

Annex 6. EU Exit - Notice of proposed licence modifications to the licence conditions of the Gas Interconnector Licence

To: All holders of a 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)
 - SLC5 (Information regarding technical rules and operation)
 - SLC10 (Charging methodology to apply to third party access to the licensee's interconnector)
 - SLC11A (Approval of terms for access to the licensee's interconnector)
 - SLC12 (Application of licence conditions 10, 11 and 11A: Exemption orders)
 - SLC22 (Notification of changes that may affect eligibility for certification)
 - SLC23 (Regional Cooperation)

set out in Annex 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 in the event that the United Kingdom (UK) leaves the European Union (EU) without a deal.
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 exit day subject to any further amendments as may be contained in statutory instruments made under the European Union (Withdrawal) Act 2018. As far as possible, the modifications do not seek to change the current obligations and duties of licensees, nor do they seek to change the current policy positions 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 of this Notice. Further information concerning the proposed modifications is contained in the letter entitled 'Preparing for EU Exit: statutory

consultation on consequential licence modifications in the event the UK leaves the EU without a deal' 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 15 February 2019 to: Heather Stewart, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email 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. We prefer to receive responses in an electronic form so they can be placed easily on our website.
7. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.

Cathryn Scott
Director, Wholesale Markets & Commercial

Duly authorised on behalf of the
Gas and Electricity Markets Authority

14 January 2019

Annex 6.1.a. Gas Interconnector Licence Modification Table

Standard Licence condition	Current wording	Proposed change	Reasons for the change
1	the “Directive” means 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 Exit 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 Exit 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 Exit) Regulations 2019 ¹ (the “Regulations”).
1	New definition	<u>“Exit Day” has the same meaning as that given in section 20(1) of the European Union (Withdrawal) Act 2018.</u>	This new definition is required to give effect to the revised definition of “Directive”.
1	New definition	<u>“legally binding decision of the Agency or the European Commission” means any legally binding decision of the Agency or European Commission but a binding decision does not include a decision that is not, or</u>	New definition to be inserted to align with reference in condition 3.3.

¹The 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.

Standard Licence condition	Current wording	Proposed change	Reasons for the change
		<u>so much of a decision as is not, Retained EU Law.</u>	
1	New definition	<u>“legally binding decision of the European Commission and/or the Agency” and “legally binding decisions of the European Commission and/or the Agency” means any legally binding decision or decisions of the European Commission and/or the Agency, but a binding decision does not include a decision that is not, or so much of a decision as is not, Retained EU Law.</u>	<p>The licence contains references to both of these phrases. Post EU exit, future decisions of the Commission and the Agency will no longer have any legal effect in the UK.</p> <p>However, decisions made prior to Exit Day are to continue to have effect. The introduction of these new definitions will achieve this.</p> <p>The terminology is consistent with the amendment that will be made by regulation 10 of the Regulations to section 4C of the Gas Act.</p>
1	New definition	<u>“Northern Ireland Authority for Utility Regulation” means the body corporate established under Article 3 of the Energy (Northern Ireland) Order 2003.</u>	New defined term required to give effect to the revised definition of “regulatory authority” (see below).
1	“regulatory authority” means any body (other than the Authority) designated by a Member State whose responsibilities include the oversight or regulation of any of the activities or matters covered by this licence.	“regulatory authority” means any body (other than the Authority) designated by a Member State whose responsibilities include the oversight or regulation of any of the activities or matters covered by this licence <u>and where appropriate the Northern Ireland Authority for Utility Regulation</u>	Amending word "Member" to "member" to align with the amendment that is to be made to the Gas Act by the Regulations (regulation 16); and adding in NIAUR for the purposes of

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			<p>“regulatory authority” in condition 10 to ensure NIAUR remains included.</p>
1	<p>“related undertaking” has the meaning given to it in Article 2 of the Directive;</p>	<p>“related undertaking” <u>means an “affiliated undertaking” and / or an “associated undertaking” both as defined in Article 2 of Directive 2013/34/EU (on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings) as it has effect immediately before Exit Day and / or an undertaking which belongs to the same shareholders;</u> has the meaning given to it in Article 2 of the Directive;</p>	<p>Amending the definition to remove existing cross reference to Article 2 of the Gas Directive. This is because Article 2 referred to affiliated undertakings, associated undertakings and “an undertaking which belongs to the same shareholders”. The definitions of affiliated undertakings and associated undertakings were contained in Directive 83/349 which was repealed and replaced with Directive 2013/34.</p> <p>The proposed updated definition incorporates the updated definitions of “affiliated undertaking” and “associated undertaking” contained in Directive 2013/34 and retains reference to “an undertaking which belongs to the same shareholders”. This is to ensure that the definition has the same effect.</p>
1	New definition	<p><u>“Retained EU Law” has the same meaning as that given in</u></p>	<p>This definition is required to give effect to the new definitions</p>

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		<p><u>section 6(7) of the European Union (Withdrawal) Act 2018.</u></p>	<p>that include reference to “Retained EU Law”.</p>
5(1)	<p>In order to promote effective competition and the efficient functioning of the internal market, if so directed by the Authority, the licensee shall:</p> <p>(a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and</p> <p>(b) Publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.</p>	<p>In order to promote effective competition and the efficient functioning of the internal market <u>in gas</u> if so directed by the Authority, the licensee shall:</p> <p>(a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and</p> <p>(b) Publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.</p>	<p>The references to “internal market” in the licence are to be updated to reflect that the market will (post EU exit and for the purpose of this licence condition) be the UK market, not the internal market of the EU.</p> <p>Regulation 151 of the Regulations is to amend the Gas Regulation. This amendment reflects those amendments.</p>
10(5)	<p>Prior to submitting the charging methodology to the Authority for approval the licensee shall:</p>	<p>Prior to submitting the charging methodology to the Authority for approval the licensee shall:</p> <p>(a) take all reasonable steps to ensure that all persons, including those in other</p>	<p>Amending word "Member" to "member" to align with the amendments that are to be made to the Gas Act by the</p>

