

To: All holders of an Electricity Supply Licence

## **Electricity Act 1989**

### **Section 11A(2)**

#### **Notice of statutory consultation on a proposal to modify the standard conditions of all Electricity Supply Licences**

1. The Gas and Electricity Markets Authority ('the Authority')<sup>1</sup> proposes to modify the standard conditions of all Electricity Supply Licences granted or treated as granted under section 6(1)(d) of the Electricity Act 1989, by amending standard licence conditions under section 11A(1)(b):
  - 1 (Definitions for standard conditions)
  - 7 (Terms of Contracts and Deemed Contracts)
  - 8 (Obligations under Last Resort Supply Direction)
  - 27 (Payments, Security Deposits, Disconnections and final Bills)
  
2. We also propose to add nine new standard licence conditions to all Electricity Supply Licences:
  - 4A (Operational capability)
  - 4B (Financial responsibility principle)
  - 4C (Ongoing fit and proper requirement)
  - 5A (Principle to be open and cooperative)
  - 5B (Independent audits)
  - 19AA (Additional reporting requirement)
  - 19C (Customer supply continuity plans)
  - 19D (Trade sales)
  - 28C (Milestone assessments)<sup>2</sup>

---

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

<sup>2</sup> Proposed standard licence condition 28C relates to electricity supply licence holders who have Section B (Standard Conditions for Domestic Suppliers) switched on in their licence

The proposed modifications are set out in Appendix 1 to this notice.

3. This notice of statutory consultation is published alongside a consultation setting out our proposed modifications to the Electricity Supply Licence. A detailed description of the reasons for and the effects of these licence modifications has been published by the Authority in the accompanying consultation, which can be found at:

<https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-supplier-licensing-review-ongoing-requirements-and-exit-arrangements>

Alternatively, they are available from [foi@ofgem.gov.uk](mailto:foi@ofgem.gov.uk).

4. We are proposing these modifications to drive up standards and increase regulatory scrutiny of poor performing suppliers, without imposing undue burden on suppliers that are already operating in a responsible manner.
5. We intend our proposed modifications to function together as a package. While we expect each of these modifications to individually have a positive impact on consumers, when taken together as a package we expect that these modifications will protect consumers by mitigating the harmful effects associated with disorderly supplier market exits.
6. Any representations with respect to the proposed licence modifications must be made on or before 20 August 2020 by email to [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk).
7. 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.
8. If we decide to make the proposed modifications they will take effect not less than 56 days after the decision is published.

.....

**Philippa Pickford**

**Director – Future Retail Markets**

**Duly authorised on behalf of the Gas and Electricity Markets Authority**

**25 June 2020**

## **Appendix 1 – Proposed modifications to the standard conditions of all electricity supply licences**

*Deletions are denoted with a strike through and new text denoted with double underlining.*

### **Condition 1. Definitions for standard conditions**

*[To be inserted in alphabetical order within existing definitions:]*

**Active Supplier** is a supplier that is actively engaging in the act of supplying electricity to one or more Domestic Customers and / or one or more Non-Domestic Customers.

**Customer Credit Balances** has the meaning given in standard condition 9.

**Gas Supplier** means any person who holds a Gas Supply Licence.

**Mutualised** means one or more market participants other than the licensee bearing costs incurred by the licensee, which may include Customer Credit Balances and costs incurred by the licensee under government environmental and social schemes, by virtue of regulatory mechanisms.

**Significant Managerial Responsibility or Influence** means where a person plays a role in—

- (a) the making of decisions about how the whole or a substantial part of a licensee’s activities are to be managed or organised, or
- (b) the actual managing or organising of the whole or a substantial part of those activities.

**Trade Sale or Trade Purchase** means a commercial transaction in which the licensee agrees the transfer of rights under one or more Domestic Supply Contracts and/or Non-Domestic Supply Contracts, or the novation of one or more Domestic Supply Contracts and/or Non-Domestic Supply Contracts.

*[INSERT NEW CONDITION:]*

#### **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.

*[INSERT NEW CONDITION:]*

#### **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.

#### **Guidance**

4B.3 The licensee must have regard to any guidance on standard condition 4B.1 (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.

