

The Retail Market Review – Final non-domestic proposals

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Overview:

This document contains Ofgem's final proposals for the non-domestic Retail Market Review (RMR) and includes our statutory consultation on the effect of the policy proposals and associated licence condition drafting. It proposes new rules to help businesses, particularly smaller businesses, get their best deal from the market with minimum hassle.

Our proposals include:

- amending existing rules to bring more businesses under our micro business protections;
- new rules to make processes clearer and simpler for smaller businesses; and
- new sanctions on energy suppliers who do not deal with smaller business customers fairly, when communicating contractual information, when customers want to switch, when they have a deemed contract, or when billing.

We are increasing our monitoring of suppliers when switching businesses, and progressing work to help all business customers engage confidently with third party intermediaries.

This consultation closes on 1 May 2013. Our implementation plan aims for these changes to take effect this year.

Context

Ofgem’s principal objective is to protect the interests of both existing and future energy consumers. The Retail Market Review (RMR) aims to make the market better at serving the interests of consumers and enable individual consumers to get a better deal from energy companies.

This document presents our proposals to help business consumers. Proposals for the domestic market, and associated impact assessment, are published in a separate consultation document.

The non-domestic RMR has links with the roll out of smart and advanced meters, our Smarter Markets Strategy, our wider work on Third Party Intermediaries, Liquidity and initiatives on voluntary back-billing codes. We are working to ensure our RMR proposals work in a complementary manner to these initiatives.

Associated documents

All documents are available at www.ofgem.gov.uk

- The Retail Market Review – Impact Assessment for the final non-domestic proposals, March 2013, 38a/13
- The Retail Market Review – Updated proposals for businesses, October 2012, Reference 134/12
- The Retail Market Review – Updated domestic proposals, November 2012, Reference 135/12.
- Research into the proposed Standards of Conduct: Non-Domestic Consumers, Insight Exchange, December 2012.
- Research Findings on the Experiences of Non-Domestic Customers, Opinion Leader, December 2012.
- Quantitative Research into Non-domestic Customer Engagement and Experience of the Energy Market, Accent, November 2012.
- The Retail Market Review – Non-domestic Proposals, Reference 157/11.
- The Retail Market Review – Draft Impact Assessments for Non-domestic Proposals, November 2011, Reference: 157a/11.
- Small and Medium Business Consumers’ Experience of the Energy Market and their Use of Energy, Harris Interactive, June 2011.
- The Retail Market Review – Findings and Initial Proposals, March 2011, Reference: 34/11.
- Energy Supply Probe - Proposed Retail Market Remedies, August 2009, Reference: 99/09.
- Energy Supply Probe - Initial Findings Report, October 2008, Reference: 140/08.

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Executive Summary

This document sets out our final proposals in respect of the non-domestic Retail Market Review (RMR). It also contains the statutory consultation for the new rules we believe are necessary. We want to take action to help business customers get onto a better deal and increase the competitive pressure on suppliers.

The actions we want to take address specific concerns we've identified through our analysis of the market and extensive engagement with stakeholders. Our proposals differ from the more significant changes we are proposing for the domestic market because, in general, this sector of the market is more competitive, customers are more active and they have not reported such high levels of mistrust in their suppliers. But some of these characteristics do show up in the smaller end of the business market, hence the focus on addressing the concerns of smaller businesses.

What we are doing

Clearer and simpler processes for smaller businesses

We are proposing new rules to help smaller businesses avoid being caught out when their fixed term contracts come to an end. Suppliers will have to show clearly, on every bill or statement of account, the date that the contract will end and the deadline for giving notice to change supplier. We are also proposing to ban "termination windows" so that customers will no longer only have a short window of time in which they have to give in their notice to terminate their contract.

Greater confidence that your energy supplier will treat you fairly

We are also creating new sanctions against energy suppliers who do not deal with their smaller business customers fairly, to provide greater assurance to smaller businesses when they are being given contractual information, wish to transfer supplier, are on a deemed contract, or are being billed. To comply with the new rules, suppliers will have to not only behave fairly, but also meet other requirements, like making sure information is not misleading and acting promptly to put things right when they make a mistake. They will need to focus their attention on what best meets the needs of their customers. And they will need to tell them how they intend to do this, for example how they will treat their customers fairly when back-billing.

Protecting more businesses

A micro business customer is defined in terms of maximum energy usage, number of employees and turnover.¹ We believe that it is appropriate to increase the energy

¹ A micro business is defined in Article 2(1) of *the Redress Scheme Order*: see http://www.legislation.gov.uk/uksi/2008/2268/pdfs/uksi_20082268_en.pdf

usage part of this definition to more accurately capture the smaller businesses that need to be protected. So we are raising the energy usage part to 100,000 kWh per year for electricity, and to 293,000 kWh per year for gas. To put this in context, a business using 100,000 kWh of electricity a year would pay about £10,000, which is double the approximate annual spend under the previous usage cap.

We do not want this change to add complexity to the market. So, we aim to secure voluntary agreements so that any businesses newly captured by our expanded definition will also have access to the redress protections given to micro business customers, as defined in other legislation.² To keep consistency through other rules in the industry, we will continue to call these customers 'micro businesses'.

Closer monitoring of supplier actions when businesses change supplier

We are increasing our monitoring of customer transfers to a new supplier and will continue to take enforcement action where necessary. Efficient switching is particularly important to the functioning of the market. Since we recently highlighted concerns, fewer customers have faced difficulties when trying to switch supplier – although there is still room for further improvements. We continue to encourage suppliers to make changes to processes to ensure this progress continues.

Third Party Intermediaries (TPIs)

We have taken further steps to gain powers under the Business Protection from Misleading Marketing Regulations 2008 (BPMRs).³ We have also started to develop a single Code of Practice for non-domestic third-party intermediaries (TPIs). We want this Code to protect the interests of business consumers by giving them the confidence that when they use TPIs for energy related services, they will be honest and transparent and assist them effectively with their energy needs.

To inform our development of the contents of the Code, we convened a working group at the start of this year. TPIs, suppliers and consumer representatives all sit at the table to ensure we capture different viewpoints and issues. We have also established a dedicated email address⁴ where all interested parties can comment on the published discussions of the working group.

²The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (Complaints Handling Standard Regulations: see <http://www.legislation.gov.uk/uksi/2008/1898/contents/made>; and the *Redress Scheme order*; see http://www.legislation.gov.uk/uksi/2008/2268/pdfs/uksi_20082268_en.pdf.

³ This will allow us to take action against entities that market energy contracts and services to businesses in a misleading manner. Ofgem is seeking information gathering powers and the ability to apply to the Court for an injunction to secure compliance with the BPMRs. We published a consultation (see our website) detailing the powers we are calling for and asking for any further evidence to inform an Impact Assessment. Following this we will provide details to BIS to inform the case for the changes to be made to the relevant legislation.

⁴ Bespoke email address : ThirdPartyIntermediaries@ofgem.gov.uk

This work will run alongside our work to consider the most appropriate regulatory position for Ofgem to take with TPIs more generally, over both the domestic and non-domestic parts of the market, to best meet the needs of current and future consumers. This work is an important complement to the RMR.

Next steps

Our statutory consultation on the new licence conditions will close on 1 May 2013. Once we have considered responses, the Authority will make a final decision on whether to implement the reforms by June.

If the Authority decides to implement the reforms, licence holders, trade bodies representing licence holders and Consumer Focus will have 20 working days to decide (from the first working day after the Authority's decision is published) if they want to appeal against the reforms to the Competition Commission. If no appeal is lodged, it is intended that the reforms would start to take effect by August.

- The rules around Standards of Conduct will come into effect first, in August.
- Specific rules that need suppliers to make changes to back office processes, like our requirement to put the end date of the contract on bills, will have to be implemented before the end of this year.
- We will issue new guidance⁵ on our micro business licence conditions once the Authority has taken their decision.

We are committed to continue our monitoring of the performance of the market, and in particular the impact of our new rules. We will review the package in full no later than 2017 – and may well examine specific issues as new information and evidence emerges. We believe that we are more likely to achieve the full benefits of our proposals if trust and confidence in TPIs improves, so we will continue to push ahead with establishing an effective Code of Practice as soon as possible.

We are also now signalling the start of our review on the impacts of allowing one-year automatic rollovers of micro business contracts, using the revised micro business definition. A number of stakeholders believe automatic rollovers are detrimental to business customers. We said in our last consultation that we could start analysing the impact of this once we had concluded on the expanded definition of micro business customers that face this licence rule. We expect this work to be completed by the end of winter 2013/1014.

⁵ We published Guidance on SLC 7A on 9th June 2010, please see <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=104&refer=Markets/RetMkts/Compet>

1. Introduction

Chapter Summary

We explain the purpose and structure of this document. We then summarise the key features of the non-domestic market⁶ and the facts that have caused us concern. We give a flavour of stakeholders' views on our earlier proposals – we have a fuller summary in Appendix 2.

Towards the end of the chapter we explain how our RMR project relates to other work Ofgem is doing. The implementation timetable for the changes is set out at the end of this chapter.

Purpose

1.1. The main purpose of this consultation is to seek views on the effect of Ofgem's final policy proposals and our envisaged approach to transposing the effect of the proposals into licence conditions.

This document

1.2. The main body of this document groups the package of proposals into five main sections:

- Protecting more businesses
- Clearer and simpler processes for smaller businesses
- Fairer treatment for smaller businesses
- Increased monitoring of suppliers' customer transfer actions
- Third Party Intermediaries (TPIs).

⁶In this consultation document and associated documentation we use the terms "market" and "markets" as shorthand for referring to different segments of the energy sector. For the avoidance of doubt these terms are not intended to describe or otherwise suggest the approach that may be taken by Ofgem for the purposes of market definition in competition law investigations

1.3. The first three bullets above contain a number of proposals that focus on helping smaller businesses. The actions contained in the last two sections will help all businesses, large and small.