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	<p>(a) take all reasonable steps to ensure that all persons, including those in other Member States, who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to make written representations; and</p> <p>(b) furnish to the Authority a report setting out:</p> <ul style="list-style-type: none"> (i) the terms originally proposed in the charging methodology; (ii) the representations, if any, made by interested persons; and (iii) any change in the terms of the methodology intended as a consequence of such representations. 	<p>Mmember States, who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to make written representations; and</p> <p>(b) furnish to the Authority a report setting out:</p> <ul style="list-style-type: none"> (i) the terms originally proposed in the charging methodology; (ii) the representations, if any, made by interested persons; and (iii) any change in the terms of the methodology intended as a consequence of such representations. 	<p>Regulations; and deleting “other” as the UK will no longer be a member State post EU exit.</p> <p>The obligation on the licensee to consult with those in member States is to be retained and maintains the current position.</p>
10(11)	Subject to paragraphs 13 and 14, the licensee shall not make a modification to the	Subject to paragraphs 13 and 14, the licensee shall not make a modification to the charging methodology unless the licensee has:	As above. Amending word "Member" to "member" to align with the amendment that is to be made to the Gas

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	<p>charging methodology unless the licensee has:</p> <p>(a) taken all reasonable steps to ensure that all persons, including those in other Member States, who may have a direct interest in the charging methodology, including the Authority, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations;</p>	<p>(a) taken all reasonable steps to ensure that all persons, including those in other Member States, who may have a direct interest in the charging methodology, including the Authority, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations;</p>	<p>Act by the Regulations (regulation 16); and deleting “other” as the UK will no longer be a member State post EU exit.</p> <p>The obligation on the licensee to consult with those in member States is to be retained and maintains the current position.</p>
10(24)	<p>A notice given under sub-paragraph 21(b) may be withdrawn or revoked by the Authority in any of the following circumstances:</p> <p>(a) the Authority considers that such contract is operating in a manner which is detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to</p>	<p>A notice given under sub-paragraph 21(b) may be withdrawn or revoked by the Authority in any of the following circumstances:</p> <p>(a) the Authority considers that such contract is operating in a manner which is detrimental to competition or the effective functioning of the internal gas market <u>in gas</u>, or the efficient functioning of the regulated system to which the licensee’s interconnector is connected;</p>	<p>Proposed amendment of paragraph (a): Regulation 151 of the Regulations is to amend the Gas Regulation. This amendment reflects those amendments.</p>

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	<p>which the licensee's interconnector is connected;</p> <p>(b) the licensee is found to be in breach of any national or European competition laws, such breach relating to the licensee's interconnector;</p> <p>(c) the European Commission requests that such contract is subject to approved tariffs and/or charging methodologies;</p> <p>(d) there is merger or acquisition activity in relation to or by the licensee that is detrimental to competition;</p> <p>(e) there is a material change to the contract terms which has not be approved by the Authority;</p> <p>(f) the contract is extended beyond its initial term;</p> <p>(g) the licensee:</p> <p style="padding-left: 20px;">(i) has a receiver (which expression shall include an administrative receiver within the meaning of</p>	<p>(b) the licensee is found to be in breach of any national or European competition laws, such breach relating to the licensee's interconnector;</p> <p>(c) [Not used]the European Commission requests that such contract is subject to approved tariffs and/or charging methodologies;</p> <p>(d) there is merger or acquisition activity in relation to or by the licensee that is detrimental to competition;</p> <p>(e) there is a material change to the contract terms which has not be approved by the Authority;</p> <p>(f) the contract is extended beyond its initial term;</p> <p>(g) the licensee:</p> <p style="padding-left: 20px;">(i) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or</p>	<p>Proposed deletion of paragraph (c) on the basis that the European Commission's role in this context will be redundant post EU exit.</p>

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	<p>section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or (ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.</p>	<p>undertaking appointed; or (ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.</p>	
11A.6	<p>Prior to submitting the Access Rules to the Authority for approval the licensee shall:</p> <p>(a) take all reasonable steps to ensure that all persons, including those in other Member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and</p> <p>(b) furnish to the Authority a report setting out:</p> <p>(i) the terms originally proposed in the Access Rules;</p> <p>(ii) the representations, if any, made by</p>	<p>Prior to submitting the Access Rules to the Authority for approval the licensee shall:</p> <p>(a) take all reasonable steps to ensure that all persons, including those in other Member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and</p> <p>(b) furnish to the Authority a report setting out:</p> <p>(i) the terms originally proposed in the Access Rules;</p> <p>(ii) the representations, if any, made by interested persons; and</p> <p>(iii) any change in the terms of the Access Rules intended as a consequence of such representations.</p>	<p>Amending word "Member" to "member" to align with the amendment that is to be made to the Gas Act by the Regulations (regulation 16); and deleting "other" as the UK will no longer be a member State post EU exit.</p> <p>The obligation to consult with those in member States is to be retained and maintains the current position.</p>

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	<p>interested persons; and (iii) any change in the terms of the Access Rules intended as a consequence of such representations.</p>		
11A.11	<p>Subject to paragraphs 13 and 14, the licensee shall not make a modification to the Access Rules unless the licensee has:</p> <p>(a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in other Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and</p> <p>(b) furnished the Authority with a report setting out:</p> <p>(i) the terms originally proposed for the modification; (ii) the representations,</p>	<p>Subject to paragraphs 13 and 14, the licensee shall not make a modification to the Access Rules unless the licensee has:</p> <p>(a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in other Mmember States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and</p> <p>(b) furnished the Authority with a report setting out:</p> <p>(i) the terms originally proposed for the modification; (ii) the representations, if any, made by interested persons to the licensee; (iii) any change in the terms of the modification intended in consequence of such representations; (iv) how the intended modification better</p>	<p>Amending word "Member" to "member" to align with the amendment that is to be made to the Gas Act by the Regulations (art 16); and deleting "other" as the UK will no longer be a member State post EU exit.</p>