*[INSERT NEW CONDITION:]*

**Condition 4C. Ongoing fit and proper requirement**

4C.1 The licensee must not appoint or have in place an individual in a position of Significant Managerial Responsibility or Influence who is not a fit and proper person to occupy that role.

4C.2 The licensee must:

- a) have and maintain robust systems, processes and governance to ensure that any person holding a position of Significant Managerial Responsibility or Influence in the licensee is fit and proper to occupy that role; and
- b) carry out regular assessments on such person(s) to ensure that they remain fit and proper to occupy that role.

4C.3 In complying with paragraphs 4C.1 to 4C.2, the licensee must have regard to and take account of all relevant matters including, but not limited to, whether the individual has:

- a) been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity (or, providing a service elsewhere which if provided in Great Britain, would be a regulated activity);
- b) any relevant unspent criminal convictions in any jurisdiction in particular fraud or money laundering;
- c) any insolvency history, including undischarged bankruptcy, debt judgements and County Court judgements;
- d) been disqualified from acting as a director of a company;
- e) been a person with Significant Managerial Responsibility or Influence at a former Gas Supplier or Electricity Supplier in respect of whose Customers' premises the Authority issued a Last Resort Supply Direction (including where they were a person with Significant Managerial Responsibility or Influence at that Gas Supplier or Electricity Supplier within the 12 months prior to the Last Resort Supply Direction being issued);

- f) been refused, had revoked, restricted or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body in any jurisdiction whether as an individual, or in relation to a business in which that person held Significant Managerial Responsibility or Influence.

4C.4 The licensee must give particular regard to circumstances in which the relevant person has a background in the energy sector in Great Britain and any previous actions of that person that resulted in or contributed towards significant consumer or market detriment.

*[INSERT NEW CONDITION:]*

#### **Condition 5A. Principle to be open and cooperative**

5A.1 The licensee must be open and cooperative with the Authority.

5A.2 In complying with paragraph 5A.1, the licensee must disclose to the Authority in writing or orally any circumstance relating to the licensee of which the Authority would reasonably expect notice in order to perform its statutory functions, particularly actions or omissions that give rise to a likelihood of detriment to Domestic Customers. Such disclosure should be given as soon as the circumstance arises or the licensee becomes aware to it.

5A.3 The licensee is not required to comply with paragraphs 5A.1 and 5A.2 if the licensee could not be compelled to produce or give the information in evidence in civil proceedings before a court.

*[INSERT NEW CONDITION:]*

#### **Condition 5B. Independent audits**

5B.1 After receiving a request from the Authority to commission an Independent Audit that the Authority considers may be necessary for the performance of any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation, the licensee must commission such an Independent

Audit and provide to the Authority, in the form requested by the Authority and by the date set by the Authority, a copy of the full audit report.

5B.2 The Independent Audit may include the following areas of the licensee's business:

- a) financial stability;
- b) customer service systems and processes; or
- c) where a licensee cannot provide adequate information under Condition 28C.

5B.3 The auditor must carry out the Independent Audit in line with terms of reference supplied by the Authority that are reasonable to meet the purpose of the audit and complying with any code of ethics or similar regulation that applies in the auditor's ordinary course of business.

5B.4 The licensee is not required to comply with paragraph 5B.1 if the licensee could not be compelled to produce or give the information in evidence in civil proceedings before a court.

5B.5 The licensee must ensure that:

- a) without prejudice to its duty to provide a copy of the report to the Authority by the date set by the Authority, each report prepared in accordance with paragraph 5B.1 is considered by appropriate members of its senior management team within four weeks of the report being provided by the auditor to the licensee; and
- b) it keeps a documentary record of the decisions made and actions taken by it in response to that report.

5B.6 The licensee must take all reasonable steps to ensure that its Affiliates cooperate fully with the Independent Audit, where appropriate.

### **Definitions for condition**

5B.7 For the purposes of this condition:

**Independent Audit** means an audit carried out by a person(s) with the relevant skills and expertise, other than the licensee or an Affiliate, instructed by the licensee. Unless

exempted by the Authority, the auditor must be a person or firm regulated by an appropriate professional body.