1.4. For each section, we set out our proposals. We describe the effect of the proposals, our reasoning (including how we took stakeholder views into account), and how we intend to action the proposals. The detail will focus on the proposals themselves. The motivation for them will be briefly summarised, as we detailed this in our October consultation⁷ and also give more information in the Impact Assessment.

1.5. The final Impact Assessment has been published alongside this document in a supplementary document. This also gives more detail on our evidence.

1.6. The proposed changes to the licence conditions are set out for statutory consultation in the appendix to this document (Appendices 3 and 4). We are also consulting on illustrative guidance on concepts used in Standards of Conduct, in Appendix 5.

Non-domestic Energy Retail Markets and the case for reform

Features of the business market

1.7. The market for business customers is more competitive, overall, than the domestic sector. There are more suppliers, a lower incumbent market share, higher switching rates and more responsive prices.⁸ However, these features apply on a sliding scale: the market smaller businesses customers operate in shares some similarities with the domestic market (for example some market concentration) and have features which are distinct from those seen in the market for larger business customers, for example engagement levels are not as high.

1.8. The needs of businesses customers can vary dramatically, across size and type of business. But, as a whole, contracting in the non-domestic market differs from domestic contracts. Most businesses contract for a fixed period of time with their supplier. Offers are open for only a short period of time subject to market movements, and normally there is no cooling off period when businesses sign up. Prices are usually bespoke, and their structure can range from simple fixed price products to complex pricing arrangements that are aligned to the wholesale market. A number of customers⁹ use the services of TPIs to help them secure a good energy deal.

⁷ The Retail Market Review – Updated proposals for businesses, October 2012.

⁸ The Retail Market Review – Updated proposals for businesses, October 2012.

⁹ Datamonitor's B2B Energy Buyer Research indicates that 39 per cent of Major Energy Users (spending £50,000 per year on energy) used TPIs in the first half of 2012.

1.9. Non-domestic suppliers tend to split their non-domestic customers into multiple business units within their supply business, separating 'large' and 'small' businesses customers. These business units will have different contracts, processes and customer engagement strategies. For example, larger customers generally have a key contact person that they form a relationship with, while small businesses often use domestic-like call centres to contact their supplier. However, there is no consistency across non-domestic suppliers in how they separate their customers. For example, one supplier may separate their businesses customers into 'small and medium enterprises' (SME) and corporate, or multi-site, customers; while another may segment into 3 units: micro business, SME, and large business. The basis for the segmentation may be based on the amount of multiple customer sites, or on energy spend or usage, or a combination of the two. Other suppliers may not segment at all, applying the same processes across their customer base.

Factors that have caused us concern

1.10. In our October consultation we detailed our findings from consumer research and contacts data analysis. This did not draw a picture of widespread problems. But, there is still a significant minority of businesses, especially smaller businesses, reporting dissatisfaction in specific areas. Across our research and contacts data, we found recurring problems being reported in three areas in particular: billing, contracts and transfers, with poor information in these areas a common problem. These three areas formed the majority of business contacts (more than two thirds) to Consumer Direct/Office of Fair Trading in the first quarter of 2012.

1.11. Our qualitative research¹⁰ indicated that for individual businesses, problems with an energy contract can be material: whether it's the extended time they have had to take to resolve problems, or the negative impact on cash-flow or overheads of the business – particularly an issue in a tight economic environment. Where they have had to go onto deemed or out of contract rates before problems are resolved, the financial impact increases as a result of the higher charges usually levied in these circumstances.

1.12. For smaller businesses, the problems appear to be more material. Our investigation into supplier offerings for consumers showed that smaller business consumers are less likely to have a direct and regular relationship with their supplier representative. And the market indicators suggest there may be less competitive pressure to improve service to smaller business consumers.

1.13. Our separate domestic RMR highlighted concerns with the ability of households to engage in the market, including low levels of trust and confidence in the market. There is not the same evidence of an overwhelming lack of confidence amongst business consumers. Our evidence suggests that smaller business

¹⁰ Research Findings on the Experiences of Non-domestic Customers, Opinion Leader, December 2012; Page 8, Page 21
http://www.ofgem.gov.uk/MARKETS/RETMKTS/RMR/Documents1/Ofgem_Non%20Doms%20Research.pdf

consumers are more engaged than domestic consumers, but their ability to engage is not as good as that of larger businesses. In particular, smaller businesses face a number of specific problems in engaging effectively. These include:

- if billing information is unclear, businesses may find it difficult to make good assessments of alternative offers;
- their ability to act can be hindered by their understanding of termination and renewal procedures and problems with switching supplier; and
- there are a number of TPis offering help with navigating the market. But we have reports of rogue TPis whose actions mislead businesses onto worse deals and this poor practice can deter consumers from engaging in the future.

1.14. The objective of our non-domestic RMR is to address these specific barriers to effective engagement.

Our consultation process

1.15. At the end of 2010 we launched a review into the retail market. We published our findings in March 2011 and consulted on initial proposals for the business market in November 2011. Responses to this consultation were very helpful in steering us to revise significant parts of our initial proposals. We then consulted on amended proposals in October 2012.

1.16. We received a total of 42 responses. Responses to our previous consultation are summarised in Appendix 2. Individual chapters in this document also draw out additional detail from respondents.

1.17. While not always unanimous, we received broad support for most of our proposals. The most contentious area was – as with the previous consultation – our proposal to introduce binding Standards of Conduct. However, our moves to narrow the scope of these rules, following our detailed look into identifying the problem areas, did increase the number of respondents who support the proposals. The main concern suppliers expressed in the responses were uncertainties around the enforcement framework for these new outcomes-based rules, and the resulting increase in regulatory risk. We held a workshop with suppliers and consumer groups in January this year to understand more clearly their key areas of concern. As a result, Chapter 4 gives more detail on the enforcement regime, and our proposed scope.

1.18. In contrast, we got unanimous support for the proposal for a single, independent Code of Practice for non-domestic third party intermediaries (TPis). And most respondents supported Ofgem taking the lead in developing this Code. Given the level of support and calls to not delay, we launched this work earlier this year, and Chapter 6 describes this in more detail. We also continued to receive support for our call for powers under the BPMRs.

1.19. Since considering responses to our consultation, we have also met individually with stakeholders, taken into account supplier developments and gathered additional information on the costs of our proposals. We have now concluded on this set of final proposals that are little changed from our October proposals. In most cases they mainly clarify our proposals in more detail.

Success criteria

1.20. This section sets out how we expect our proposals will help achieve our aims. In general, our proposals aim to improve information given to businesses, in particular smaller businesses, where issues have been identified through analysis of contacts data, consumer research and supplier data. Our package of measures will therefore be successful if we see a reduction in the unnecessary problems some business consumers face when engaging at particular points.

1.21. More specifically, we hope to see a decrease over time of contacts about unclear contract terms, contract termination and switching problems. Our review of consumer contacts from various external and internal sources, including consumer organisations and the Ombudsman Services: Energy (“the Ombudsman”) has been very useful in identifying key issues. We are working to put in place more effective and regular reviews of Ofgem’s internal contacts database.

1.22. We would like to similarly capture trends more routinely from external organisations. But we are aware that there could be a link between the level of awareness that businesses have of who they can approach to raise complaints, and the extent to which particular suppliers appear on complaints monitoring. For example, a significant proportion of suppliers currently signpost complaints redress routes on their customer bills and all suppliers signpost their internal complaints procedures on their websites. But providing details for Citizens Advice consumer service (CAcs)¹¹ is not currently a requirement for business consumer bills, as it is for domestic ones.¹² Consumer Focus wrote to all non domestic suppliers in November 2010 asking them to voluntarily add the relevant details onto their customer bills and communications. Whilst not all business suppliers agreed to this request, it did result in a good number of business suppliers voluntarily referring their small business customers to CAcs. As part of our external complaints monitoring we will need to better understand which suppliers signpost CAcs and how they do this (including whether this messaging goes just to micro business customers, or more widely). We will then consider whether there would be value in seeking consistency across suppliers.¹³

¹¹CAcs took over Consumer Direct in April 2012; however the complaints handling standards have not yet been amended to reflect this.

¹² SLC 31.1. The licensee must inform each of its Domestic Customers: that Consumer Direct can assist in providing information and advice to Domestic Customers; and) how to contact the Consumer Council.

¹³ We note that Consumer Focus publishes complaints data for large domestic suppliers, and has said they would like to also do this for non-domestic suppliers. They have said that they are not currently able to do this, in part because of these inconsistencies in signposting.

1.23. We also expect to see fewer objections to supply transfer, as a percentage of total attempted transfers. We will be monitoring the objections processes of suppliers. We intend to improve this monitoring by collecting data on a regular basis from all suppliers and via electricity distribution companies and gas transportation companies (or their agents).

1.24. We will also be commissioning ongoing research with business consumers, to get their views on the market and on suppliers. We expect over time to see a lower percentage of dissatisfied consumers and fewer issues relating to poor information.

1.25. Our research and contacts analysis has also highlighted billing practices as a concern. We expect that complaints related to billing – including clarity – should reduce if binding Standards of Conduct are in place, as suppliers seek to understand and deliver what their customers want. The voluntary micro business back-billing code most non-domestic suppliers have signed up to is also expected to help reduce some of the problems linked to back-billing, and we have noted that some suppliers have gone further than the commitments. We will continue to monitor its effectiveness.¹⁴ However, we note the potential for cases where a consumer gets a smart or advanced meter (or indeed any replacement meter) and the meter replacement identifies an issue with the previous meter. In the future we expect most replacement meters to be smart or advanced. This could lead to an initial increase in complaints from 'smart' consumers and will test the effectiveness of the code. In the longer term, though, we would expect a reduction in back-billing complaints as more consumers receive accurate billing and consumption information from their smart and advanced meters.

1.26. The above success criteria are linked specifically to our supplier proposals. We believe they will have significant benefits to business consumers in their own right. However, we believe that we also have to tackle the issues around TPI behaviour in the market to deliver on our objective in full. We would like TPIs who undertake fraudulent or misleading activities to be held to account. This should result in fewer complaints and a rise in consumer trust in using TPIs. We believe this trust will also grow if TPIs are more transparent about their services to businesses consumers, including costs and the range of suppliers they are comparing when suggesting energy deals.

Monitoring our proposals and the 2017 Market Review

1.27. If, following consultation, this RMR package is introduced, we will monitor on an ongoing basis how suppliers and consumers respond to our remedies and the extent to which the identified problem areas improve. This will include using business consumer research, and information from suppliers and other industry sources. Over

¹⁴Each signatory supplier has committed to demonstrating (for example in the form of a report) how they are adhering to the commitments. This will be formally reviewed by signatories and other relevant stakeholders by October 2013 – this review will take into account relevant data from the Ombudsman as well as representations from relevant stakeholders.

the next few months we will conduct further work to establish the base level of indicators before our proposals take effect.

1.28. In line with best regulatory practice, we are committed to conduct and publish a more comprehensive review of the effects of our remedies at an appropriate time. Assuming our reforms come into effect this year, and assuming there is no clear reason to delay, we will review the package in full no later than 2017. We will conduct this review earlier if we consider our reforms are, for whatever reason, not having the expected effect.

Related initiatives

Wider TPI review

1.29. We are launching a parallel piece of work to review the regulatory framework for TPIs, more generally. This will consider the question of whether more direct forms of regulation, including the appropriate and enduring status for any established Code of Conduct and any existing, voluntary Codes, would lead to better outcomes for consumers.

1.30. This work will consider the wider TPI energy market issues, including areas where TPIs are taking or seeking to take active roles in the domestic sector (for example in collective purchasing schemes, the Confidence Code, and community energy schemes) as well as our work on the non-domestic sector (see Chapter 6 for more details). We are looking at all these issues together because of a number of overlaps, but this does not preclude us ultimately taking different approaches to domestic and non-domestic TPIs, given the relevant differences that may exist between those sectors. We aim to publish an issues paper for consultation in the first half of 2013.

Voluntary standards for back-billing smaller businesses

1.31. Suppliers will issue a back-bill when a customer hasn't been charged correctly for energy they have already used. Back-bills for months, or even years, can be an issue for businesses. Further to concerns raised by consumer representatives, steps have been taken to address back-billing in the non-domestic market. Following a roundtable meeting held by Ofgem in July 2011, suppliers, in conjunction with business consumer groups, developed a set of voluntary standards to address this issue for micro businesses.¹⁵

1.32. We welcome the development of voluntary industry standards in this area and note that a number of suppliers have made commitments to limit back-bills to one year by 2014 where the supplier is at fault. Suppliers' current positions are published

¹⁵ <http://www.energy-uk.org.uk/policy/microbusiness-.html>

by Consumer Focus.¹⁶ In October 2012 we published an open letter setting out our further expectations of the industry, alongside analysis from our request for information to suppliers on back-billing cases in 2011.¹⁷

1.33. In the letter we stated that we would undertake a further request to suppliers in 2013 for their back-billing cases and will consider publishing this information in an appropriate format. We also consider suppliers should apply commitments on back-billing to non-domestic customers beyond the current micro business definition. In addition we see the proposed Standards of Conduct (which cover billing) as a way of addressing supplier behaviours where it has led to back-bills of the type and amounts previously seen.

Liquidity

1.34. In order to facilitate competition in the retail market, energy wholesale markets must work effectively. Ofgem's Liquidity project aims to address concerns that the wholesale electricity market is not functioning effectively at present and is therefore inhibiting competition in the retail market.

1.35. In our December 2012 consultation document, we set out our proposals for a 'Secure and Promote' (S&P) licence condition. S&P would seek to secure market-led developments to date and push for further improvements where necessary. Our consultation on S&P closed on 15 February 2013. We are now considering the feedback we received from stakeholders and refining our proposals. The Authority intends to make a decision on whether to intervene, and the shape of any intervention, ahead of Summer 2013. If we do proceed with intervention, we would aim to modify licence conditions by the end of 2013.

Smarter markets

1.36. It is government policy that gas and electricity smart meters will be rolled out to all domestic and small business consumers in Great Britain by the end of 2019.¹⁸ This roll-out is expected to transform the consumer experience of retail energy markets. Consumers will have ready access to data on their consumption that can help them to make informed choices about how they buy and use energy. Smart metering can also enable improvements to customer service, facilitate new entry and provide opportunities for innovation in business models and products.

¹⁶ <http://www.consumerfocus.org.uk/policy-research/energy/non-domesticbusiness-energy>

¹⁷

<http://www.ofgem.gov.uk/Sustainability/Cp/Ewbc/Documents1/Nondombackbillingpositionoct12.pdf>

¹⁸ In some defined cases, suppliers are permitted to install advanced meters at their smaller non-domestic premises instead of smart meters. The government estimates that 77% of electricity meters and 60% of gas meters at smaller non-domestic sites will be smart, with the remainder being advanced', ref:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/87894/ND171an_SMIP.pdf

1.37. Over time, arrangements designed to help consumers engage in today's market may need to adapt to the opportunities and risks the roll-out presents. Through the Smarter Markets Programme, Ofgem is helping to use the opportunity that smart metering presents to make retail energy markets work better for consumers.¹⁹ As part of this Programme, we are progressing a project to put in place regulatory arrangements that empower and protect consumers to participate effectively in smarter retail energy markets. As a first step, we plan to publish in Q3 2013 a consultation document setting out our views on how the current arrangements may need to change in a smart world and how potential changes can be progressed.

Implementation

1.38. We are consulting on the final proposals and statutory licence changes until 1 May 2013. We envisage taking a final decision regarding implementation of the package in June and, if a decision is taken to proceed, implementation would take place from August this year (allowing for the requisite 56 day period before implementation). This will be on a phased basis, with certain elements of the package needing more time than others for associated systems changes and communication with customers to take place.

1.39. We considered views on potential implementation lead times for our package of proposals from our October consultation. The following implementation lead times have been amended from those proposals.

Implementation for micro business protections

1.40. In respect of micro business consumers which are already subject to the existing micro business protections (known as SLC 7A), it is envisaged that the modifications will apply on and from a date which is 206 calendar days²⁰ after the date the Authority publishes a final decision to proceed with modifications (assuming for these purposes and the implementation periods set out below that, following consultation, the Authority decides to proceed with modifications).

1.41. In respect of micro business consumers which are not already subject to the micro business protections of SLC 7A (i.e. the business consumers that would be covered by the proposed wider definition of micro business), the effect of the existing drafting of SLC 7A means that we envisage that the modifications (and SLC 7A as a whole) will start to apply on and from a date which is 206 calendar days after the date the Authority publishes a final decision to proceed with modifications:

¹⁹ For more information see the following link:

<http://www.ofgem.gov.uk/MARKETS/SM/STRATEGY/Documents1/Promoting%20smarter%20energy%20markets%20-%20a%20work%20programme.pdf>

²⁰ The 206 day period accounts for the statutory period of 56 days before a licence modification may take effect, plus 5 months (based on 30 days per month) for implementation by suppliers.

- at and from the time a micro business consumer enters into a new supply contract; or
- in the case of a fixed term contract, at and from the time when the duration of a supply contract that applies to a micro business consumer is extended in any way.

1.42. Our proposals relating to SLC 7A will require suppliers to make changes to systems and undertake other back office preparatory work before they can be implemented. There will also need to be a period of time for transitional arrangements with customer communications and to change contractual terms for new fixed term contracts.²¹ We expect suppliers to do all they can to ensure consumers are given clear information about any changes in the terms and conditions of their tariffs as part of this process.

Implementation of Standards of Conduct

1.43. In respect of all micro business consumers (covered by the proposed new definition of micro business), we envisage that the Standards of Conduct licence condition SLC 7B (and all relevant new definitions) will apply on and from a date which is 56 days after the date the Authority publishes a final decision to proceed with modifications.

1.44. We expect that over time the proposed SOC should result in very significant changes in culture and practice within supply businesses. It follows that what is reasonable for a supplier to have accomplished in transforming its processes and systems to meet the fairness principle will change over time. We will take this into account in dealing with any licence breach allegations.

1.45. Amongst other things, the SOC will bridge the gap before SLC 7A applies to all micro business consumers. This may happen when, for example, a business newly classified as micro businesses is still subject to an existing contract signed before these new SLC 7A rules took effect.

1.46. By way of example, in light of the SOC, we would expect suppliers, once they had made the relevant systems changes, to start printing the contract end date and the last date the customer can give notice to terminate, on the bills of all expanded micro business customers - even if a micro business consumer was not yet subject to the micro business protections of SLC 7A (as per the example above in paragraph 1.45).

²¹ For example where contracts previously allowed for the automatic rollover of the contract term to greater than 2 years, or where the contracts are not written in plain English.

Next steps

1.47. Interested parties may make representations with respect to the proposed modifications. The Authority will take those representations into account in coming to its decisions about the proposed modifications.

1.48. In conjunction with this statutory consultation we are also consulting on draft guidance on some of the key terms used in the SOC licence condition. Following a review of consultation responses, we will consider whether to designate the guidance on key terms as guidance subject to a guidance provision, described in paragraph 4.16.