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	<p>if any, made by interested persons to the licensee;</p> <p>(iii) any change in the terms of the modification intended in consequence of such representations;</p> <p>(iv) how the intended modification better achieves the relevant access rules objectives; and</p> <p>(v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 14 expires.</p>	<p>achieves the relevant access rules objectives; and</p> <p>(v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 14 expires.</p>	
12.2	<p>On the application of the licensee in accordance with paragraph 3, the Authority must (either before, at the same</p>	<p>On the application of the licensee in accordance with paragraph 3, the Authority must (either before, at the same time, or after this licence has been granted to the licensee) issue an</p>	<p>Proposed deletion of para 2(b) on the basis that post EU exit the Agency will no longer have the authority to</p>

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	<p>time, or after this licence has been granted to the licensee) issue an exemption order providing that any or all of the relevant conditions may not have effect or are suspended from operation, or (where the licence has not yet been granted) will not be in effect or will be suspended from operation, where the Authority is satisfied that:</p> <p>(a) the requirements of paragraphs 7 and 10 are met; or</p> <p>(b) it is required to do so by the Agency under Article 36(5) of the Directive.</p>	<p>exemption order providing that any or all of the relevant conditions may not have effect or are suspended from operation, or (where the licence has not yet been granted) will not be in effect or will be suspended from operation, where the Authority is satisfied that:</p> <p>(a) the requirements of paragraphs 7 and 10 are met; or</p> <p>(b) it is required to do so by the Agency under Article 36(5) of the Directive.</p>	<p>require Ofgem to issue an exemption order.</p>
12.7(e)	<p>The requirements of this paragraph are that -</p> <p>(a) the investment in the licensee's interconnector enhances competition in gas supply and enhances security of supply;</p> <p>(b) the level of risk attached to the investment is such that the investment would not take place unless an exemption order was issued under</p>	<p>The requirements of this paragraph are that -</p> <p>(a) the investment in the licensee's interconnector enhances competition in gas supply and enhances security of supply;</p> <p>(b) the level of risk attached to the investment is such that the investment would not take place unless an exemption order was issued under paragraph 2 of this condition;</p> <p>(c) the licensee's interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the</p>	<p>Regulation 151 of the Regulations is to amend the Gas Regulation. This amendment reflects those amendments</p>

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	<p>paragraph 2 of this condition;</p> <p>(c) the licensee's interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the relevant system operators to whose systems that infrastructure will be connected;</p> <p>(d) charges will be levied on users of the licensee's interconnector;</p> <p>(e) having any or all of the relevant conditions under consideration not in effect, or suspended from operation, is not detrimental to competition or the effective functioning of the internal gas-market or the efficient functioning of the regulated system to which the licensee's interconnector is connected.</p>	<p>relevant system operators to whose systems that infrastructure will be connected;</p> <p>(d) charges will be levied on users of the licensee's interconnector;</p> <p>(e) having any or all of the relevant conditions under consideration not in effect, or suspended from operation, is not detrimental to competition or the effective functioning of the internal gas-market <u>in gas</u> or the efficient functioning of the regulated system to which the licensee's interconnector is connected.</p>	
12.10	<p>The requirements of this paragraph are that:</p> <p>(a) the Authority has sent notification of the application to:</p>	<p>The requirements of this paragraph are that:</p> <p>(a) the Authority has sent notification of the application to:</p>	<p>At paragraph (10)(a)(i) amending word "Member" to "member" for reasons set out above;</p>

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	<p>(i) the relevant regulatory authority if part of the interconnector is located in another Member State; and</p> <p>(ii) the designated regulatory authority for Northern Ireland if part of the interconnector is located in Northern Ireland;</p> <p>(b) the Authority has sent to the European Commission:</p> <p>(i) a copy of the application as soon as reasonably practicable following its receipt;</p> <p>(ii) the Authority's decision to give an exemption including the terms on which that exemption has been given;</p> <p>(iii) any other information it considers relevant to the exemption or the terms on which the exemption was given, including the information mentioned in Article 36(8) of the Directive;</p>	<p>(i) the relevant regulatory authority if part of the interconnector is located in another Member <u>a member</u> State; and</p> <p>(ii) the designated regulatory authority for Northern Ireland if part of the interconnector is located in Northern Ireland;</p> <p>(b) [Not used] the Authority has sent to the European Commission:</p> <p>(i) a copy of the application as soon as reasonably practicable following its receipt;</p> <p>(ii) the Authority's decision to give an exemption including the terms on which that exemption has been given;</p> <p>(iii) any other information it considers relevant to the exemption or the terms on which the exemption was given, including the information mentioned in Article 36(8) of the Directive;</p> <p>(iv) any other information requested by the European Commission;</p> <p>(c) [Not used] if part of the interconnector is located in another Member State, the Authority has sent a copy of the application and the Authority's decision as to whether the exemption order should be granted if approved by the European Commission to the Agency;</p> <p>(d) save where the Agency takes a decision pursuant to Article 36(5) of the Directive, the</p>	<p>Deletion of paragraph (10)(b) as Authority will not be required to send information to the European Commission post exit day;</p> <p>Deletion of paragraph (10) (c) as Authority will not be required to send information to the Agency post exit day;</p> <p>Some corresponding deletions to paragraphs (10)(d) and (e) to delete references to the</p>

