



Holders of gas and/or electricity supply licences, consumers and their representatives and other interested parties

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*Promoting choice and value for all customers*

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Dear Colleagues

## **Guidance on notification of price increases - Standard Licence Condition 23**

1.1. This letter<sup>1</sup> is intended to provide domestic electricity and gas suppliers ('suppliers') with guidance on the requirements of Standard Licence Condition 23 ('SLC 23') which relate to unilateral variations to Domestic Supply Contracts<sup>2</sup>.

### **Background and purpose**

1.2 Following reports from consumers and consumer groups, Ofgem is concerned that domestic suppliers may not be complying with their obligations under SLC 23 in connection with notifying customers about price increases and the prohibition contained in Supply Licence Condition 24 ('SLC 24') on charging termination fees in the event of a price increase.

1.3 Ofgem has therefore decided that it is appropriate to issue guidance to clarify when SLC 23 applies to a price increase and therefore when the protections for consumers contained in SLC 23 and SLC 24 apply.

### **Ofgem's Guidance**

1.4 Ofgem is firmly of the view that any standard licence conditions for supply that refer to contractual terms and conditions, Principal Terms or Charges for the Supply of [Gas/Electricity] were always intended to capture the actual price (e.g. actual unit rate(s) and standing charges) that applies to individual customers, i.e. the price itself would always be treated as part of the terms and conditions<sup>3</sup>.

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<sup>1</sup> This guidance is being published pursuant to section 35(1) of the Gas Act 1986 and section 48(1) of the Electricity Act 1989.

<sup>2</sup> In this letter many of the words and expressions which begin with capital letters are intended to be interpreted in accordance with Standard Condition 1 of the gas and electricity supply licences.

<sup>3</sup> By way of example, it has always been clear that the main purpose of SLC 25A was to address undue discrimination between the prices charged for different groups of domestic customer and this licence condition refers to "the Principal Terms" which is defined as including "the Charges for the Supply of [Gas/Electricity]".

1.5 Accordingly, for the purposes of SLC 23.3, the reference to *"the licensee unilaterally [varying] a term of the contract: (a) to increase the Charges for the Supply of [Gas/Electricity]..."*, has always captured (amongst other things) any increases in the actual unit rate(s) or standing charges that are subject to the discretion of the supplier<sup>4</sup>. Therefore, any domestic supply contract which provides that the price is guaranteed to be lower than the supplier's standard tariff rates will be subject to the requirements of SLC 23 in the event of any price increase (including an increase within the guaranteed range).

1.6 In support of this firm view, Ofgem notes that it has always been necessary to interpret SLC 23 in light of the consumer protection measures contained in the Gas and Electricity Directives which require that *"Service providers shall notify their subscribers directly of any increase in charges"*<sup>5</sup>(*emphasis added*).

## **Next steps**

1.7 Ofgem wishes to confirm that as part of the next steps for the Retail Market Review ('RMR') it will be considering whether licence modifications are necessary to any licence conditions in order to clarify their original intent and to facilitate any of the RMR proposals or alternatives which are to be taken forward.

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<sup>4</sup> An example of a price variation which would not be considered to be at the discretion of the supplier is a variation which is automatically linked to fluctuations in a stock exchange quotation or index or a financial market rate (e.g. the Retail Prices Index) that the supplier does not control.

<sup>5</sup> See paragraph 1(b) of Annex 1 of 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 and DIRECTIVE 2009/72/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, and paragraph (b) of Annex A of DIRECTIVE 2003/55/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC and DIRECTIVE 2003/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC.