

To: All holders of a gas supplier licence (“licensees”) who are relevant licence holders for the purposes of section 23(10) of the Gas Act 1986

MODIFICATION PURSUANT TO SECTION 23 OF THE GAS ACT 1986 OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 7A(1) OF THE GAS ACT 1986

NOTICE OF REASONS FOR THE DECISION TO MODIFY THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCE UNDER SECTION 38A OF THE GAS ACT 1986.

WHEREAS:

1. Each of the companies to whom this notice is addressed holds a gas supply licence granted or treated as granted pursuant to section 7A(1) of the Gas Act 1986 (the “Act”).
2. In accordance with section 23(2), (3) and (4) of the Act, the Gas and Electricity Markets Authority (the “Authority”)¹ gave notice (“Notice”) on 19 October 2016 that it proposed modifying the standard conditions of the gas supply licence by inserting new standard condition 32A (Power to direct suppliers to test consumer engagement measures). The Notice required any representations with respect to the proposed modification to be made on or before 18 November 2016.
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 modification should not be made.
4. We received 20 responses to the Notice, which we carefully considered. We have placed all non-confidential responses on our website. A copy of the non-confidential representations received by Ofgem are available free of charge from the Ofgem Knowledge Management Team, 9 Millbank, London, SW1P 3GE.
5. The Authority has carefully considered the representations made and, subject to changes explained in paragraph 6, has decided to proceed with the modification proposed in the Notice.
6. The Authority has decided to add a sunset provision to the version of SLC 32A contained in the Notice by inserting new paragraphs 32A.9 and 32A.10 (and a relevant subheading). This change is highlighted in yellow in the attached Schedule 1. The effect of this change is that all the substantive elements of SLC 32A will cease to have effect at 24:00 on 31 December 2022, unless the Authority decides to extend the duration (on one or more occasions). In order to extend the duration the Authority would first need to consult on its proposal to do this, and if it decided it was appropriate to do so after consideration of responses, publish a statement in writing. The main reason for making this change is to better reflect the Authority’s stated policy intention in respect of acting proportionately and in line with better regulation duties. Further information on this change and the reasoning is set out in the decision document.
7. In accordance with section 38A of the Act, the reasons for making the licence modification are to implement the policy stated in the following documents:

¹ The terms “the Authority”, “we” and “Ofgem” are used interchangeably in this document.

(a) Decision document: Implementation of Standard Licence Condition 32A: Power to direct suppliers to test consumer engagement measures – decision to make licence modifications (30 January 2017);

(b) Statutory Consultations on the introduction of SLC 32A: Power to direct suppliers to test consumer engagement measures (19 October 2016);

(c) The CMA’s Energy market investigation final report (24 June 2016).

In summary, the modification is being made because the Authority agrees with the Competition and Markets Authority’s recommendation on establishing an ongoing programme to test consumer engagement measures (including via randomised controlled trials (RCTs), where appropriate)² and considers that introducing Standard Licence Condition 32A for this purpose would promote the interests of existing and future energy consumers.

8. The effects of this modification are described in the documents referred to in paragraph 6 of this Notice. In summary, the main effect of this modification is to enable robust testing of measures to promote consumer engagement on a mandatory basis by suppliers.
9. Where an application for permission to appeal the Authority’s decision is made to the Competition and Markets Authority (CMA) under section 23B of the Act, Rule 5.7 of the CMA’s Energy Licence Modification Appeals Rules³ requires that the appellant send a non-confidential notice to any relevant licence holders who are not parties to the appeal, setting out the matters required in Rule 5.2. Schedule 2 to this Notice provides a list of the relevant licence holders in relation to the modification. Section 23(10) of the Act sets out the meaning of “relevant licence holder”.

Now therefore

In accordance with the powers contained in section 23(1)(b) of the Act, the Authority hereby modifies the standard conditions for all gas supply licences in the manner specified in attached Schedule 1. The modification will take effect on and from 27 March 2017, a date which is at least 56 days from the publication of this Notice.

The Official Seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of



.....
Neil Barnes
Duly authorised on behalf of the
Gas and Electricity Markets Authority

30 January 2017

² Or with quasi-experimental or other research methods, where not.

³ The rules were published by the Competition Commission in September 2012. On 1 April 2014, the Competition Commission was abolished and its functions transferred to the CMA.