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	<p>(iv) any other information requested by the European Commission;</p> <p>(c) if part of the interconnector is located in another Member State, the Authority has sent a copy of the application and the Authority's decision as to whether the exemption order should be granted if approved by the European Commission to the Agency;</p> <p>(d) save where the Agency takes a decision pursuant to Article 36(5) of the Directive, the Authority has the agreement of any relevant national regulatory authority to the exemption, which agreement has been reached within 6 months of the date on which the application was received by the last of the relevant national regulatory authorities and they have informed the Agency of their decision;</p> <p>(e) the Authority has not been required to</p>	<p>Authority has the agreement of any relevant national regulatory authority to the exemption, which agreement has been reached within 6 months of the date on which the application was received by the last of the relevant national regulatory authorities and they have informed the Agency of their decision;</p> <p>(e) [Not used] the Authority has not been required to refuse the application for an exemption by the Agency under Article 36(5) of the Directive;</p> <p>(f) [Not used] the European Commission:</p> <p>(i) has approved the Authority's decision;</p> <p>(ii) in accordance with Article 36(9) of the Directive has required the Authority to modify or revoke the exemption decision and the Authority has complied with that request within one month of the date on which it received the request and informed the European Commission of doing so; or</p> <p>(iii) has not required the Authority to withdraw the decision under Article 36(9) of the Directive and 4 months have passed since the Commission was notified of the Authority's decision.</p>	<p>Agency as these will no longer be relevant post exit day; and</p> <p>Deleting paragraph (10)(f) as the European Commission will no longer perform this role post exit day.</p>

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	<p>refuse the application for an exemption by the Agency under Article 36(5) of the Directive;</p> <p>(f) the European Commission:</p> <p>(i) has approved the Authority’s decision;</p> <p>(ii) in accordance with Article 36(9) of the Directive has required the Authority to modify or revoke the exemption decision and the Authority has complied with that request within one month of the date on which it received the request and informed the European Commission of doing so; or</p> <p>(iii) has not required the Authority to withdraw the decision under Article 36(9) of the Directive and 4 months have passed since the Commission was notified of the Authority’s decision.</p>		
12.15	<p>“relevant date” means:</p> <p>(a) the date on which the European Commission confirmed that it is content for the exemption to be given in accordance with the Authority’s decision as notified in</p>	<p>“relevant date” means:</p> <p><u>the date on which the Authority issues an exemption order under paragraph 2.</u> (a) the date on which the European Commission confirmed that it is content for the</p>	<p>Proposed new definition of "relevant date" to refer to exemption order issued by the Authority and not the approval of the order by the European Commission as this role will be performed</p>

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	<p>accordance with paragraph 10(b)(ii), or given subject to specified modifications to the exemption; or (b) if the Authority did not receive such approval, the date four months after the Commission was sent a copy of the Authority's decision in accordance with paragraph 10(b)(ii).</p>	<p>exemption to be given in accordance with the Authority's decision as notified in accordance with paragraph 10(b)(ii), or given subject to specified modifications to the exemption; or</p> <p>(b) if the Authority did not receive such approval, the date four months after the Commission was sent a copy of the Authority's decision in accordance with paragraph 10(b)(ii).</p>	<p>by the Authority post EU exit.</p>
22.1	<p>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(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</p>	<p>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.</p>	<p>Amending reference to section 8F(7) of the Gas Act to 8F(4) of the Gas Act to reflect the amendment contained in regulation 15 of the Regulations 2019, which will update the certification process (to remove the role of the European Commission).</p>

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	<p>circumstance may affect its eligibility for certification.</p>		
22.3	<p>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.</p>	<p>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 <u>outside the United Kingdom</u>, or that a person from a third country <u>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.</p>	<p>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.</p> <p>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".</p>
22.5	<p>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:</p>	<p>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:</p> <p>(a) whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month</p>	<p>As above for condition 22(3).</p>

Standard Licence condition	Current wording	Proposed change	Reasons for the change
	<p>(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;</p> <p>(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, or that a person from a third country 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</p> <p>(c) whether the licensee has exercised any shareholder right</p>	<p>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;</p> <p>(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 <u>country outside the United Kingdom</u>, or that a person from a third <u>country outside the United Kingdom</u> 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</p> <p>(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</p>	

Standard Licence condition	Current wording	Proposed change	Reasons for the change
	<p>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.</p>	<p>to a period that occurs after the relevant date.</p>	
22.6	<p>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” 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.</p>	<p>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 <u>outside the United Kingdom</u>” 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.</p>	<p>As above for condition 22(3) and (5). Reflects amendments to Section 8Q of the Gas Act made by regulation 22 of the Regulations.</p>
23.1	<p>If the licensee is a vertically integrated</p>	<p>If the licensee is a vertically integrated undertaking it may participate in a joint</p>	<p>Proposed deletion of reference to Article 6 of the Directive as in</p>

Standard Licence condition	Current wording	Proposed change	Reasons for the change
	undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation pursuant to Article 6 of the Directive and Article 12 of the Regulation.	undertaking established for the purposes of facilitating regional co-operation <u>with member States</u> , pursuant to Article 6 of the Directive and Article 12 of the Regulation.	our view, the reference to Article 6 will not operate effectively post EU Exit. Regulation 151 of the Regulations is to amend the Gas Regulation by omitting Article 12. This amendment reflects that omission.
23.3	In this condition: “vertically integrated undertaking” shall have the meaning given in Article 2 of the Directive	In this condition: “vertically integrated undertaking” shall have the meaning given in <u>the Act</u> . Article 2 of the Directive.	Proposed deletion of Article 2 of the Directive on the basis that section 8C of the Gas Act 1986 contains a definition of “vertically integrated undertaking”.

Annex 6.1.b. Gas Interconnector Standard Conditions Change Marked Licence Text

We have included the sections of the licence conditions 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 “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 Exit Day as read with the modifications set out in the Act.</u>
<u>“Exit Day”</u>	<u>has the same meaning as that given in section 20(1) of the European Union (Withdrawal) Act 2018.</u>
<u>“legally binding decision of the Agency or the European Commission”</u>	<u>means any legally binding decision of the Agency or European Commission, but a binding decision does not include a decision that is not, or so much of a decision as is not, Retained EU Law.</u>
<u>“legally binding decision of the European Commission and / or the Agency” and “legally binding decisions of the</u>	<u>means any legally binding decision or decisions of the European Commission and / or the Agency, but a binding decision does not include a decision that is not, or so much of a decision as is not, Retained EU Law.</u>

European Commission and /
or the Agency”

“Northern Ireland Authority
for Utility Regulation”

means the body corporate established under
Article 3 of the Energy (Northern Ireland)
Order 2003.