[AMEND EXISTING CONDITION:]

## **Condition 7. Terms of Contracts and Deemed Contracts**

### **Terms of Deemed Contracts**

7.12 The licensee must ensure that each Deemed Contract contains terms and conditions which:

- a) reflect the effect of the provisions of standard condition 7; and
- b) require the licensee to honour Customer Credit Balances, provided and to the extent that the licensee committed to do so before the Authority gave it a Last Resort Supply Direction and the Deemed Contract arose as a result of the Last Resort Supply Direction.

[AMEND EXISTING CONDITION:]

## **Condition 8. Obligations under Last Resort Supply Direction**

8.1 The Authority may give a Last Resort Supply Direction to the licensee if it considers that:

- a) a circumstance has arisen that would entitle it to revoke the Electricity Supply Licence of an Electricity Supplier other than the licensee (for this condition and condition 9 of this licence only, the "other supplier"); and
- b) the licensee could comply with the Last Resort Supply Direction without significantly prejudicing its ability:
  - (i) to continue to supply electricity to its Customers' premises; and
  - (ii) to fulfil its contractual obligations for the supply of electricity.

8.2 The Last Resort Supply Direction will:

- a) have effect on and from the date on which and the time at which the other supplier's Electricity Supply Licence is revoked;
- b) stop having effect on and from a date, specified in the Last Resort Supply Direction; and
- c) where the other supplier is a Green Deal Licensee and is supplying Green Deal Premises, ensure that those Green Deal Premises will continue to be supplied by a Green Deal Licensee.

### **Licensee's obligations**

8.3 In complying with the Last Resort Supply Direction, the licensee must take all reasonable steps to honour any commitment made to the Authority before the Authority gave it a Last Resort Supply Direction.

~~8.3~~ 8.4 Except in the circumstances set out in paragraph ~~8.4~~ 8.5, the licensee must comply with a Last Resort Supply Direction.

~~8.4~~ 8.5 The licensee:

- a) is not required to comply with a Last Resort Supply Direction in respect of premises to which it would not be required to supply electricity because of any of the exceptions set out in sub-paragraphs 6(a) and (b) of standard condition 22 (Duty to offer and supply under Domestic Supply Contract); and
- b) shall not comply where the Last Resort Supply Direction is in respect of a Green Deal Premises and the licensee is not a Green Deal Licensee.

~~8.5~~ 8.6 Within a reasonable period of time after receiving a Last Resort Supply Direction, the licensee must send a Notice to each of the premises specified or described in the Last Resort Supply Direction to inform each Customer:

- a) that the other supplier stopped supplying electricity to his premises with effect on and from the date on which the Last Resort Supply Direction had effect;
- b) that the licensee began to supply electricity to his premises with effect on and from the date on which the Last Resort Supply Direction had effect;

- c) that the licensee is supplying electricity to the Customer's premises under a Deemed Contract;
- d) that the Customer may enter into a Contract with the licensee or any other Electricity Supplier under which electricity will be supplied to his premises;
- e) of the Charges for the Supply of Electricity that the licensee may charge the Customer while supplying him under the Last Resort Supply Direction; and
- f) if the Customer is a Green Deal Bill Payer, a statement to the effect that the premises are Green Deal Premises and that the Green Deal Charges will be added to the charges for the Supply of Electricity notified to the Customer under paragraph (e) above.

### **Charges under Last Resort Supply Direction**

~~8.6~~ 8.7 The licensee's Charges for the Supply of Electricity to the premises specified or described in the Last Resort Supply Direction must not exceed an amount that may be expected, in total, approximately to equal the licensee's reasonable costs of supply (including, where appropriate, the costs of purchasing electricity at short notice) and a reasonable profit.

~~8.7~~ 8.8 If the licensee purchases electricity to comply with a Last Resort Supply Direction, it must take all reasonable steps to do so as economically as possible in all the circumstances of the case.

*[INSERT NEW CONDITION:]*

### **Condition 19AA. Additional reporting requirement**

19AA.1 The licensee must notify the Authority of any change in any of the matters listed in 19AA.2, promptly and within a reasonable timescale.