SCHEDULE 1

MODIFICATION PURSUANT TO SECTION 23(1)(b) OF THE GAS ACT 1986 OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCE GRANTED OR TREATED AS GRANTED UNDER SECTION 7A(1) OF THE GAS ACT 1986

The text below constitutes the modification to insert new standard condition 32A in the gas supply licence:

Condition 32A. Power to direct suppliers to test consumer engagement measures

Power of direction

- 32A.1 For any purposes connected with the Authority's consideration of measures or behaviours which may impact on consumer engagement ('consumer engagement measures'), the licensee must comply with a direction issued by the Authority in respect of Relevant Matters for Standard Condition 32A.
- 32A.2 The licensee is not required to comply with a direction issued pursuant to 32A.1 unless the Authority has given the licensee at least 1 month's prior Notice.
- 32A.3 A direction issued under paragraph 32A.1 may include a requirement to comply with any instructions from the Authority or a third party agent appointed by the Authority for the purposes of conducting any test of consumer engagement measures.

Provision of information

- 32A.4 The licensee must provide the Authority (or such other person as specified by the Authority) with information specified by the Authority in relation to matters that it reasonably considers are relevant to:
- (a) the Authority's consideration of whether to issue a direction pursuant to paragraph 32A.1; and/or
 - (b) the licensee's compliance with any direction issued pursuant to paragraph 32A.1.
- 32A.5 The Authority may direct the licensee to comply with paragraph 32A.4 by providing to the Authority (or such other person as specified by the Authority) information:
- (a) in a particular form or medium by a particular date;
 - (b) in a particular form or medium at such reoccurring intervals of time as the Authority considers appropriate; and
 - (c) of any description specified by the Authority, including any documents, accounts, estimates, returns, records or reports and data of any kind, whether or not prepared specifically at the request of the Authority.
- 32A.6 The licensee is not required to comply with paragraph 32A.4 if it could not be compelled to produce or give the information in evidence in civil

proceedings before a court.

Compliance with this condition

32A.7 The licensee is not required to comply with paragraph 32A.1 until the Authority has published criteria for the selection of one or more licensees to conduct testing (including through Randomised Controlled Trials) of any consumer engagement measures.

Definitions for condition

32A.8 For the purposes of this condition:

'Relevant Matters for Standard Condition 32A' means any or all of the following:

(a) a requirement to test or evaluate (including through a Randomised Controlled Trial, where the Authority considers it appropriate) any consumer engagement measures in a manner and time frame prescribed by the Authority (including on the basis of the Authority's Specification for Testing), and to provide information to Domestic Customers in a manner and time frame specified by the Authority;

(b) where appropriate, a requirement to submit an implementation plan to the Authority for approval;

(c) a requirement not to comply with any licence conditions which are relevant to the subject matter of this condition to such extent and subject to such conditions as the Authority may direct; and

(d) a requirement to provide the Authority (or such other person as specified by the Authority) with information relating to the results (and the underlying data) of the testing of any consumer engagement measures in the manner and time frame specified by the Authority.

'Randomised Controlled Trial' means a form of consumer research (which is statistically robust for measuring behavioural impact) for Domestic Customers which is for the purposes of testing one or more consumer engagement measures relevant to the subject matter of this licence condition and includes two or more randomly assigned customer groups from the pool of eligible participants (which may be determined and specified by the Authority) in circumstances where:

(a) at least one of those groups are not subject to the consumer engagement measure; and

(b) all of the customer groups are comparable (including on the basis of the randomised selection) but for the consumer engagement measure(s).

'Authority's Specification for Testing' includes detail on some or all of the following:

Design

- the objective(s) of the testing;
- the details of the consumer engagement measure(s) (and any variants) to be tested;
- the testing methodology (including, but not limited to, the approach to randomisation and maximising the equivalence of groups and the proposed sample size);
- the testing of outcomes and how they will be measured;
- the proposed timetable;
- any planned piloting activity; and/or
- any supplementary research or follow up analysis to gain a better understanding of the behavioural impact.

Implementation

- the identification of third parties who will be involved in delivering the proposed specification for testing and clarity around roles and responsibilities;
- the details of any proposed supplier-initiated activity that might have an impact on the testing;
- proposed approach for monitoring (including possible arrangements for independent moderation) and quality assurance; and/or
- the approach to dealing with ethics and consumer protection issues, including how any possible consumer detriment will be identified, monitored and addressed should any issue be identified.

Analysis and evaluation of the results

- criteria and approach to evaluate and analyse the results of the testing; and/or
- data to be shared, consideration of format, precise content, file types and data security.

Duration of condition

32A.9 Paragraphs 32A.1 to 32A.8 will cease to have effect at 24:00 on 31 December 2022 unless, following consultation, the Authority specifies a later date by publishing a statement in Writing.

32A.10 The power to specify a later date in paragraph 32A.9 may be exercised by the Authority on more than one occasion (before, on, or after the expiry of any later date specified by the Authority).