“regulatory authority”

means any body (other than the Authority)
designated by a ~~Member~~ member State whose
responsibilities include the oversight or
regulation of any of the activities or matters
covered by this licence and where appropriate
the Northern Ireland Authority for Utility
Regulation

“related undertaking”

means an “affiliated undertaking” and / or an
“associated undertaking” both as defined in
Article 2 of Directive 2013/34/EU (on the
annual financial statements, consolidated
financial statements and related reports of
certain types of undertakings) as it has effect
immediately before Exit Day and / or an
undertaking which belongs to the same
shareholders; ~~has the meaning given to it in
Article 2 of the Directive;~~

“Retained EU Law”

has the same meaning as that given
in section 6(7) of the European Union
(Withdrawal) Act 2018.

PART II - SECTION B: GENERAL

Condition 5. Information regarding technical rules and operation

1. In order to promote effective competition and the efficient functioning of the ~~internal~~ market in gas if so directed by the Authority, the licensee shall:
 - (a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and
 - (b) publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.
2. To the extent not already published pursuant to Paragraph 1 above, the licensee shall furnish to any relevant gas transporter or any operator of an interconnected system,; information concerning the operation and technical specifications of the licensee's interconnector in such manner and at such times as may reasonably:
 - (a) be required by a relevant gas transporter to enable it to comply with its obligations under its own licence or applicable industry codes; or
 - (b) be specified in directions issued from time to time by the Authority to the licensee for the purpose of sub-paragraph (a) above, having taken into consideration any representations made to the Authority by the licensee and any relevant gas transporter, and in accordance with any conditions contained in such directions; or
 - (c) be required by the operator of an interconnected system for the purposes of ensuring the secure and efficient operation of the interconnected system.
3. The licensee shall be entitled to refuse to disclose an item of information under paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c) above on the grounds that its disclosure would seriously and prejudicially affect the commercial interests of the licensee unless and until the Authority, by notice in writing given to the licensee, directs it to provide that item of information on the ground that provision thereof is necessary or expedient for the purpose mentioned in paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c).
4. This condition shall not require the licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before the court.
5. Sub-paragraphs 2(a) and 2(c) shall not apply in respect of any relevant gas transporter or operator of an interconnected system which has not established, whether in pursuance of a

licence condition or otherwise, effective arrangements designed to secure that information provided in pursuance of this condition is not communicated, directly or indirectly, to any gas shipper or gas supplier.

PART II - SECTION D: THIRD PARTY ACCESS

Condition 10. Charging methodology to apply to third party access to the licensee's interconnector

1. Unless otherwise determined by the Authority, the licensee shall only enter into agreements for access to the licensee's interconnector on the basis of the charging methodology last approved by the Authority.

Initial approval of charging methodology

2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority, a charging methodology for access to (including use of) the licensee's interconnector. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Access Rules and the charging methodology.
3. The charging methodology shall set out the methodologies for the calculation of any charges imposed upon users for access to (including use of) the interconnector and/or the provision of ancillary services, and any payments made to users for access to (including use of), the interconnector, including:
 - (a) charges levied by the licensee for the allocation of interconnector capacity, including but not limited to:
 - (i) any charges for congestion management purposes, such as the non-use of nominated interconnector capacity; and
 - (ii) any charges for the provision (including the provision to any relevant system operator), of ancillary services, including but not limited to balancing services;
 - (b) payments made by the licensee for the provision of ancillary services provided by users or relevant system operators; and

- (c) payments made by the licensee to users for the loss of capacity in the event of being unable to make available interconnector capacity.
4. The charges and the application of the underlying charging methodology shall be objective, transparent, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency”; (collectively, the ‘relevant charging methodology objectives’).
5. Prior to submitting the charging methodology to the Authority for approval the licensee shall:
- (a) take all reasonable steps to ensure that all persons, including those in ~~other~~ Member States, who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to make written representations; and
 - (b) furnish to the Authority a report setting out:
 - (i) the terms originally proposed in the charging methodology;
 - (ii) the representations, if any, made by interested persons; and
 - (iii) any change in the terms of the methodology intended as a consequence of such representations.

Review of the charging methodology by the licensee

6. The licensee shall comply with any direction from the Authority to amend its charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology submitted by the licensee. Where the Authority directs changes to the charging methodology the licensee shall resubmit (by such date as may be determined by the Authority and notified to the licensee) its charging methodology to the Authority for approval and the provisions of paragraph 7 shall apply.
7. The charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the charging methodology is not approved. In the absence of any direction within three months of receipt of the charging methodology from the licensee, the charging methodology shall be deemed to be approved.

8. If the Authority does not approve the charging methodology submitted by the licensee, or if the licensee does not submit a charging methodology for approval, the licensee shall comply with any provisional charging methodology which the Authority may, after giving reasonable notice to the licensee, fix for an interim period and the licensee shall ensure that any compensatory measures set by the Authority are put in place to compensate the licensee and/or users as the case may be if the approved charging methodology deviates from the provisional charging methodology.
9. The licensee shall review its charging methodology at least once in each calendar year and, subject to paragraphs 11 to 14, make such modifications to the charging methodology as may be requisite for the purpose of ensuring that the charging methodology better achieves the relevant charging methodology objectives.
10. The licensee shall also review its charging methodology where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's charging methodology. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 11 to 14, make such modifications to the charging methodology as may be requisite for the purpose of better achieving the relevant charging methodology objectives.

