

To: All holders of a gas supply licence who are relevant licence holders for the purpose of section 23 of the Gas Act 1986

Notice of statutory consultation on a proposal pursuant to section 23 of the Gas Act 1986 to modify the Conditions 8 and 9 of all gas supply licences

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 of the Act, the Gas and Electricity Markets Authority (the **Authority**)¹ gives notice that it proposes to modify the standard licence conditions of all gas supply licences granted or treated as granted under section 7A(1) of the Act by amending:
 - Condition 8 – Obligations under Last Resort Supply Direction; and
 - Condition 9 – Claims for Last Resort Supply Payment
3. We are proposing these modifications to ensure we continue to have effective protections in place for customers in the event their supplier exits the market. A copy of the proposed modifications and a more detailed explanation for the reasons for them have been published on our website (<https://www.ofgem.gov.uk>). Alternatively, they are available from foi@ofgem.gov.uk.
4. The effects of the proposed modifications are described in the documents referred to in paragraph 3, above. In summary, those effects are to:
 - clarify that the Supplier of Last Resort (**SoLR**) could (if appropriate) seek to recover the costs of protecting all affected customer credit balances through a Last Resort Supply Payment (**LRSP**);
 - clarify the limitations on costs of protecting customer credit balances that can be claimed, to avoid the risk of over and/or inappropriate cost recovery;
 - provide greater flexibility on the timings of potential claims for a LRSP; and
 - make housekeeping changes to tidy up the existing drafting of the conditions.
5. The envisaged text for the proposed modifications are set out in the schedule to this Notice.
6. Any representations with respect to the proposed licence/modifications must be made on or before 8 October to: Jeremy Adams-Strump, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email to 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 However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
8. Subject to responses to the statutory consultation, if we decide to make the proposed modifications they will take effect not less than 56 days after the decision is published.

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

Lesley Nugent
Head of Industry Codes and Licensing
Duly authorised on behalf of the Gas and Electricity Markets Authority
7 September 2018

Schedule – proposed modifications to Standard licence conditions (SLC)

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

Condition 8. Obligations under Last Resort Supply Direction

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; and
 - (b) stop having effect on and from a date, specified in the Last Resort Supply Direction, ~~that is up to six months after the date on which the direction has effect;~~

Licensee’s obligations

- 8.3 The licensee must comply with a Last Resort Supply Direction.
- 8.4 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 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;

- (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 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 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.

Condition 9. Claims for Last Resort Supply Payment

Ability to make claim

- 9.1 If the licensee has received the Authority's consent under paragraph 9.5, it may make a claim for a Last Resort Supply Payment, under standard condition 48 (Last Resort Supply: Payment Claims) or standard special condition A48 (Last Resort Supply: Payment Claims) of the Gas Transporter Licence, from each Relevant Gas Transporter ~~in whose Transportation Services Area there were premises supplied by the licensee under the Last Resort Supply Direction.~~
- 9.2 The licensee must not make a claim for a Last Resort Supply Payment if and to the extent that, it has waived its ability to do so by Notice given to the Authority before the Authority gave it a Last Resort Supply Direction.

Process for making claim

- 9.3 If the licensee intends to make a claim for a Last Resort Supply Payment, it must:
- (a) give Notice to the Authority of its claim; and
 - (b) give the Authority a calculation of the amount claimed with information to support that calculation,
- no later than than a date notified to it by the Authority or, in the event that no such date is notified, five years ~~six months~~ after the date on which the Last Resort Supply Direction to which the claim relates stops having effect.
- 9.4 The total amount of the Last Resort Supply Payment (for this condition only, "the relevant amount") to be claimed by the licensee must not exceed the amount by which:
- (a) the total costs (including interest on working capital) reasonably incurred by the licensee in supplying gas to premises under the Last Resort Supply Direction and a reasonable profit,
- plus
- ~~(b)~~ (c) any sums paid or debts assumed by the licensee to compensate any Customer in respect of any Customer Credit Balances,
- are greater than:
- ~~(b)~~ (c) the total amounts recovered by the licensee through Charges for the Supply of Gas to premises under the Last Resort Supply Direction (after taking all reasonable steps to recover such ~~e~~Charges).
- 9.5 If the Authority considers it appropriate in all the circumstances of the case for the licensee to make the claim notified to it in accordance with paragraph 9.3, the Authority will give its consent to the licensee.

9.6 Within three months after it has been notified of the claim in accordance with paragraph 9.3, The Authority may determine that an amount other than the one calculated by the licensee is a more accurate calculation of the relevant amount.

9.7 If the Authority makes a determination under paragraph 9.6, the amount specified by it must be treated as the relevant amount for the purpose of paragraph 9.8.

Submissions to Relevant Gas Transporters

9.8 A claim by the licensee for a Last Resort Supply Payment from each Relevant Gas Transporter referred to in paragraph 9.1 must specify:

- (a) the respective proportion of the relevant amount to be paid by that Relevant Gas Transporter (being the same as the number of premises located within its Transportation Services Area when expressed as a proportion of the total number of premises located within the Transportation Services Areas of all the Relevant Gas Transporters in question); and
- (b) whether payment is to be made by quarterly or monthly instalments.

9.9 A claim for a Last Resort Supply Payment will lapse if the licensee does not make it within six months after the Authority has given its consent under paragraph 9.5.

Definitions for condition

9.10 In this condition:

<u>“Closed Credit Balance”</u>	<u>means any Credit owed, on the date on which a relevant Last Resort Supply Direction took effect, by the other supplier to any Customer for whom the responsibility for the supply of gas had either transferred from the other supplier to another Gas Supplier or had otherwise terminated on or before the date on which the relevant Last Resort Supply Direction took effect;</u>
<u>“Customer Credit Balances”</u>	<u>means Closed Credit Balances and Open Credit Balances;</u>
<u>“Credit”</u>	<u>means an amount by which the payments made by a Customer to the other supplier under or in accordance with a Domestic Supply Contract exceeds the sum of:</u> <ul style="list-style-type: none"> a) <u>the total amount of Charges which were due and payable by that Customer to the other supplier under the relevant Domestic Supply Contract on or before the date on which the relevant Last Resort Supply Direction took effect;</u> b) <u>the total amount of Charges relating to gas supplied to that Customer by the other supplier on or before the date on which the relevant Last Resort Supply Direction took effect that would have fallen due and</u>

	<p><u>payable under the relevant Domestic Supply Contract but for that Last Resort Supply Direction; and</u></p> <p>c) <u>the sum of any amounts equivalent to those described in (a) and (b), above, either that:</u></p> <ul style="list-style-type: none"> (i) <u>were due and payable; or</u> (ii) <u>would have been due and payable but for a direction issued by the Authority under standard licence condition 8 of a Electricity Supply Licence,</u> <p><u>by that Customer to the other supplier under any contract for the supply of electricity to domestic premises, insofar as that sum exceeds the amounts paid by the Customer to the other supplier under a contract for the supply of electricity.</u></p>
<u>“Open Credit Balance”</u>	<u>means any Credit owed by the other supplier to a Customer on the date of the relevant Last Resort Supply Direction.</u>

9.11 For the purposes of this condition, the term “licensee” in the definition of “Charges for the Supply of Gas” may refer to either the licensee or the other supplier, or both (as the context requires).