SCHEDULE 2

MODIFICATION PURSUANT TO SECTION 23(1)(b) OF THE GAS ACT 1986 OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCE GRANTED OR TREATED AS GRANTED UNDER SECTION 7A(1) OF THE GAS ACT 1986

LIST OF RELEVANT LICENCE HOLDERS

1 North Utilities Ltd
1st Direct Utilities Plc
Addito Supply Limited
Affect Energy Ltd
AvantiGas On Limited
Avro Energy Limited
Axis Telecom Limited
Barbican Power Limited
Better Energy Supply Limited
Bluebell Energy Supply Limited
Bor Energy Limited
Breeze Energy Supply Limited
Brilliant Energy Supply Limited
Bristol Energy & Technology Services (Supply) Limited
British Gas Trading Limited
Brook Green Trading Limited
Bryt Energy Limited
Bruntwood Energy Services Limited
Bulb Energy Ltd
Business Power and Gas Limited
Cardiff Energy Supply Limited
Celesto Enterprises Limited
Co-Operative Energy Limited
Corona Energy Retail 4 Limited
Cowpow Limited
Crown Gas and Power Limited
Crown Oil Limited
Daffodil Energy Supply Limited
Daisy Energy Supply Limited
Daligas Limited
Dirac Energy Supply Limited
Donnington Energy Limited
Dual Energy Direct Limited
Eddington Energy Supply Limited
Effortless Energy Ltd.
ENGIE Power Limited
E.ON Energy Gas (Eastern) Limited
E.ON Energy Solutions Limited
Eclipse Energy Supply Limited
Economy Energy Supply Ltd
Economy Energy Trading Limited
EDF Energy Customers Plc
E (Gas and Electricity) Limited
Entice Energy Supply Limited

Enstroga Ltd
Euston Energy Limited
Eversmart Energy Ltd
Extra Energy Supply Limited
Fairline Gas Ltd
Faraday Energy Supply Limited
First Utility Limited
Flogas Britain Limited
Flow Energy Limited
Foxglove Energy Supply Limited
Future Energy (Supply) Limited
Gas Plus Supply Limited
GEN4U Ltd
GnERGY Limited
Golding Energy Limited
Green Energy (UK) plc
Greengen Direct Limited
Green Network Energy Ltd
Good Energy Gas Limited
Hartree Partners Supply (UK) Limited
Hawking Energy Supply Limited
Holborn Energy Limited
Home Counties Energy Plc
Hudson Energy Supply UK Limited
Hyde Park Energy Limited
Igloo Energy Supply Limited
Iresa Limited
I Supply Energy Limited
Jacob Developments Limited
Kensington Power Limited
Labrador Ltd
Lavender Energy Supply Limited
Loco2 Energy Supply Ltd.
Lovely Energy Limited
Mint Energy Supply Limited
Mongoose Energy Supply Limited
Monument Energy Limited
MyLife Home Energy Limited
Nabuh Energy Ltd
Nationwide Electricity Limited
Newport Energy Limited
Npower Direct Limited
Npower Gas Limited
Npower Northern Limited
Npower Yorkshire Limited
Octopus Energy Limited
Oneselect Limited
Opal Energy Limited
Opal Gas Limited
Opus Energy Limited
Opus Gas Supply Limited
Our Power Energy Supply Limited
Ovo Gas Limited
Palladium Energy Supply Limited

Pan-Utility Limited
Places for People Energy Limited
Planet 9 Energy Limited
Positive Energy Ltd
Putney Energy Limited
Queensbury Energy Limited
Rayleigh Energy Supply Limited
Retford Gas Limited
Robin Hood Energy Limited
Rose Energy Supply Limited
Saphir Energy Limited
Satus Energy Limited
Scottish Power Energy Retail Limited
Shale Gas UK Limited
Simple Energy Scotland Limited
Sing Power Limited
Smarter Eco Energy Limited
Snowdrop Energy Supply Limited
So Energy Trading Limited
Southern Electric Gas Limited
Spalt Energy Limited
Spark Energy Supply Limited
Squeaky Clean Energy Limited
Sunflower Energy Supply Limited
Switch Business Gas and Power Ltd
Symbio Energy Solutions LLP
Telecom Plus PLC
Temple Energy Limited
The Renewable Energy Company Limited
Thistle Energy Supply Limited
Together Energy Supply Limited
Tonik Energy Limited
Total Gas & Power Limited
Toto Energy Ltd.
Tulip Energy Supply Limited
UK National Gas Ltd
UK Healthcare Corporation Limited
Utilita Energy Limited
Utilita Gas Limited
Vavu Power Limited
Zog Energy Limited