19AA.2 The matters referred to in paragraph 19AA.1 are the following:

- a) if the licensee has agreed to undertake a Trade Sale or Trade Purchase;

- b) the address of the licensee's registered office;
- c) the e-mail address of the licensee's regulatory contact;
- d) whether the licensee is an Active Supplier in respect of Domestic Customers and / or Non-Domestic Customers;
- e) whether a Relevant Merger Situation has arisen in respect of the licensee;
- f) any Person with Significant Control in respect of the licensee;
- g) any Person with Significant Managerial Responsibility or Influence in respect of the licensee;
- h) whether the licensee supplies any Customers through a White Label Tariff;
- i) any significant changes that may affect how a licensee operates.

### **Definitions for condition**

19AA.3 for the purposes of this condition:

**Person with Significant Control** has the same meaning as under section 790C of the Companies Act 2006.

**Relevant Merger Situation** has the same meaning as under section 23 of the Enterprise Act 2002.

*[INSERT NEW CONDITION:]*

### **Condition 19C. Customer supply continuity plans**

19C.1 The licensee must ensure it has prepared and has in place, at all times, a customer supply continuity plan, which sets out the licensee's strategy for safeguarding the continuity of supply for its customers in the event of its exit from the market (a **Customer Supply Continuity Plan**).

19C.2 The licensee must ensure that the information provided in its Customer Supply Continuity Plan is accurate, and is prepared with due skill and care.

19C.3 The licensee must ensure that the information contained in its Customer Supply Continuity Plan is maintained and kept up-to-date at all times.

[INSERT NEW CONDITION:]

### **Condition 19D. Trade sales**

19D.1 The licensee must not undertake a Trade Sale or Trade Purchase that:

- a) subvert or distort, or are likely to subvert or distort the Supplier of Last Resort process; and / or
- b) make it more likely, in the Authority's opinion, that costs will be Mutualised.

[AMEND EXISTING CONDITION:]

### **Condition 27. Payments, Security Deposits, Disconnections and final Bills**

27.8A The licensee must ensure that the terms and conditions of each Domestic Supply Contract or a Deemed Contract comply with the provisions of the following standard conditions:

- paragraphs 5 to 8 of standard condition 27 (inclusive), and stipulate that (i) in respect of any current or former Domestic Customer to which this condition applies, charges may not be demanded or recovered unless and until it is established that such payment options referred to under this condition have been expressly offered to the customer and they have been given time to make payment, and (ii) charges may not be demanded or recovered unless and until it can be established that such steps to ascertain a current or former Domestic Customer's ability to pay have been taken and instalments set accordingly;
- paragraphs 17 and 18 of standard condition 27, and stipulate that charges may not be demanded or recovered unless and until it is established that all reasonable steps to issue a final Bill have been taken; and

- paragraphs 5 and 6 of standard condition 28B, and stipulate that Charges may not be demanded or recovered unless and until it is established that such costs which are sought to be recovered under this condition are considered proportionate.

27.8A1 The licensee must ensure that the terms and conditions of each Domestic Supply Contract or a Deemed Contract stipulate that, for the avoidance of doubt, the relevant conditions referred to above and the back-billing condition imposed by SLC 21BA.3 should bind the licensee after any termination of the supply licence.

27.8A2 The licensee must ensure that the terms and conditions of each Domestic Supply Contract or a Deemed Contract stipulate a right to allow a Domestic Customer to set off against contract debts any credit balance owing under another supply contract with the licensee.

*[INSERT NEW CONDITION:]*

#### **Condition 28C. Milestone assessments**

28C.1 The licensee must notify the Authority, in writing, a reasonable time before it reasonably anticipates reaching its first 50,000 Domestic Customers.

28C.2 The licensee must notify the Authority, in writing, when it reaches its first 50,000 Domestic Customers for the purpose of undergoing the relevant milestone assessment.

28C.3 The licensee must notify the Authority, in writing, a reasonable time before it reasonably anticipates reaching its first 200,000 Domestic Customers.

28C.4 The licensee must notify the Authority, in writing, when it reaches its first 200,000 Domestic Customers for the purpose of undergoing the relevant milestone assessment.

28C.5 The licensee must have regard to any guidance on standard condition 28C (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.