

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 supply licence which has been granted or treated as granted under 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 June 2020 ('the Notice') that we propose to modify standard condition:
 - 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)

We also proposed to introduce nine new standard licence conditions to all gas 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)
- 19E (Customer supply continuity plans)
- 19F (Trade sales)
- 28C (Milestone assessments)²

We stated that any representations to the modification proposal must be made on or before 20 August 2020.

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 31 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 letter.
5. It is necessary to make a number of minor alterations to the modifications set out in the Notice. These alterations are shown in yellow highlight in the attached Schedule 1. The reasons for any differences between the modifications set out in the Notice and the modifications reflected in Schedule 1 are to correct minor typographical

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

² Proposed standard licence condition 28C relates to gas supply licence holders who have Section B (Standard Conditions for Domestic Suppliers) switched on in their licence.

errors, to improve on the drafting, and to clarify policy intent based on consultation responses.

6. We are making these licence changes to improve supplier standards of financial resilience and customer service, and to minimise the likelihood and impact of disorderly supplier market exit. While we expect each of these modifications to individually have a positive impact for consumers, when taken together as a package we expect that these modifications will protect consumers by ensuring suppliers are managed appropriately and prepared to meet their obligations. A more detailed description of the reasons and effects of these modifications has been published by the Authority alongside this notice.
7. In summary, the effects of the modification will be to strengthen our regulatory regime, drive up standards among poor performing energy suppliers without imposing undue burden on suppliers that are already operating in a responsible manner, and to minimise competitors' and consumers' exposure to financial risks and poor customer service.
8. 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 22 January 2021 – with the exception of the Customer Supply Continuity Plans requirements (in condition 19E), which will come into effect from 18 March 2021.

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

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Lesley Nugent
Duly authorised on behalf of the
Gas and Electricity Markets Authority

26 November 2020

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

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

- Text which has been deleted from the relevant licence condition has been struck through: ~~Example~~
- Text which has been added is double underscored: Example
- Changes from the statutory consultation notice have been highlighted yellow

Condition 1. Definition for standard condition

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

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

Customer Credit Balances means the amount by which any payment made by the Customer to the licensee under or in accordance with the relevant Domestic Supply Contract and/or Non-Domestic Supply Contract which exceeds the total amount of Charge which is due and payable by the Customer to the licensee under that Domestic Supply Contracts and/or Non-Domestic Supply Contracts minus any amount refunded to the Customer.

Electricity Supplier means any person who holds a Electricity 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 person 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 processes, systems and governance in place 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 current or former licensed 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 licensed 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 the previous actions of that person 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 **te** of 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.

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 will include one (or more) of 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 If required to commission an Independent Audit pursuant to paragraph 1, the licensee must commission the auditor must to 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 Gas Supply Licence of a Gas 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 gas to its Customers’ premises; and

- (ii) to fulfil its contractual obligations for the supply of gas.

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 Gas Supply Licence is revoked;
- b) stop having effect on and from a date, specified in the Last Resort Supply Direction.

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 The licensee must comply with a Last Resort Supply Direction.

~~8.4~~ 8.5 But the licensee is not required to comply with a Last Resort Supply Direction in respect of premises to which it would not be required to supply gas because of any of the exceptions set out in sub-paragraphs 5(a) to (c) of standard condition 22 (Duty to offer and supply under Domestic Supply Contract).

~~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 gas 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 gas 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 gas to the Customer's premises under a Deemed Contract; **Note: Consolidated conditions are not formal Public Register documents and should not be relied on.**
- d) that the Customer may enter into a Contract with the licensee or any other Gas Supplier under which gas will be supplied to his premises; and
- e) of the Charges for the Supply of Gas that the licensee may charge the Customer while supplying him under the Last Resort Supply Direction.

Charges under Last Resort Supply Direction

~~8.6~~ 8.7 The licensee's Charges for the Supply of Gas 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 gas at short notice) and a reasonable profit.

~~8.7~~ 8.8 If the licensee purchases gas 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

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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.

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

- a) **whether the licensee is entering into a binding agreement for a Trade Sale or a Trade Purchase, and for the avoidance of doubt, the notification should take place before the licensee enters into such an agreement;**

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 19F. Trade Sales

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

a) subverts or distorts, or are is likely to subvert or distort the Supplier of Last Resort process; and / or

b) makes it more likely, in the Authority's opinion, that costs will be Mutualised.

[INSERT NEW CONDITION:]

Condition 19E. Customer supply continuity plans

19E.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**).

19E.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.

19E.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.

Condition 27.8

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

- (a) paragraphs 5 to 8 (inclusive) of standard condition 27 and paragraphs 5 and 6 of standard condition 28B, stipulating that charges may not be demanded or recovered unless and until it can be established that the corresponding contractual terms have been complied with; and
- (b) paragraphs 17 and 18 of standard condition 27.

27.8D The licensee must ensure that the terms and conditions of each Domestic Supply Contract provides for the right for the customer to offset any amount owing to the customer pursuant to the contract against any amounts owed by the customer under any other Domestic Supply Contract or under any contract for the supply of electricity to

premises (whether or not the licensee continues to hold an Electricity Supply Licence or Gas Supply Licence).

27.8E The licensee must ensure that the terms and conditions of each Domestic Supply Contract or a Deemed Contract stipulates, for the avoidance of doubt, that the relevant conditions referred to in paragraphs 27.8C and 27.8D will continue to bind the licensee after termination of this licence.

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 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 he/she has 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 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 is 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 (a) bind the licensee after any termination of the supply licence and (b) bind the licensee in administration.

~~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 28C.1 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 28C.2 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 28C.3 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.

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

Gas Supply licence holders are listed at: <https://www.ofgem.gov.uk/publications-and-updates/list-all-gas-licensees-including-suppliers>