1.49. Please send all responses to by email to rnr@ofgem.gov.uk on or before the 1 May 2013. Responses may also be posted to Jonathon Lines, Retail markets and Research, Ofgem, 9 Millbank, London, SW1P 3GE.

1.50. All responses will normally be published on Ofgem’s website. However, if respondents do not wish their response to be made public then they should clearly mark their response as not for publication. We would prefer to receive responses in an electronic form so they can be placed easily on the our website.

2. Protecting more businesses

Chapter Summary

We set out our final proposals to change the rules that define the businesses covered by the protections in standard licence condition 7A. We are only proposing to change the energy usage part of the definition. So we will continue to refer to these customers as micro businesses.

We will be seeking a voluntary agreement with key stakeholders directly relating to the current complaint handling rules, to ensure all customers covered under SLC 7A will receive a universal service when seeking redress with a supplier or independent body.

Introduction

2.1. We have rules in place for when suppliers contract with micro business customers (as defined by the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (Redress Scheme Order²²). This section describes our final proposal to include an increased number of smaller businesses under the protection of this licence condition.²³

2.2. This chapter explains the underlying motivation for expanding our protections, and summarises the specific new rules we are putting in place and the supporting reasoning. It also explains what we are doing to address the impacts of this change, including ensuring that the businesses that now fall into the protections are afforded the same access to redress. It concludes by sign-posting the start of the work to review automatic rollovers, which our previous consultation signalled would commence when we had concluded on our definition work.

Our Final Proposals

2.3. This section sets out the detail of the new definition we are proposing to put in place to protect more businesses. It describes what it is and sets out how it will be given operational effect. It also explains why, based on the evidence, we have concluded that these particular rules are both necessary and proportionate.

²²A micro business is defined in Article 2(1) of *the Redress Scheme Order*: see http://www.legislation.gov.uk/uksi/2008/2268/pdfs/uksi_20082268_en.pdf

²³ SLC 7A – Standard Licence condition 7A – Supply to Micro Business customers

Revising the definition for micro business energy customer

What

2.4. Our final proposal for the definition of businesses customers that will be protected by SLC 7A is those businesses who:

- consume **≤ 100,000 kWh electricity** per year, or
- consume **≤ 293,000 kWh gas** per year, or
- Employ fewer than 10 employees (or their FTE equivalent) and their turnover or balance sheet is no greater than €2 million.

2.5. This new definition only changes the energy-specific element of the existing micro business definition. I.e. Electricity consumption has increased from $\leq 55,000\text{kWh}$ to $\leq 100,000\text{kWh}$ and gas consumption has increased from $200,000\text{ kWh}$ to $\leq 293,000\text{ kWh}$. The employee and turnover/balance sheet conditions remain the same.

Why

2.6. We want businesses to understand their contracts, consider alternative deals at the right time, make informed choices and switch with ease. We inserted standard licence conditions (SLC) 7A in 2010 to ensure the smallest businesses got the information they needed to help them do this. This SLC drew on an existing micro business definition²⁴ to define who would be covered under the rules.

2.7. But recent research has suggested that businesses just outside of this definition show similar characteristics, face the same problems and need similar help to micro businesses, as currently defined.²⁵ For example, many of these smaller businesses are not always aware that they are in a contract with their energy supplier and could be paying higher rates than they need to,²⁶ or experience

²⁴ Micro business consumer has the meaning given to “relevant consumer” (in respect of premises other than domestic premises) in article 2(1) of the Gas and Electricity Regulated Provider (Redress Scheme) Order 2008 (S.I. 2008/2268).

²⁵ Quantitative research into non domestic consumer engagement and experiences of the Energy market, Accent, November 2012
<http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/Quantitative%20Research%20in%20Non%20Domestic%20Customer%20Engagement%20and%20Experience%20of%20the%20Energy%20Market.pdf>

²⁶ Research Findings on the Experiences of Non-domestic Customers, Opinion Leader December 2012.

difficulties when they try to switch supplier, as they only then find out that they are tied into a contract for a specific term²⁷.

2.8. Our consumer research has also indicated that relative expenditure and consumption levels are strongly linked to engagement.²⁸ The increased consumption levels in our new definition is consistent with an annual energy spend of about £10,000 per fuel.²⁹ By raising the cap on energy usage covered by SLC 7A we expect to increase the number of informed business consumers and give them a better chance of securing a good energy deal.

2.9. The original micro business consumption cap (e.g. 55,000 kWh per annum for electricity) was linked to an annual bill of approximately £5,000 per fuel. This was partially linked to the maximum claim amount possible in Small Claims Court (£5,000). However we understand that the Ministry of Justice intention is that the amount of compensation that the Small Claims Court can award will increase to £10,000 from April 2013 or as soon after that date as is practical. We note that the Ombudsman is also currently reviewing their maximum award limit of £5,000, which was set originally to mirror that of the Small Claims Court. They see merit in increasing this to £10,000 to ensure consistency with the small claims levels and also to continue to encourage the use of the free-to-consumer route to an alternative settlement process.

Consultation responses

2.10. There was considerable support for the proposed expansion of SLC 7A, including from consumer groups who felt the current definition was too narrow.

2.11. We had some concerns raised about the employee and turnover criteria in the definition. A small proportion of respondents said that the practical implementation of these was sometimes difficult: they felt that this information is not always in the public domain and that suppliers and other stakeholders would benefit from consumption only based criteria. But we are proposing to keep the same employee and turnover criteria because a) this ensures we continue to include any micro business consumers who have previously been part of the micro business definition on these employee/turnover grounds and b) to ensure consistency with the EU 'micro business' criteria (see paragraph 2.16).

2.12. A number of respondents to our consultation also wanted more clarity on how to treat customers that have multiple sites. For example, a large chain of stores may have some individual sites that use very little energy, but the contract with the chain of stores as a whole is for a much higher energy use than our cap. They felt that if

²⁷ Research Findings on the Experiences of Non-domestic Customers, Opinion Leader, December 2012.

²⁸ Research groups demonstrated for consumers at a micro business level (by size and turnover), large consumption/expenditure was key to their knowledge and engagement.

²⁹ Based on quarterly non-domestic price data from DECC. See Table 2.1 of Impact Assessment.

the individual sites were captured on their own, large businesses may be inadvertently covered by protections that would not be relevant to them.³⁰ However we emphasise that the licence condition applies to customers, not sites, and therefore it focuses on the total value of a customer's contract, rather than an individual site's characteristics.

Implementation

2.13. The new rules on SLC 7A will be implemented via amendments to the supply licence. The proposed drafting to give effect to the new rules is provided in Appendices 3 and 4. Our Impact Assessment³¹ provides further information on our expected costs and benefits of the change.

2.14. The implementation time scales are set out in Chapter 1. We note that our proposals relating to the protection afforded to businesses by licence condition 7A will require the following:

- Suppliers will need to make changes to systems and undertake other back office preparatory work before they can be implemented.
- There will also need to be a period of time for transitional arrangements with customer communications and to change contractual terms for new fixed term contracts.³²
- We expect suppliers to do all they can to ensure consumers are given clear information about any changes in the terms and conditions of their tariffs as part of this process.

2.15. The implementation timetable has been amended slightly from our previous consultation proposals. This is in part to address some concerns with the timetable, and in part to be clearer and set out the implementation rules for arrangement we had not commented on.

Keeping the name "micro business"

2.16. We will continue to refer to businesses in this expanded scope as 'micro businesses'. This is for three main reasons:

³⁰ Our information request to suppliers (July 2012) illustrated different and more sophisticated market offerings as customers got larger. This includes a greater prevalence of individual account managers at the larger end, as well as greater use of energy specialists that engage with suppliers on a large business' s behalf. We would not expect that these business customers would need additional clarity on their contract terms.

³¹ Retail Market Review – Impact Assessment for the final non-domestic proposals, March 2013, 38a/13

³² For example where contracts previously allowed for the automatic rollover of the contract term to greater than 2 years, or where the contracts are not written in plain English.

- The employee number and turnover limits remain the same. These align with the EU micro business definition, which is reflected when transposing EU rules into UK legislation.³³ The EU also has a 'small business' definition³⁴ that has significantly higher employee and turnover limits. It could be confusing to refer to small business when the employee and turnover criteria of our definition would still refer to the EU definition of a micro business.
- The micro business term is referred to in a number of other industry rules, including redress arrangements³⁵, smart meter licence conditions and voluntary agreements, such as the micro business back-billing code.³⁶ As we have concluded that the needs and problems faced by the businesses now included in our new definition are the same as the existing micro business customers, we believe it is appropriate that they have access to the same protections. By keeping the name, fewer changes are needed for this to take effect.
- We believe it will be less onerous on suppliers and less confusing when interpreting various pieces of supplier information, if they do not need to log different types of customers for different reporting requirements. This would also be confusing for customers.

Access to Redress

What

2.17. In the short term, we will be seeking to secure voluntary agreement with suppliers and consumer redress bodies. This is an interim measure to ensure that all micro businesses, including those newly in scope as a result of our proposals, are able to access complaints redress via the same route as currently protected micro businesses.³⁷

³³ For example this was used as a basis in The Gas and Electricity (Complaints Handling Standard Regulations 2008)

³⁴ Fewer than 50 employees and ≤€10 million turnover or balance sheet total, see: http://europa.eu/legislation_summaries/enterprise/business_environment/n26026_en.htm

³⁵ The Gas and Electricity (Consumer Complaints Handling Standard Regulations) Regulations 2008: see <http://www.legislation.gov.uk/uksi/2008/1898/contents/made>; and the *Redress Scheme order*; see http://www.legislation.gov.uk/uksi/2008/2268/pdfs/uksi_20082268_en.pdf.

