

Code Governance Review Phase 2 – illustrative licence drafting

APPENDIX 5: Gas Supply Standard Licence Conditions

Condition 6A. Supply Point Administration Agreement

- 6A.1 The licensee must be a party to, comply with and maintain ~~the~~ those provisions of the Supply Point Administration Agreement (for this condition only, the “SPAA”) which are relevant to the licensee, as set out in the SPAA document (the “relevant provisions”).
- 6A.2 The licensee must take all reasonable steps to secure and implement, and must not take any unreasonable steps to prevent or delay, any modifications to Industry Documents which are necessary to give full and timely effect to a modification of the SPAA.
- 6A.3 Paragraph 6A.2 is without prejudice to:
- (a) any right of appeal that the licensee may have in relation to a decision made by the Authority under Industry Documents; and
 - (b) any right of approval, veto or direction that the Authority or the Secretary of State may have in relation to changes to Industry Documents.
- 6A.4 The licensee must take all reasonable steps to secure and implement changes to its systems, procedures and processes which are necessary to give full, timely and practical effect to any modification of the SPAA.
- 6A.5 The licensee must take all reasonable steps to ensure that the SPAA remains an agreement which:
- (a) is designed to facilitate the achievement of the relevant objectives set out in paragraph 6A.6; and
 - (b) includes the matters set out in paragraph 6A.7.
- 6A.6 The relevant objectives referred to in sub-paragraph 6A.5(a) are:
- (a) the development, maintenance and operation of an efficient, coordinated and economical change of supplier process;
 - (b) the furtherance of effective competition between Gas Suppliers and between relevant agents;
 - (c) the promotion of efficiency in the implementation and administration of the supply point administration arrangements; and
 - (d) so far as is consistent with sub-paragraphs (a), (b) and (c), the efficient discharge of the licensee’s obligations under this licence.
- 6A.7 The matters referred to in sub-paragraph 6A.5(b) are:
- (a) provision for enabling the SPAA to be modified from time to time so as to better facilitate the achievement of the relevant objectives set out in paragraph 6A.6;
 - (b) provision for enabling parties to the SPAA to appeal against any proposed modification of it which does not require the Authority’s approval to the Authority for determination; and

- (c) provision for a copy of the SPAA and accompanying schedules to be provided to any person on request, upon payment of an amount not exceeding the reasonable costs of making and providing it.
- (d) where an appeal has been raised in respect of a modification proposal in accordance with paragraph (b), provision for that modification proposal to be treated in accordance with any decision and/or direction of the Authority following that appeal;

6A.8 The SPAA must provide for:

- (a) a panel body, as specified in the SPAA (the “panel”) whose functions shall include the matters required by this condition and as set out in the SPAA; and
- (b) arrangements for a secretarial or administrative person or body, as specified in the SPAA, to perform the role of code administrator (the “code administrator”). In addition to any powers, duties or functions set out in the SPAA, the code administrator shall:
 - (i) together with other code administrators, publish, review and (where appropriate) amend from time to time the Code of Practice approved by the Authority (any amendments to the Code of Practice are to be approved by the Authority);
 - (ii) facilitate the procedures for making a modification to the SPAA;
 - (iii) have regard to, and in particular (to the extent relevant) be consistent with the Principles contained in, the Code of Practice; and
 - (iv) provide assistance, insofar as is reasonably practicable and on reasonable request, to parties (including, in particular, small participants and consumer representatives) that request assistance in relation to the SPAA including, but not limited to, assistance with:
 - 1.1.i.1.1. drafting a modification proposal;
 - 1.1.i.1.2. understanding the operation of the SPAA;
 - 1.1.i.1.3. their involvement in, and representation during, the modification procedure processes (including, but not limited to, code panel, and/or workgroup meetings);
 - 1.1.i.1.4. accessing information relating to modification proposals and/or modifications.

6A.9 The modification procedures referred to in sub-paragraph 6A.7(a) shall provide:

- (a) for a modification report to be prepared in such manner and with all such contents as specified in the SPAA, which shall include an assessment of the extent to which the proposed modification would better facilitate achieving the relevant SPAA objectives and a detailed explanation of the reasons for that assessment;
- (b) where the proposed modification requires Authority approval in accordance with the provisions of the SPAA, for the revision and resubmission of the modification report upon, and in accordance with, a direction issued to the panel by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal;
- (c) that proposals for the modification of the SPAA falling within the scope of a significant code review may not be made during the significant code review phase, except:
 - a. where the Authority determines that the modification proposal may be made, having taken into account (among other things) the urgency of the subject matter of the proposal; or

- b. at the direction of the Authority;
- (d) where a modification proposal is made during a significant code review phase the panel shall:
 - i. unless exempted by the Authority, notify the Authority as soon as practicable of:
 - 1. any representations received in relation to the relevance of the significant code review; and
 - 2. the panel's assessment of whether the proposal falls within the scope of the significant code review and its reasons for that assessment; and
 - ii. if the Authority so directs, not proceed with the modification proposal until the significant code review phase has ended.

