

Annex 6. End of the transition period - Notice of proposed licence modifications to the licence conditions of the Gas Interconnector Licence

Gas Act 1986

Section 23(2)

Notice of statutory consultation on a proposal to modify the standard conditions of all Gas Interconnector Licences.

1. The Gas and Electricity Markets Authority (the Authority) proposes to modify the standard conditions of all gas interconnector licences granted or treated as granted under section 7ZA of the Gas Act 1986 by amending Standard Licence Conditions under section 23(1)(b):
 - SLC1 (Definitions and interpretation)
 - SLC22 (Notification of changes that may affect eligibility for certification)

set out in Annexes 6.1.a and 6.1.b. to this notice.

2. The modifications we propose to make are to reflect the changes in the legislative framework that will be implemented after the transition period ends at 11pm on 31 December 2020.
3. The effect of these proposed modifications is to ensure that the references in the licence to EU law (e.g. Directives, Regulations and Commission decisions) shall be read as references to such EU law as it had effect immediately before IP completion day subject to any further amendments as may be contained in statutory instruments made under the European Union (Withdrawal) Act 2018. The modifications do not seek to change the current obligations and duties of licensees, nor do they seek to change the current policy position as reflected in the licence conditions.
4. The proposed modifications and the reasons why they are proposed are stated in Annex 6.1.a to this Notice. The effect of the proposed changes is set out in paragraph 3 in this notice. Further information concerning the proposed modifications is contained in the letter entitled 'Statutory consultation on consequential licence modifications due to the end of the transition period' which can be found at www.ofgem.gov.uk.
5. Any representations with respect to the proposed licence modification/modifications must be made on or before 24 December 2020 to EUExit@ofgem.gov.uk.

6. 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 However, if you do not wish your response to be made public then please clearly mark it as not for publication.
7. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.

Kristian Marr

.....

**Interim Head of European Wholesale Markets
Duly authorised on behalf of the
Gas and Electricity Markets Authority**

26 November 2020

Annex 6.1.a. Gas Interconnector Licence Modification Table

Standard Licence condition	Current wording	Proposed change	Reasons for the change
1	the “Agency” means the European Union Agency for the Cooperation of Energy Regulators established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast);	the “Agency” means the European Union Agency for the Cooperation of Energy Regulators established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast); <u>(EC) No 713/2009 as construed as reference to and read in accordance with the correlation table in Annex II of Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (recast) and as it had effect immediately before IP completion day.</u>	The licence refers to the “Agency” in a number of conditions. This proposal will clearly identify the meaning of the term used, as Regulation (EU) 2019/942 has been revoked by The Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020 ¹
1	the “Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.	the “Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC <u>as it has effect immediately before IP completion day as read with the modifications set out in the Act;</u>	The licence refers to the Directive in a number of conditions. This proposal will ensure that the references to the Directive are to be interpreted on the basis of the Directive as it has effect immediately before IP completion day as read with the modifications inserted into section 4AA(5B) of the Gas Act 1986 by regulation 8 of the Electricity and Gas etc. (Amendment etc.) (EU

¹ <https://www.legislation.gov.uk/ukdsi/2020/9780348209495>

Standard Licence condition	Current wording	Proposed change	Reasons for the change
			Exit) Regulations 2019 (the “Regulations”) ² .
1	New definition	<u>“IP completion day” has the same meaning as that given in section 39(1) of the European Union (Withdrawal) Act 2020;</u>	This new definition is required to give effect to the revised definition of “Directive”.
22.3	If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.	If at any time from 3 March 2013 the licensee knows or reasonably should know that, <u>on or after IP completion day</u> , any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third <u>country outside the United Kingdom</u> , or that a person from a third <u>country outside the United Kingdom</u> has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.	Proposed deletion of "from 3 March 2013" to reflect the amendments that are to be made to section 8D of the Gas Act by regulation 12 of the Regulations. Updated reference to "third country" to "country outside the United Kingdom" to reflect the proposed amendments to the certification provisions (in sections 8D to 8Q) of the Gas Act to be made by the Regulations. This is to reflect the fact that post EU Exit, all countries outside of the UK will become a “third country”.

²The Electricity and Gas etc (Amendment etc) (EU Exit) Regulations 2019 were published in draft on 17th December 2018 (<https://assets.publishing.service.gov.uk/media/5c17d12140f0b60c70c4ba79/Regulations.pdf>) and have been laid in draft before the sifting committees of both Houses of Parliament. The modifications that are proposed to the licence are on the assumption that the draft Regulations will be made and come into force in their published format before any proposed licence modification is to take effect. Cross references to the Regulations reflect the numbering in the published draft as at the date of this notice.

Annex 6.1.b. Gas Interconnector Marked-up Licence

We have included the sections of the SLCs we propose to remove or amend below. Deletions are shown in strike through and new text is double underlined.

PART II – THE STANDARD CONDITIONS

PART II - SECTION A: INTERPRETATION, APPLICATION AND PAYMENTS

Condition 1. Definitions and interpretation

1. In these licence conditions unless the context otherwise requires:

the “Agency”	means the European Union Agency for the Cooperation of Energy Regulators established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast); <u>(EC) No 713/2009 as construed as reference to and read in accordance with the correlation table in Annex II of Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (recast) and as it had effect immediately before IP completion day.</u>
“Directive”	means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC <u>as it has effect immediately before IP completion day as read with the modifications set out in the Act;</u>
<u>“IP completion day”</u>	<u>has the same meaning as that given in section 20(1) of the European Union (Withdrawal) Act 2018;</u>

Part II: SECTION F: OTHER PROVISIONS

Condition 22. Notification of changes that may affect eligibility for certification

1. Where the licensee has made or makes an application for certification under section 8D of the Act, if at any time prior to the Authority notifying the licensee of its final certification decision under section 8F(4) (7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.
2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.
3. If at any time ~~from 3 March 2013~~ the licensee knows or reasonably should know that, on or after IP completion day, any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a ~~third~~ country outside the United Kingdom, or that a person from a ~~third~~ country outside the United Kingdom has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.
4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 8O of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.

5. Where the licensee has been certified, by 31 July of each year following certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:

(a) whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;

(b) whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country outside the United Kingdom, or that a person from a third country outside the United Kingdom has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and

(c) whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 8O of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 8G(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

“certified” has the same meaning as in section 8Q of the Act

“control” has the same meaning as in section 8Q of the Act

“person from a third country outside the United Kingdom” has the same meaning as in section 8Q of the Act

“relevant date” has the same meaning as in section 8O of the Act

“shareholder right” has the same meaning as in section 8Q of the Act.