³⁶ We note that each supplier has applied back-billing principles to its best fit of how it treats the portfolio – in some cases this is their SME portfolio. See the industry standards at the following link: <http://www.energy-uk.org.uk/policy/microbusiness-.html>

³⁷ The Gas and Electricity (Consumer Complaints Handling Standard Regulations) Regulations 2008; <http://www.legislation.gov.uk/uksi/2008/1898/contents/made>

2.18. The long term solution to inconsistencies between our rules and UK legislation is for there to be a change to legislation.³⁸ We are seeking a legislative change³⁹ that will amend the Redress Scheme Order to match the new consumption criteria to our expanded definition.⁴⁰ We will continue to engage with government to pursue this change.

Why

2.19. As we noted above, by expanding the scope of SLC 7A, there will be implications for our alignment with current legislation in relation to customer complaints. The micro business definition is currently used operationally by the Ombudsman⁴¹ and suppliers in relation to the Complaints Handling Standards and redress arrangements, and has been adopted by consumer organisations.

2.20. We have not received a significant number of consultation responses expressing concerns on the impact SLC 7A might have on the consumer redress covered by the Redress Scheme Order. However we have been engaging regularly with key stakeholders to gauge the detriment we think may occur to both consumer and supplier and we have attempted to minimise any onerous consequences. We have been closely engaging with the relevant parties including DECC, BIS, suppliers and consumer bodies to:

- seek views on expanding the scope of SLC 7A and how this may affect the organisations operational issues, including the complexities that increased consumption may bring;
- seek views on a voluntary agreement to expand redress to all customers who will be covered under SLC 7A; and
- understand costs and complaints statistics relating to the Ombudsman.

2.21. Consumer Focus has expressed their support of our intention to seek a voluntary agreement in the interim from all key industry stakeholders. They have, however, expressed their concern that this change may result in a need for increased operational resource, in their Extra Help Unit, should complaint numbers increase or if there is an increase in complex cases arising from an increase in higher consuming business cases. CACs have also agreed that this approach is sensible to minimise any consumer disruption in relation to complaints. We will work closely with these organisations to ensure minimal disruption for consumers.

³⁸ Redress Scheme Order

http://www.legislation.gov.uk/uksi/2008/2268/pdfs/uksi_20082268_en.pdf

³⁹ This change would be managed via government (BIS or DECC) and would follow the standard consultation process.

⁴⁰The Gas and Electricity regulated providers (Redress scheme order) 2008

http://www.legislation.gov.uk/uksi/2008/2268/pdfs/uksi_20082268_en.pdf

⁴¹ As part of the CEAR ACT : Consumers, Estates Agents and Redress Act 2007 :

<http://www.legislation.gov.uk/ukpga/2007/17/contents>

2.22. Network companies must also adhere to the complaints and redress arrangements. They are supportive of the intention of the Ombudsman to accept for investigation unresolved complaints from an increased number of business customers and would be comfortable with a voluntary agreement in the interim.

2.23. We have informally discussed the scope for a voluntary agreement with a number of suppliers. So far, all have been supportive. The only concern raised was the potential for the Ombudsman cost to increase should more consumers take their complaint to the Ombudsman. The Ombudsman expressed their support in principle, however the final decision to accept the agreement would have to be made by suppliers, as they are required to be members of the redress scheme and fund this service.⁴²

Implementation

2.24. We envisage that the voluntary agreement to refer customers' newly covered by SLC 7A along the same redress route will be implemented through a letter from each key stakeholder to Ofgem. This would declare that they will handle complaints from business consumers newly covered by the protections of SLC 7A in accordance with the complaints handling regulations and the redress scheme, including agreeing to be bound by the decision of the Ombudsman.

2.25. We will seek to have this voluntary agreement in place by the time our expanded definition takes effect, should we proceed with our current proposals. We will be formally engaging with affected parties as soon as possible. We will also continue to engage with the appropriate government bodies to try to formalise these arrangements in the redress order.

Review of automatic rollover of contracts

What

2.26. We will be kicking off a review into the ability of suppliers to automatically rollover micro business contracts for 12 months (in the event that the Authority decides to implement our SLC 7A proposals). Our expected timetable and processes for this review are set out below:

- Publish a call for evidence in early summer this year. At the same time, we would issue a detailed information request to suppliers. We expect this will include a request for information on (at least average) rates for new contracts, rollover contracts, deemed contracts and out of contract charges, and the relevant customer numbers that usually fall within each of those categories;

⁴² Please see Energy Ombudsman fees 2012/2013; <http://www.ombudsman-services.org/funding.html>

- After analysing responses and considering the options, we plan to consult on our preferred option this autumn;
- After reviewing responses we expect to publish our decision at the end of winter 2013/2014.

Why

2.27. When we put in place the SLC 7A licence conditions, there was a lot of discussion around whether or not to allow automatic rollover of contracts⁴³, but on balance it was agreed to allow a 12 month automatic provision, subject to suppliers making customers aware of their options before this happens.

2.28. More recently, a number of respondents to our March 2011 RMR consultation called for us to ban the ability of suppliers to roll customers' contracts over for 12 months. They felt that it was better to fall back onto deemed rates or out of contract rates than to be locked into another fixed term contract that limited their ability to move supplier freely. Research would seem to suggest that a number of businesses felt that they had been 'caught out' by rollover provisions.⁴⁴ We said in our last two consultations that we would review this licence condition.

2.29. Before making any changes to existing licence rules, we need to properly consider the impacts of both keeping and removing the condition. This rollover condition only applies to micro business customers captured by SLC 7A. As set out in this document, we have been considering expanding the definition of businesses covered by SLC 7A. Different size businesses face different costs. Expanding our definition to include larger sized businesses will therefore have an impact on our analysis of costs and benefits. So we have been unable to evaluate the impacts of rollovers up to now. We look forward to engaging with all stakeholders when this work commences.

⁴³ Many non-domestic contracts contain a clause whereby their supplier can automatically extend the customer's fixed term contract for a further fixed term, with new rates. A customer can only prevent this happening if they specifically contact the supplier to say they do not want this to happen. However, if they don't tell the supplier in time, they cannot change their supply until the end of the new fixed term and will have to pay the rollover rates during this time. These rates are often higher than what a customer could obtain if they negotiated a new contract.

⁴⁴ 42% of SMEs (including micro) interviewed felt they have recently been "caught out" by a contract rollover, Forum of Private Business, 2010

3. Clearer and simpler processes for smaller businesses

Chapter Summary

We set out proposals to effectively improve business consumer processes for smaller businesses. We outline our final proposals, which include a new mandate to include the contract end date and final contract termination date on bills. We are also proposing a change to allow termination notices to be given from the start of a contract.

Introduction

3.1. The second component of the package of proposed new rules is designed to provide micro businesses with clearer information and simpler processes around their energy contracts.

3.2. The chapter has two sections. The first section provides an overview of our final proposals. It explains the underlying motivation for providing consumers with clearer information, and summarises the specific new rules we are proposing to put in place and the supporting reasoning. The second section unpacks the new rules, and why we consider them necessary and proportionate, in more detail.

Our Final Proposals - overview

Motivation

3.3. Our proposals will improve the information given to businesses, where issues have been identified through analysis of contacts data, consumer research and information from suppliers. Clearer information is essential to promote consumer engagement and to help customers choose the best energy deal available to them. Lack of knowledge can reduce the opportunities to search for and understand the best deal available in the market.

3.4. Our research showed that bills were the one item of communication that businesses regularly referred to and are likely to keep.⁴⁵ Some had negative experiences with regard to contract rollovers and errors in the charges they were

⁴⁵ Research Findings on the Experiences of Non-domestic Customers, Opinion Leader, December 2012, Pages 6-11

given in their bills and felt these could have been avoided if there had been greater transparency and clarity in the information provided by their supplier. So we believe that giving details of the end dates of fixed term and termination related information clearly on bills or statement of accounts will remind businesses when they need to engage. If they are not aware of this information, consumers could miss out on opportunities to transfer to a better deal. Similarly, we have received complaints that businesses feel caught out by some suppliers requiring them to give in their notice in a narrowly defined 'termination window'.

3.5. Some smaller business consumers have said that they struggle to maintain relationships with suppliers⁴⁶ and that these type of rules may improve communication throughout the renewal process.

Action

3.6. The proposed new rules on SLC 7A will be implemented through changes to standard conditions of the electricity supply licence and gas supply licence. The proposed drafting to give effect to the new rules is provided in appendices 3 and 4.

Reasoning

3.7. In our qualitative research, there was a perception that suppliers failed to adequately remind customers that their contracts were going to be renewed.⁴⁷ Over a quarter (26 per cent) of FSB survey panel members said they have been rolled onto another fixed term energy contract without their knowledge.⁴⁸

3.8. As part of the response to our November 2011 consultation we received 323 submissions from business consumers driven by a campaign from two third party intermediaries (TPIs).⁴⁹ The first called for contract end dates and termination procedures to be highlighted on bills and for renewal letters to be sent by recorded delivery. In addition to the above, the second campaign called for the standardisation of termination procedures and for suppliers to offer their best price first. These responses show some dissatisfaction with the current level of information provided to business consumers.

⁴⁶ Research Findings on the Experiences of Non-domestic Customers, Opinion Leader, December 2012, Page 12

⁴⁷ Research Findings on the Experiences of Non-domestic Customers, Opinion Leader, December 2012, Page 25

⁴⁸ Federation of Small Business, 2012 Online survey. FSB survey panel members. 3063 participants, of which 3013 responded to this question.

⁴⁹ RMR non-domestic informal responses
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=70&refer=Markets/RetMkts/rm>

Our Final Proposals – in detail

3.9. This section sets out in more detail the new rules that we are proposing to put in place to routinely provide micro business gas and electricity customers with clearer information and simpler processes. For each area of new rules, it describes what they are and highlights changes for our previous proposals – and sets out how they will be given operational effect. It also explains why, based on the evidence, we have concluded that these particular rules are both necessary and proportionate.