6A.10 If within twenty eight (28) days after the Authority has published its significant code review conclusions, the Authority issues to the licensee:

- (a) directions, the licensee shall comply with those directions;
- (b) a statement that no directions under sub-paragraph (a) will be issued in relation to the SPAA, the licensee shall treat the significant code review phase as ended;
- (c) neither directions under sub-paragraph (a) nor a statement under sub-paragraph (b), the significant code review phase will be deemed to have ended.

The Authority's published conclusions and directions to the licensee will not fetter the voting rights of SPAA parties or the panel, or the procedures informing the modification report described at sub-paragraph 6A.9(a).

6A.11 Eligible grounds for appeal under the provisions referred to in sub-paragraph 6A.7(b) shall be that, in the opinion of the Authority:

- (a) (i) the appealing party is likely to be unfairly prejudiced by the implementation or non-implementation of that modification proposal; or
 - (ii) the appeal is on the grounds that:
 - i. in the case of implementation, the modification proposal may not better facilitate the achievement of at least one of the relevant SPAA objectives; or
 - ii. in the case of non-implementation, the modification may better facilitate the achievement of at least one of the relevant SPAA objectives; and
- (b) the appeal is not brought for reasons that are trivial or vexatious, nor does the appeal have no reasonable prospect of success.

6A.12 The procedures for the modification of the SPAA must provide that, where parties are able to indicate their vote for or against the implementation of a modification proposal, that vote is made by reference to their assessment of the modification proposal against the relevant objectives.

6A.13 The procedures for the modification of the SPAA shall be consistent with the Principles set out in the Code of Practice, to the extent that they are relevant.

6A.14 Without prejudice to any rights of approval, veto or direction the Authority may have, the licensee shall use its best endeavours to ensure that procedures are in place that facilitate its compliance with the requirements of this condition and to create or modify industry

documents including but not limited to the SPAA, core industry documents and industry codes where necessary no later than [1 July 2013].

6A.15 This condition shall take effect under the non-domestic gas supplier licence from [1 July 2013].

Definitions

“Code of Practice”

means the Code Administration Code of Practice approved by the Authority and:

- (a) developed and maintained by the code administrators in existence from time to time; and
- (b) amended subject to the Authority’s approval from time to time; and
- (c) re-published from time to time.

“directions”

in the context of paragraph 6A.10(a), means direction(s) issued following publication of significant code review conclusions which shall contain:

- (i) instructions to the licensee to make (and not withdraw, without the Authority’s prior consent) a modification proposal;
- (ii) the timetable for the licensee to comply with the Authority’s direction(s); and
- (iii) the Authority’s reasons for its direction(s).

“significant code review”

means a review of one or more matters which the Authority considers likely to:

- (a) relate to the SPAA (either on its own or in conjunction with other industry code(s)); and
- (b) be of particular significance in relation to its principal objective and/or general duties (under section 4AA of the Act), statutory functions and/or relevant obligations arising under EU law; and

concerning which the Authority has issued a notice to the SPAA parties (among others, as appropriate) stating:

- (i) that the review will constitute a significant code review;
- (ii) the start date of the significant code review; and
- (iii) the matters that will fall within the scope of the review.

“significant code review phase”

means the period commencing on the start date of a significant code review as stated by the Authority, and ending in one of the following ways:

- a. on the date on which the Authority issues a statement that no directions will be issued in relation to the SPAA; or
- b. if no statement is made on the date on which the licensee has made a modification proposal in accordance with directions issued by the Authority; or

immediately if neither a statement nor directions are issued by the Authority within (and including) twenty eight (28) days from the Authority's publication of its significant code review conclusions

"small participant"

means

- (a) a supplier, gas transporter, or new entrant to the gas market in Great Britain that can demonstrate to the code administrator that it is resource-constrained and, therefore, in particular need of assistance;
- (b) any other participant or class of participant that the code administrator considers to be in particular need of assistance; and
- (c) a participant or class of participant that the Authority has notified the code administrator as being in particular need of assistance.

"relevant provisions"

under this condition, means the provisions of the SPAA which, in accordance with the provisions of the SPAA, are applicable to holders of domestic and non-domestic gas supply licences (in relation to all licensees), or which are applicable to domestic supply licence holders only (in relation to domestic supply licence holders).