Modification of charging methodology

11. Subject to paragraphs 13 and 14, the licensee shall not make a modification to the charging methodology unless the licensee has:
 - (a) taken all reasonable steps to ensure that all persons, including those in ~~other~~ Member States, who may have a direct interest in the charging methodology, including the Authority, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
 - (b) furnished the Authority with a report setting out:
 - (i) the terms originally proposed for the modification;
 - (ii) the representations, if any, made by interested persons to the licensee;
 - (iii) any change in the terms of the modification intended in consequence of such representations;
 - (iv) how the intended modification better achieves the relevant charging methodology objectives; and

- (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 14 expires.
- 12. The licensee shall not propose a modification to the charging methodology more than once a year unless the Authority consents otherwise.
- 13. The licensee shall comply with any direction from the Authority to amend its proposed modified charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology submitted by the licensee. Where the Authority directs changes to the proposed modified charging methodology the licensee shall resubmit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified charging methodology to the Authority for approval and the provisions of paragraph 14 shall apply.
- 14. The proposed modified charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the proposed modified charging methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the proposed modified charging methodology is not approved (in which case paragraph 8 shall apply). In the absence of any direction within three months of receipt of the proposed modified charging methodology from the licensee, the proposed modified charging methodology shall be deemed to be approved.

Publication of charging methodology statement

- 15. The licensee shall publish (at least on its website) a charging methodology statement that sets out the prevailing charges for access to the licensee's interconnector and how the charges have been derived in accordance with its charging methodology, as soon as practicable after the charging methodology has been approved by the Authority, or, where the charging methodology has been modified, in accordance with any modified charging methodology. Unless the Authority directs otherwise, the charging methodology statement shall be published 28 days prior to it coming into effect.

Provision of charging methodology or charging methodology statement to any person

- 16. The licensee shall send a copy of its: charging methodology; charging methodology statement; and/or any proposed modification to the charging methodology proposed under

paragraph 11, to any person who requests such charging methodology, charging methodology statement or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of a charging methodology, charging methodology statement or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition.

Where tariffs, and/or a tariff or charging methodology has been established or approved by a regulatory authority other than the Authority

17. Where the licensee's interconnector either:
 - (a) forms part of an integrated transmission system and the tariffs and/or the tariff or charging methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meet the relevant charging methodology objectives; or
 - (b) does not form part of an integrated transmission system and the tariffs and/or the tariff or charging methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meet the relevant charging methodology objectives, the Authority may issue a notice to the licensee that the establishment or approval by that regulatory authority meets the requirements of this licence condition. Such notice will constitute approval of a charging methodology for the purposes of this licence condition.
18. A notice issued under paragraph 17 will expire on the earlier of:
 - (a) the date, if any, provided for expiry in the notice, or
 - (b) the withdrawal of the notice by the Authority, such withdrawal being effective from the date specified by the Authority, such date being not less than four months after the Authority has informed the licensee that the notice will be withdrawn.
19. Where the Authority has issued a notice to the licensee under paragraph 17 and the tariffs, and/or tariff or charging methodology that have or has been established or approved by the regulatory authority have or has been modified, or is or are to be modified, the licensee shall furnish the Authority with a report setting out:
 - (a) the terms originally proposed for the modification;
 - (b) the representations, if any, made by any interested person to the licensee;

- (c) any change in the terms of the modification intended in consequence of the representations;
 - (d) how the intended modification better achieves the relevant charging methodology objectives; and
 - (e) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect.
20. Where the Authority has issued a notice to the licensee under paragraph 17, until that notice expires or is withdrawn by the Authority, paragraphs 2 and 5 to 15 of this condition do not apply to the licensee.

Agreements entered into before 1 July 2004 on the basis of a charging methodology that was approved by either the Authority or the European Commission

21. Paragraphs 2 and 5 to 15 of this licence condition do not apply to a contract for access to the licensee's interconnector that was entered into before 1 July 2004 and which:
- (a) was entered into on the basis of a charging methodology that had been approved by either the Authority or the European Commission; and
 - (b) subject to paragraph 24, the Authority has given notice to the licensee that paragraphs 2 and 5 to 15 of this licence condition do not apply to such contract.
22. The licensee shall inform the Authority in writing of any proposed material changes to a contract which is the subject of a notice given under sub-paragraph 21(b). This information shall be furnished to the Authority at least 28 days before the proposed contractual variation becomes effective.
23. A notice given under sub-paragraph 21(b) may be given unconditionally or subject to such conditions as the Authority considers appropriate.
24. A notice given under sub-paragraph 21(b) may be withdrawn or revoked by the Authority in any of the following circumstances:
- (a) the Authority considers that such contract is operating in a manner which is detrimental to competition or the effective functioning of the ~~internal~~ gas market in gas, or the efficient functioning of the regulated system to which the licensee's interconnector is connected;
 - (b) the licensee is found to be in breach of any national or European competition laws, such breach relating to the licensee's interconnector;

- (c) ~~[Not used] the European Commission requests that such contract is subject to approved tariffs and/or charging methodologies;~~
- (d) there is merger or acquisition activity in relation to or by the licensee that is detrimental to competition;
- (e) there is a material change to the contract terms which has not be approved by the Authority;
- (f) the contract is extended beyond its initial term;
- (g) the licensee:
 - (i) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
 - (ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.

Provision of information to Authority in relation to the charging methodology

25. The licensee shall comply with any direction given by the Authority to furnish it with a statement showing, so far as is reasonably practicable, the methods by which, and the principles upon which, its charging methodology has been derived.

Condition 11A. Approval of terms for access to the licensee's interconnector

Existing Exemptions

1. For the duration of the exemption, the licensee is not required to comply with this licence condition 11A in respect of its capacity which is exempt if, in respect of that particular capacity, prior to 3 March 2011 it was granted an exemption pursuant to licence condition 12 from complying with any requirement of the licence relating to the use by other persons of the gas interconnector to which its licence relates.

Initial approval of access rules

2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority a statement, setting out the Access Rules. The licensee may,

subject to the approval of the Authority, submit a statement which includes both the charging methodology and the Access Rules.