Contract and notice period end dates on bills

3.10. We are creating new rules to require suppliers to print clearly on every bill or statement of account the date that a fixed term contract will end.

3.11. We are also requiring that information regarding notice of termination and the last date a termination notice can be provided is also printed on the bill/statement of account. How this relates to different contract terms is set out below.

- Micro business consumers in a fixed term contract, which can be extended for a further fixed term period (rolled over): the last date that the consumer may give notice of termination must be prominently displayed on any bill or statement of account. Text next to the date must clearly convey what the date means/relates to.
- Micro business consumers in a fixed term contract, which cannot be rolled over: If the consumer cannot be rolled over, but still requires a notice period, the last date they may give termination notice must be prominently displayed on any bill or statement of account. Text next to the date must clearly convey what the date means/relates to.

Why

3.12. The addition of the contract end date and termination notice information on bills/statement of account is a key part of improving information to small business consumers. Our quantitative research shows that over four fifths (83 per cent) of businesses are aware that they have a contract with their energy supplier, but of those customers with a contract, around 10 per cent were unsure of its duration.⁵⁰ Our qualitative research also indicated that micro and small businesses were not always sure or aware that they had a contract with their energy supplier.⁵¹ Although

⁵⁰ Quantitative Research into Non-domestic Customer Engagement and Experience of the Energy Market, Accent, November 2012

⁵¹ Research Findings on the Experiences of Non-domestic Customers, Opinion Leader, December 2012, Page 21

some consumers would like more information, previous research indicates that for many the bill was the main contact with their supplier.⁵²

How implemented

3.13. These proposals will be achieved through new provisions in SLC 7A and would apply to customers on fixed term contracts covered by the extension of the definition of micro business in SLC 7A.

Allowing termination notice to be given at any time

3.14. We are proposing to amend existing rules and add new rules to require suppliers to allow a customer to give notice that they want to terminate their contract:

- a) in the case of a contract which includes a fixed term period (with effect from the end of the fixed term period), any time, up to the last date of notice period (e.g. 30 days before the end of the contract); and
- b) in the case of a contract which does not include a fixed term period, at any time.

3.15. This will remove any narrow termination windows.

Why

3.16. Some respondents to our November 2011 consultation thought that termination procedures are often confusing. Our review of suppliers' offerings confirmed that some suppliers accept notice not to automatically rollover as equating to a termination notice. However, others require an additional, separate termination notice to be given, even if the customer had already notified the supplier they did not want to rollover. Sometimes suppliers only allow this notice to be given at a set time (e.g. within a specified month).

3.17. A small number of October consultation respondents have highlighted a risk that consumers may give notice very early in their contract, but then fail to take further action before the contract ends. This may result in them moving onto expensive out of contract rates. We recognise this risk, but consider that the benefits of consistency across the market outweigh this, and the risk will be mitigated by the extra information consumers will be provided on bills.

⁵² Some consumers with low engagement wanted clearer, simpler information on their bill rather than more information in other forms. They often did not look at additional leaflets. Small and Medium Business Consumers' Experience of the Energy Market and their Use of Energy, Harris Interactive, June 2011.

Implementation

3.18. These proposals will be achieved through amending and adding new provisions in SLC 7A.

Not allowing unilateral termination of micro business contract

3.19. We are proposing not to amend the clause in SLC 7A to allow contracts to be unilaterally terminated if the customer ceases to be a micro business customer, in the event that their consumption grew significantly to the extent that they were required by industry rules to install a half-hourly (HH) electricity or daily read gas meter.

Why

3.20. In the October consultation, we asked if respondents wanted us to change this clause, as a small number of suppliers had raised the issue with us. We had a mixed response.

3.21. A number of stakeholders agreed that a micro business customer's consumption increasing to HH level was a particularly uncommon occurrence and did not constitute a strong reason to change SLC 7A. One supplier commented that it was more common than we had suggested in our consultation. A consumer group felt that changing this licence condition would not benefit consumers and do not foresee that many businesses covered by SLC 7A would experience such dramatic increases.

3.22. We considered the above views and, on balance, have decided not to pursue this option further and amend SLC 7A. We note, for the avoidance of doubt, that this still allows mutual contract variations to occur where a change is mutually agreed between the supplier and customer.

4. Fairer treatment for smaller businesses

Chapter Summary

We propose to introduce Standards of Conduct into the licence for supplier dealings with smaller business consumers, covering billing, communicating contractual information, customer transfers and matters covered by some existing licence conditions (including the terms of deemed contracts).

We also provide further clarity regarding our proposal, including the scope of the policy and how we see the Standards of Conduct working in practice.

Please note that we are also consulting on draft guidance on some of the key terms used in the SOC licence condition.

Introduction

4.1. The third component of the package is a set of rules designed to provide greater reassurance to micro business electricity and gas consumers that they will be treated fairly by their energy supplier in respect of activities relating to transferring supply, communicating contractual information, billing and matters covered by some existing licence conditions (including the terms of deemed contracts). These rules will apply to micro businesses under our revised definition for SLC 7A.

4.2. The chapter has two sections. The first section gives an overview of the proposal. It explains the underlying motivation, and summarises the new rules we are proposing to put in place and our reasons for doing so. The second section goes into more detail about the new rules, and why we consider them necessary and proportionate. It also sets out our approach to enforcement of these new rules.

Our Final Proposals - overview

Motivation

4.3. Our separate domestic RMR sets out a number of concerns with the ability of households to engage in the market, including low levels of trust and confidence in the market. There is not the same evidence of an overwhelming lack of confidence amongst business consumers. Our research⁵³ suggests that smaller business

⁵³ Research into the proposed Standards of Conduct: Non-Domestic Consumers, Insight Exchange, December 2012

<http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/Non-Domestic%20SOC%20report.pdf>

consumers are more likely to engage in the market in comparison to domestic consumers, but do not engage as effectively as larger businesses.

4.4. We have evidence that businesses, and particularly smaller businesses, face a number of specific problems in engaging effectively, as summarised in Chapter one and detailed in our October 2012 consultation. In short, across our research and contacts data, we found recurring problems being reported around three areas in particular: billing, contracts (including deemed contracts) and transfers. More than two-thirds of the business contacts to Consumer Direct/OFT in the first quarter of 2012 were about these areas. Key themes from particularly smaller businesses included unclear information, the businesses knowledge, ability and resources to engage with suppliers, and the amount of time, and effort, it sometimes takes businesses to put things right.⁵⁴

Action

4.5. We are proposing to introduce SOC into the licence that will require suppliers to treat micro business consumers fairly in the specific areas where we identified problems (as set out in the Scope section below). The SOC also contain a range of more specific principles covering broadly their behaviour, how they give customers information and their processes. The full content of the requirements are set out from paragraph 4.12.

4.6. We see the SOC as something that should be considered and understood at all levels of energy supply organisations, including senior management and board level as well as front line staff. So we expect suppliers to demonstrate they have embedded the SOC into their organisation at all levels of the business. This may include electricity and gas suppliers developing and maintaining ways of embedding the fair treatment of customers into their business processes and management reporting. It will be for suppliers to take account of the SOC across all levels of the organisation and consider how decisions made across the business will impact consumers in the context of the SOC. This will involve suppliers identifying and delivering what consumers need. How the SOC are given operational effect will not be prescribed by Ofgem.

4.7. The non-domestic SOC licence condition includes an obligation on suppliers that they communicate⁵⁵ to their customers how they have applied and are applying the principles outlined in the SOC to their business and the service and treatment customers can expect. This will help consumers understand what specific actions they can expect from a supplier in relation to the SOC.

⁵⁴ Research Findings on the Experiences of Non-Domestic Customers, Opinion Leader, December 2012

⁵⁵ Via information displayed on the supplier's website and, where a customer requests a hard copy, the supplier must provide that information free of charge as soon as reasonably practicable.

Reasoning

4.8. We believe that implementation of the SOC will help to address identified problems in the smaller business market. Given the more competitive nature of the market (when compared to the domestic market), we have been careful to restrict our intervention to those areas, and the part of the business market, where our research and consumer groups have shown there to be problems. Our consumer testing of the SOC last year⁵⁶ also indicated that larger firms in general did not feel they needed the protections offered by the SOC. Larger business consumers feel they are better able to deal with problems with their supplier.

4.9. As part of the policy development process we have considered whether we are replicating existing provisions in the licence condition. Stakeholders particularly felt that they added little value to existing protections for micro business customers in SLC 7A and the rules around transfer of supply in SLC 14. We reconsidered the evidence and we have concluded that a number of problems faced by small business consumers are not covered by the existing licence conditions. For example, a significant concern for business consumers is that problems when attempting to transfer supplier can take a long time to resolve. Existing provisions in SLC 14 do not say anything about resolving problems quickly. We also believe that the SOC will support existing licence conditions within scope by clarifying that we expect suppliers to abide by their rules in a manner that ensures that their customer is treated fairly.

4.10. We are proposing regulatory action because voluntary interventions through the existing SOC⁵⁷ have not, in our view, helped to resolve some problems. The original SOC covered the need for consumers to be treated fairly, to have full and accurate information and be helped in trying to find a better deal and switch supplier. Our quantitative⁵⁸ and qualitative research⁵⁹ suggests that there are still problems in specific areas of the market. Amongst other things, our quantitative research highlights problems with bill accuracy, bill clarity and the information on bills. Our qualitative research highlights that switching and contracts can be difficult, time consuming and suppliers can be slow to remedy problems. This suggests that suppliers could do more to fully embrace the spirit of the current SOC in particular areas. By making the SOC enforceable, we will ensure that suppliers are obligated to successfully deliver the SOC.

