufficient safeguards under those arrangements. British Gas can see no reason why it should be any different in the SPAA for transporters.

38. As mentioned above, the cost of change is already recovered via transportation charges. If change to SPA processes, currently managed under the Network Codes, is migrated to the SPAA, the change control savings accrued by GTs should be reflected in lower transportation charges.

### **Governance of Metering**

#### **Asset Transfer**

39. British Gas agree that it is important to ensure that the transfer of a metering asset, or arrangements for the continuing use of that asset, are affected efficiently. To that end, it is probably prudent to develop guidance on how that process would be operated in practice including timings on the steps in that process. However, publication of terms (which would naturally include prices) should be left to commercial discussions rather than governed by the SPAA. This is particularly the case where new entrant meter operators are the meter title owners (rather than Gas Act owners) and so would not be governed by licence or the SPAA. That is not to say that meter title owners would not wish to publish terms to encourage incoming suppliers or meter operators to retain or purchase their metering assets and ensure the new arrangements are concluded promptly. As Ofgem acknowledge, the commercial incentives are already there for the existing meter operators to do so.

#### **Transco metering contract**

40. As recognised previously under its comments regarding consistency, British Gas agree it is vitally important to ensure that related industry agreements i.e. those whose amendment would potentially impact on

another agreement, are kept in alignment to avoid any conflict in obligations.

41. The Transco metering contract is clearly such a related agreement in respect of the SPAA. In order to maintain alignment, three steps would need to be taken:

- ◆ the SPAA should act as the guardian of the RGMA baseline as proposed by the GIGG metering work group;
- ◆ any changes to that baseline should go through the SPAA change control process; and
- ◆ discussions would be held within the Metering Contract Group to refine the provisions within the Transco contract to meet the revised baseline. Bilateral discussions would also be held between the relevant parties to amend contracts that suppliers may have with non-Transco meter operators.

42. It is anticipated that before any formal change proposal to the RGMA baseline is accepted through SPAA, there will be discussions between meter operators and suppliers to understand the potential impact on service delivery that the change may have. This is important to ensure informed decisions are made on proposed RGMA changes.

43. However, British Gas agrees that until gas meter operation is fully effective, Ofgem would need to maintain a degree of regulatory control. It is therefore welcomed that if difficulties were experienced with regard to incorporating a RGMA change into the Transco metering contract, Ofgem would determine the dispute. However, the criteria that Ofgem would adopt in determining disputes of this nature is dependent on the “reasonableness” provision proposed for Transco’s GT licence. Accordingly, early visibility of that provision is critical to enable suppliers to establish the most effective approach to manage the relationship between SPAA and Transco’s metering contract.

**British Gas**  
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