3. In respect of interconnector capacity which was operational prior to 3 March 2011, and which has not been included in the Access Rules submitted pursuant to paragraph 1, the licensee shall, by such date as the Authority may direct in writing, prepare and submit for approval by the Authority the Access Rules.
4. The Access Rules shall comply with the Regulation and must include, in particular but not be limited to:
 - (a) arrangements for maximising the available interconnector capacity, including: the methodology for the calculation of interconnector capacity, the provision of virtual capacity for a counter-flow of gas on the interconnector, the volume of capacity offered on a firm basis and any additional capacity offered on an interruptible basis to maximise cross-border trade;
 - (b) arrangements for users to obtain interconnector capacity at appropriate timescales, including, where relevant, the auction rules and procedures for nominating gas flows against the capacity;
 - (c) arrangements for the management of congestion, including procedures for licensees to resell or make available to other users unused interconnector capacity and for users to transfer or resell interconnector capacity;
 - (d) arrangements in the event that the licensee curtails, withdraws or is unable to provide available capacity;
 - (e) arrangements for any ancillary services, such as balancing arrangements, including where these are offered by third parties, including agents; and
 - (f) any general terms and conditions that a user must accept in order to obtain interconnector capacity.
5. The Access Rules shall be transparent, objective, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency (collectively 'the relevant access rules objectives').
6. Prior to submitting the Access Rules to the Authority for approval the licensee shall:
 - (a) take all reasonable steps to ensure that all persons, including those in ~~other~~

Member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and

- (b) furnish to the Authority a report setting out:
 - (i) the terms originally proposed in the Access Rules;
 - (ii) the representations, if any, made by interested persons; and
 - (iii) any change in the terms of the Access Rules intended as a consequence of such representations.

7. The licensee shall comply with any direction from the Authority to amend the Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 8 shall apply.
8. The Access Rules shall not be approved unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee, unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

Review of the Access Rules by the licensee

9. The licensee shall review its Access Rules at least once in each calendar year and, subject to paragraphs 11 to 14, make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.
10. The licensee shall also review its Access Rules where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's Access Rules. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The

licensee shall then, subject to paragraphs 11 to 14, make such modifications to the Access Rules as may be requisite for the purpose of better achieving the relevant access rules objectives.

Modification of Access Rules

11. Subject to paragraphs 13 and 14, the licensee shall not make a modification to the Access Rules unless the licensee has:
 - (a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in ~~other~~ Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
 - (b) furnished the Authority with a report setting out:
 - (i) the terms originally proposed for the modification;
 - (ii) the representations, if any, made by interested persons to the licensee;
 - (iii) any change in the terms of the modification intended in consequence of such representations;
 - (iv) how the intended modification better achieves the relevant access rules objectives; and
 - (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 14 expires.
12. The licensee shall not propose a modification to the Access Rules more than once a year unless the Authority consents otherwise.
13. The licensee shall comply with any direction from the Authority to amend its proposed modified Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules submitted by the licensee. Where the Authority directs changes to the proposed modified Access Rules, the licensee shall resubmit (by such date as may be determined by the Authority and notified to the licensee)

its proposed modified Access Rules to the Authority for approval and the provisions of paragraph 14 shall apply.

14. The proposed modified Access Rules shall not be approved unless and until the Authority has issued a direction approving the proposed modified Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the proposed modified Access Rules are not approved. In the absence of any direction within three months of receipt of the proposed modified Access Rules from the licensee, the proposed modified Access Rules shall be deemed to be approved.

Publication of Access Rules

15. The licensee shall publish (at least on its website) the Access Rules as soon as practicable after the Access Rules have been approved by the Authority, or, where the Access Rules have been modified, the Access Rules as modified. Unless the Authority directs otherwise, the Access Rules shall be published 28 days prior to coming into effect.

Provision of Access Rules to any person

16. The licensee shall send a copy of its Access Rules and/or any proposed modification to the Access Rules proposed under paragraph 11, to any person who requests such Access Rules or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of the Access Rules or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition".

Condition 12. Application of licence conditions 10, 11 and 11A: Exemption orders

1. In accordance with this licence condition, licence conditions 10, 11 and 11A ('the relevant conditions') may:
 - (a) not have effect in this licence;
 - (b) be suspended from operation in this licence;
 - (c) be brought into, (where the licence condition did not have effect) or back into operation (where the licence condition was suspended from operation), in this licence.
2. On the application of the licensee in accordance with paragraph 3, the Authority must (either before, at the same time, or after this licence has been granted to the licensee) issue an exemption order providing that any or all of the relevant conditions may not have effect or are suspended from operation, or (where the licence has not yet been granted) will not be in effect or will be suspended from operation, where the Authority is satisfied that:
 - ~~(a) the requirements of paragraphs 7 and 10 are met.;~~
 - ~~(b) it is required to do so by the Agency under Article 36(5) of the Directive.~~
3. A licensee may make a request in writing to the Authority for the Authority to issue an exemption order such that any or all of the relevant conditions do not have effect or are suspended from operation. The request shall specify the relevant conditions to which the request relates and must set out all relevant information that would allow the Authority to determine whether such an exemption order should be issued given the matters of which the Authority must be satisfied before issuing an exemption order, as set out in paragraph 7. The request shall include the Access Rules for approval by the Authority in accordance with paragraph 13 below, which Access Rules shall:
 - (a) comply with paragraph 4 of licence condition 11A; and
 - (b) comply with paragraph 5 of licence condition 11A save for the requirement for the Access Rules to comply with the Regulation,and prior to submitting the Access Rules for approval, the licensee shall comply with the requirements of licence condition 11A paragraph 6
4. An exemption order shall be in writing and may be expressed:
 - (a) so as to have effect for a period specified in, or determined under the exemption;
 - (b) subject to such conditions as the Authority considers appropriate; including any conditions regarding non-discriminatory access to the interconnector to which the exemption relates

- (c) so as to have effect in relation to the whole or any part of, as the case may be:
 - (i) the capacity of the new interconnector;
 - (ii) the significant increase in the capacity of the licensee's interconnector; or
 - (iii) the modification of the licensee's interconnector which enables the development of new sources of gas supply.
- 5. When considering the terms on which any exemption is to be given in respect of the interconnector, the Authority must take into account:
 - (a) the size of the interconnector or, if it is being modified, any increase in capacity of the interconnector;
 - (b) the length of time required to recover the investment in the interconnector;
 - (c) the implications of the exemption for the operation of the gas market in Great Britain.
- 6. An exemption order issued under paragraph 2 may be revoked in accordance with its provisions and must be revoked if:
 - (a) construction of the interconnector or the increase in, or modification to, its capacity to which the exemption relates has not started within two years of the relevant date; or
 - (b) the interconnector or the increase in, or modification to, its capacity to which the exemption relates is not operational within five years of the relevant date.
- 7. The requirements of this paragraph are that –
 - (a) the investment in the licensee's interconnector enhances competition in gas supply and enhances security of supply;
 - (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption order was issued under paragraph 2 of this condition;
 - (c) the licensee's interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the relevant system operators to whose systems that infrastructure will be connected;
 - (d) charges will be levied on users of the licensee's interconnector;
 - (e) having any or all of the relevant conditions under consideration not in effect, or suspended from operation, is not detrimental to competition or the effective functioning of the ~~internal gas~~ market in gas or the efficient functioning of the regulated system to which the licensee's interconnector is connected.

8. When deciding whether the requirements of paragraph 7 are met, the following shall be taken into account—
 - (a) when considering the criteria in paragraph 7(a), (b) and (e), the way in which capacity is to be allocated under the Access Rules approved by the Authority in accordance with paragraph 13 below; and
 - (b) any opinion which it has received from the Agency in respect of the application pursuant to Article 36(4) of the Directive.
9. An application made under paragraph 3 may relate to a new interconnector or to a part of an interconnector in so far as that part represents either:
 - (a) a significant increase of capacity to that interconnector; or
 - (b) a modification to the interconnector which enables the development of new sources of gas supply.
10. The requirements of this paragraph are that:
 - (a) the Authority has sent notification of the application to:
 - (i) the relevant regulatory authority if part of the interconnector is located in ~~another Member State~~; and
 - (ii) the designated regulatory authority for Northern Ireland if part of the interconnector is located in Northern Ireland;
 - (b) ~~[Not used] the Authority has sent to the European Commission:~~
 - ~~(i) a copy of the application as soon as reasonably practicable following its receipt;~~
 - ~~(ii) the Authority's decision to give an exemption including the terms on which that exemption has been given;~~
 - ~~(iii) any other information it considers relevant to the exemption or the terms on which the exemption was given, including the information mentioned in Article 36(8) of the Directive;~~
 - ~~(iv) any other information requested by the European Commission;~~
 - (c) ~~[Not used] if part of the interconnector is located in another Member State, the Authority has sent a copy of the application and the Authority's decision as to whether the exemption order should be granted if approved by the European Commission to the Agency;~~

- (d) ~~save where the Agency takes a decision pursuant to Article 36(5) of the Directive, the Authority has the agreement of any relevant national regulatory authority to the exemption, which agreement has been reached within 6 months of the date on which the application was received by the last of the relevant national regulatory authorities and they have informed the Agency of their decision;~~
- (e) ~~[Not used] the Authority has not been required to refuse the application for an exemption by the Agency under Article 36(5) of the Directive;~~
- (f) ~~[Not used] the European Commission:~~
 - ~~(i) has approved the Authority's decision;~~
 - ~~(ii) in accordance with Article 36(9) of the Directive has required the Authority to modify or revoke the exemption decision and the Authority has complied with that request within one month of the date on which it received the request and informed the European Commission of doing so; or~~
 - ~~(iii) has not required the Authority to withdraw the decision under Article 36(9) of the Directive and 4 months have passed since the Commission was notified of the Authority's decision.~~

11. An exemption order will not be made until the Authority has approved the Access Rules.

12. The licensee shall comply with any direction from the Authority to amend the Access Rules submitted pursuant to paragraph 3 above, for the purposes of meeting the relevant access rules objectives (save for the requirement for the Access Rules to comply with the Regulation) and the requirements of paragraph 14 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 13 shall apply.

13. The Access Rules shall not be approved for the purposes of paragraph 11, unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives (save for the requirement for the Access Rules to comply with the Regulation) and the requirements of paragraph 14 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

14. The requirements of this paragraph are that the Authority considers that the Access Rules:

(a) will ensure that all potential users of the exempt infrastructure will be invited to register an interest in using that infrastructure before rights to use that infrastructure are allocated to the applicant or any other person;

(b) will require that any unused capacity in the exempt infrastructure is made available to other users or potential users;

(c) will not restrict reselling of rights to have gas conveyed through the exempt infrastructure.”;

15. In this licence condition:

“new interconnector” means an interconnector not completed by 3 August 2003

“relevant date” means:

the date on which the Authority issues an exemption order under paragraph 2. ~~(a) the date on which the European Commission confirmed that it is content for the~~

~~exemption to be given in accordance with the Authority's decision as notified in accordance with paragraph 10(b)(ii), or given subject to specified modifications to the exemption; or~~

~~(b) if the Authority did not receive such approval, the date four months after the Commission was sent a copy of the Authority's decision in accordance with paragraph 10(b)(ii).~~

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 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.

Condition 23. Regional Cooperation

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation with member States pursuant to Article 6 of the Directive and Article 12 of the Regulation.
2. A compliance officer of the licensee shall monitor compliance with a compliance programme which must be established and implemented by the joint undertaking to ensure that discrimination and anti-competitive conduct is excluded.
3. In this condition:

“vertically integrated undertaking” shall have the meaning given in ~~Article 2 of the Directive~~ the Act