⁵⁶ Research into the proposed Standards of Conduct: Non-Domestic Consumers, Insight Exchange, December 2012

⁵⁷ Energy Supply Probe - Proposed Retail Market Remedies, 7 August 2009
<http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Retail%20package%20-%20decision%20document.pdf>

⁵⁸ Quantitative Research into Non-domestic Customer Engagement and Experience of the Energy Market, Accent, November 2012

⁵⁹ Research Findings on the Experiences of Non-Domestic Customers, Opinion Leader, December 2012

Our Final Proposals – in detail

4.11. This section outlines details of key propositions related to the SOC. We give more details on the Standards themselves, provide additional guidance to stakeholders on key terms in the licence drafting and the scope of the SOC, outline our approach to enforcement, and outline the role of the Ombudsman in relation to the SOC.

The Standards of Conduct

4.12. The SOC require suppliers to take all reasonable steps to ensure that they treat their micro business consumers fairly in the specified activities (set out in the next section). The Standards cover three broad areas:

- a) **Behaviour:** suppliers must behave and carry out any actions in a fair, honest, transparent, appropriate and professional manner;
- b) **Information:** suppliers must give information (whether in writing or orally) which:
 - i. is complete, accurate and not misleading (in terms of the information provided or omitted);
 - ii. is communicated in plain and intelligible language;
 - iii. relates to products or services which are appropriate to the customer to whom it is directed; and
 - iv. is otherwise fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);
- c) **Processes:** the supplier must:
 - v. make it easy for a consumer to contact them;
 - vi. act promptly to put things right when they make a mistake; and
 - vii. otherwise ensure that customer service arrangements and processes are fit for purpose and transparent.

Explaining key terms

4.13. Following our November 2011 and October 2012 consultations, we received feedback from suppliers that the terminology used in the draft licence condition was open to interpretation and may result in differing interpretations over compliance. Suppliers suggested this exposed them to regulatory risk and ultimately may lead to overly cautious behaviour which could result in costs being passed on to consumers.

4.14. The proposed licence condition for the SOC includes a customer objective that each micro business consumer is treated fairly; the drafting also outlines when a supplier would be classed as not acting fairly. For the avoidance of doubt, a supplier would only be in breach of the SOC if their actions or omissions significantly favour the interests of the licensee and also give rise to the likelihood of consumer detriment. By way of a generic example, where a supplier has a right to do something (which falls within the scope of designated activities), the SOC would not necessarily prevent the supplier from exercising that right but will always capture whether the process for exercising the right and the manner in which it is exercised is fair and otherwise consistent with the SOC principles.

4.15. Appendix 5 contains draft guidance of some of the key terms used within the SOC including for 'appropriate', 'professional manner', etc. This draft guidance is intended to help suppliers with their interpretation of the SOC and assist them with process of complying with the licence condition. However, as with other licence conditions, suppliers will still be responsible for ensuring that they are compliant with the SOC licence condition and that the concept of fairness is embedded within the organisation, including how it is made operational within the business. Given the importance of this we have carefully considered the format and the level of detail included in our guidance.

SOC guidance provision

4.16. As part of, and in order to facilitate, the SOC proposals we are proposing to include a licence condition which would require suppliers to have regard to any guidance issued by Ofgem on any aspects of the overall SOC licence condition (the guidance provision). Before issuing (or revising) guidance which is subject to the guidance provision, Ofgem would need to consult with suppliers (this consultation may take place before the SOC licence condition comes into force).

4.17. This means that, in conjunction with this statutory consultation, we are also consulting on the document in Appendix 9 (referred to in paragraph 4.15), that provides draft guidance on some of the key terms used in the SOC licence condition. Following a review of consultation responses, we will consider whether to designate this as guidance subject to the guidance provision.

Scope

4.18. The scope of the non-domestic SOC is narrowed in two ways:

- the customers that they apply to; and
- the activities they apply to.

4.19. We have not changed the scope of the SOC from the October 2012 position. Most respondents to our October 2012 consultation agreed in principle with the proposed scope. The following sections will, though, give more clarity on what we meant by certain parts of the scope, as requested by stakeholders.

The SOC only apply to micro business customers

4.20. The non-domestic SOC will apply to micro business consumers, as defined in Chapter 2 of this document. A business customer can therefore hold their supplier to account against the SOC if their business:

- uses less than or equal to 100,000 kWh of electricity in a year; or
- uses less than or equal to 293,000 kWh of gas in a year; or
- has a turnover of less than or equal to €2m and employs less than 10 employees.

The SOC only apply to certain activities

4.21. Through this document we summarise the activities that apply to the SOC as billing, contracting, deemed contracts and customer transfers. We now set out more detail about what we mean by those activities, and what they cover.

Billing

4.22. “Billing” will cover:

- the accuracy of a bill or statement of account;
- any written or oral communications of a bill or statement of account;
- the timeframe for a micro business consumer receiving a bill or statement of account and the timeframe for the repayment of a bill; and
- all matters which fall into the scope of SLC 21B that relates to billings based on meter readings, including customer meter reads (in so far as they relate to a micro business consumer)

4.23. To be clear, the level of a bill (i.e. the £ amount due) will not be in scope. But the approach suppliers take with their customers around billing is firmly within the

scope of the SOC. For example, we would not be covering the level of a back-bill, but the following would be in scope: the processes and procedures that a supplier had in place for accurate billing, including the collection and use of consumption data, bill content and calculations, the frequency of bills and the timeframes involved, including the time a non-domestic consumer has to pay a back-bill.

Customer Transfers

4.24. The SOC will apply to all elements of customer transfers. This includes, but is not limited to:

- any matters that relate to a customer’s ability to change supplier and/or affect the timeframe for changing supplier (including related terms and conditions of a Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer); and
- any matters which fall within the scope of SLC 14 and SLC 14A (in so far as they relate to a micro business consumer and excluding any unit rates or ancillary charges).

Contracting

4.25. The SOC will apply to:

- any written or oral communications regarding contractual information;
- all matters relating to Deemed Contracts, in so far as they relate to a micro business consumer. This will cover, but is not limited to, charges, other terms in a deemed contract, and the communication to consumers that they are on or moving to a deemed contract.
- The proposed SOC would not cover the terms of a contract, except when the terms relate to:
 - ‘Billing’, as described above;
 - ‘Customer Transfer’ , as described above; and
 - Deemed Contracts, as described above.

4.26. For further details on any licence conditions, please consult the Standard Conditions of Gas or Electricity supply licence.⁶⁰

4.27. For the avoidance of doubt, the SOC do not apply to the level of supply prices or ancillary charges that energy suppliers charge, except in the case of deemed contracts as they are already the subject of licence rules⁶¹.

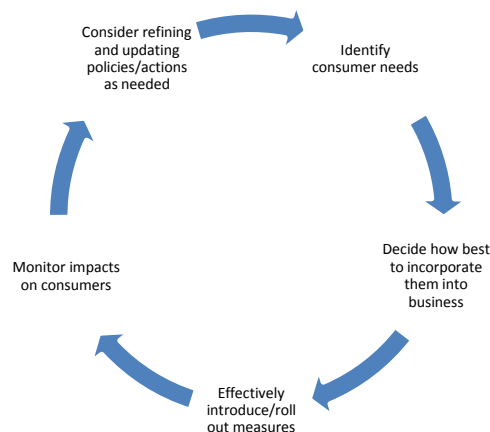
How the SOC will work in practice

4.28. At their heart, our SOC proposal is about the relationship, and interactions, between energy suppliers and consumers. We want to ensure the SOC are centrally about this relationship to support desired outcomes for consumers.

4.29. Principles-based regulation allows suppliers to be flexible and innovative in the way they deliver the SOC. Therefore, the SOC will enable suppliers to focus on what consumers need rather than turning compliance with the SOC into a tick-box exercise. This will also allow suppliers to find solutions to challenges in a way that fits their business model, and that best suits their customers. This is particularly relevant in the business sector, where the requirements and needs of consumers can differ dramatically.

4.30. The SOC should be embedded at all levels of the organisation and understood by all staff. It would be embedded in the design, monitoring and revision of all relevant systems and processes. The figure below illustrates a high level vision for supplier processes to ensure interactions for consumers are compliant with the SOC.

Figure 4.1: High level vision for likely processes in relation to the SOC



⁶⁰ Link to E-Public register: <http://www.ofgem.gov.uk/Licensing/Work/Pages/licence-conditions-consolidated.aspx>

⁶¹ See for example SLC 7

Bespoke approach to enforcement

4.31. We take a proportionate approach to investigating issues in line with the criteria set out in Chapter 3 of our Enforcement Guidelines.⁶² In addition, we are proposing to use a bespoke approach to enforcement for the SOC. In line with our October 2012 proposals, we propose that our assessment of the seriousness of a potential breach will include consideration of whether a reasonable person, intent on complying with the SOC, would have acted in the way that a supplier did in its interactions with consumer.

4.32. To this end, we will have regard to the supplier's actions and considerations (including at senior level) in (i) the development of new policies or processes, and amendments to existing policies and processes; (ii) the monitoring of its implementation of new initiatives and operation of existing policies and processes; and (iii) the taking of remedial action where any adverse consequences for consumers came to light. This will mean that we will usually ask suppliers for contemporaneous documents so we can make this assessment before deciding whether to proceed with investigations.

4.33. The extent to which the supplier can demonstrate via contemporaneous documents that they acted reasonably will help us assess the seriousness of the breach and in turn whether we are more or less likely to take any enforcement action. Enforcement action could be based on failings in any or all of these stages. In line with the procedures set out in our Enforcement Guidelines, we propose to consider this in the round with other factors, such as the degree of harm, or potential harm, to consumers.

4.34. Some suppliers suggested that the principles based nature of the SOC may create regulatory risk. It was suggested that there may be an interpretive gap between how Ofgem and suppliers interpret the licence, including the terminology within the SOC. Some suppliers suggested that to ensure compliance with the SOC, they may undertake overly cautious behaviour to ensure compliance with the licence and this could lead to higher costs. Consultees suggested a formal two-stage approach to enforcement, involving an initial dialogue between Ofgem and suppliers as well as the opportunity to remedy problems, would be the most effective way to tackle any regulatory risk.

4.35. Having considered feedback from suppliers following our October 2012 consultation we confirm that we would usually speak to a supplier before taking enforcement action. However, we are not proposing a staged approach to enforcement where suppliers would be guaranteed an opportunity to avoid enforcement action, so long as they took steps to resolve the breach.

⁶² For more information, see the following link:
<http://www.ofgem.gov.uk/About%20us/enforcement/Documents1/Enforcement%20guidelines%202012.pdf>

4.36. Some small suppliers raised concerns relating to the potential administrative burden that could result from the need to provide contemporaneous documentation illustrating suppliers' practices in relation to interactions with consumers, their relevant internal policies and practices including how decisions are made in relation to the SOC. We recognise that depending on the size of the organisation, the nature of the business or internal business practices it may be appropriate for actions around the SOC to be documented and communicated in different ways.

4.37. We also recognise that appropriate documentation and 'audit trails' may be different for different situations. Documentation produced may vary depending on the scope of the issue, what it relates to, and the nature of internal and organisational processes.

4.38. Some of the large suppliers raised concerns in response to the October 2012 consultation with regard to implementation timeframes for the SOC, and specifically that lead times may be needed to allow for necessary changes in advance of the SOC coming into force. A transition period of 2 years was suggested by one supplier. But we believe suppliers can start to consider issues and, as we set out above, supplier action in relation to the SOC is a process and should evolve over time depending on a range of factors including consumer needs, changes in the market, technology and suppliers' opportunity to consider and implement relevant change within their organisation. A delay in implementation does not seem warranted. We therefore do not propose to delay the introduction of the SOC.

4.39. Ofgem is separately conducting a wider review of its approach to Enforcement. Our initial thinking will be published in March 2013.⁶³ Amongst other things, we will be setting out our thoughts on who takes the final decisions on whether there are breaches and if so what, if any, penalty should be imposed. We believe that our proposals will, among other things, address comments raised by stakeholders in the context of SOC about how enforcement decisions are made, having a consistent approach to assessing compliance with the SOC, and whether Ofgem will adopt a subjective assessment about compliance with the SOC.

SOC and the role of the Ombudsman Services: Energy

4.40. As set out in Chapter 2 of our Enforcement Guidelines, we would not necessarily take enforcement action, with the SOC or other licence conditions, in light of individual or isolated consumer complaints. Our focus is more likely to centre on concerns over more systemic issues involving suppliers' actions. As Ofgem has limited functions in dealing with individual disputes between consumers and licenced suppliers, we therefore see a role for the Ombudsman in applying the SOC when dealing with individual cases referred to it.

4.41. Some stakeholders have raised concerns that the approach taken by the Ombudsman could result in setting a form of precedent for supplier actions. We note

⁶³ The document will be found here on publication:
<http://www.ofgem.gov.uk/About%20us/enforcement/Pages/Enforcement.aspx>

that rulings made by the Ombudsman are independent to those made by Ofgem. Also, the Ombudsman determines cases individually and treats them on a case by case basis, as reflected in their terms of reference.⁶⁴ Therefore, we do not consider the Ombudsman would set precedent (particularly in a legal sense), in their rulings. They are independent and assess the SOC in a different context to Ofgem (as the independent regulator). Due to Ofgem's independence and the applicable legal framework that applies, it is also the case that decisions of the Ombudsman could never be binding on Ofgem. Therefore their decisions do not impact on Ofgem's interpretation of licence conditions. However, we would generally look to work with the Ombudsman to help foster a shared understanding of our objectives and expectations relating to the SOC. This general approach to promote a shared understanding is already part of the Memorandum of Understanding between the Authority and the Ombudsman.

Communication to customers

4.42. We propose that the SOC licence condition requires that suppliers communicate to their customers how they have treated (and how they are treating) consumers fairly and the service and treatment that consumers can expect. This will help consumers understand what specific actions they can expect from a supplier in relation to the SOC.

4.43. Our proposed approach to the communication for non-domestic suppliers require that:

- the SOC information is set out in writing and includes a clear heading which alludes to the contents;
- if a consumer requests a copy of the SOC information, this should be provided free of charge as soon as is reasonably practicable; and
- where the supplier has a website, the SOC information must be available on the website in a position that can easily be accessed by consumers.

⁶⁴ Their Terms of Reference say '...the Ombudsman shall not be bound by any legal rule of evidence or by the past conduct or decisions of, or the past Remedies or Awards imposed by the Ombudsman'.

5. Reducing barriers to switching for all businesses

Chapter Summary

This informs readers of our intention to increase our monitoring of supplier behaviour during the customer transfer process. We are also encouraging industry to alleviate some of the other issues consumers may face when they try to switch.

Introduction

5.1. This chapter outlines additional work we are doing to give greater confidence to all businesses - from the very smallest to the very largest – that when they want to switch supplier they can do so without unnecessary problems.

Our Final Proposals

5.2. We set out how we will continue to monitor the actions of suppliers when a customer wants to transfer to a new supplier and whether industry modifications can help smooth this process.

What

Increased monitoring of objections to transfer

5.3. We will be increasing our monitoring of supplier objection to transfer. This will include accessing data from industry sources (including gas transporter and electricity network companies (or their agents) and electricity network companies) and continuing to request data directly from suppliers. In the coming months we will contact suppliers to amend the current data requirements.

5.4. We will assess the need to continue collecting data from suppliers after a period of not less than 6 months. This will give us enough time to assess the appropriateness of collecting data solely from industry sources.

Continue to encourage modifications to improve the transfer process

5.5. In our October 2012 consultation we set out a number of concerns that have been raised to us regarding the objections process. These included practices around change of tenancies, multiple invalid registrations and win-backs. We encouraged industry to resolve these issues without specific regulatory intervention.

5.6. Since then, we have already seen some developments. These include:

- **Change of tenancies:** A modification to an industry process flow⁶⁵ that requires a higher bar of evidence for suppliers using the change of tenancy indicator to push through a customer switch. We expect that this will improve market participants' confidence in the validity of change of tenancies, and reduce some of the problems we have seen in relation to this. These included allegations of fraudulent change of tenancies, more objections to supplier transfers and a lengthier process for genuine change of tenancy customers to switch.
- **Multiple invalid registrations:** We noted in our October 2012 consultation that most suppliers re-applied to register a customer after an objection two or three times at most. But some suppliers regularly re-applied four or more times, and sometimes up to ten times. We expressed concerns about what this would mean for a customer's switching experience. Since then, we are aware of at least one supplier who has amended their processes to ensure they do not have a protracted re-application process by limiting the number of times they will re-apply for a customer.
- **Reduced number of objections:** Our preliminary data shows that objections to transfer have started to decline since we shone a spotlight on this area.

5.7. At the current time we do not consider any changes to the licence condition SLC 14 (that sets out the rules around objecting to supply transfers) are required. However, the scope of the proposed Standards of Conduct will cover transfers (see Chapter 4), which includes the contract terms suppliers may rely on to object to a transfer.⁶⁶ It will also cover how suppliers communicate to customers during the transfer process. Evidence of suppliers being consistently obstructive or relying on unfair terms to object to a customer leaving, may be in breach of these standards.

5.8. We continue to take compliance with licence conditions seriously. Last year, we opened an investigation into whether British Gas Business⁶⁷ is complying with the requirements of condition 14 of their gas and electricity supply licence (SLC 14), regarding the objections process.⁶⁸ Details on the outcome of this investigation will appear on our website in due course.

⁶⁵ <http://www.ofgem.gov.uk/Licensing/ElecCodes/MRA/Pages/MRA.aspx>

⁶⁶ It is our policy intention that the SOC will take precedence over the existing rules in SLC 14 in the event of any conflict.

⁶⁷ For the avoidance of doubt, the fact that Ofgem has launched an investigation should not in any way be taken as implying that there has been a breach of a licence condition.

⁶⁸ The notice for this can be seen at the following link:
<http://www.ofgem.gov.uk/About%20us/enforcement/Investigations/CurrentInvest/Pages/CurrentInvstgtns.aspx>

Why

5.9. We want to improve our monitoring of supplier switching data in an efficient manner. So we proposed accessing regular data from more centralised industry sources. Industry sources, whilst not giving us all context to an objection, should provide a consistent and unbiased view across the industry. However, a number of respondents raised concerns about the robustness of these sources. Therefore, we intend to collect data from both industry and suppliers for at least six months to properly assess the best means of monitoring this in the future.

5.10. If there are suppliers exhibiting objection rates far above industry norms we may ask for more information to understand what is happening. We may publish objections data in an appropriate format if we consider it to be in the interest of consumers.

6. Third Party Intermediaries

Chapter Summary

We describe the developments for a single Code of Practice for non domestic TPIs, our work to seek powers to use certain parts of the BPMMRs, and the wider review of the TPI market and its regulatory framework.

Introduction

6.1. This section outlines additional work we are doing to give greater confidence to all businesses - from the very smallest to the very largest – that when they want to consider their options and use the services of TPIs, they can do so easily and with confidence.

6.2. TPIs in the non domestic sector are energy brokers, agents or consultants who facilitate energy deals between business consumers and suppliers, typically offering the consumer a range of options. There are various services offered by TPIs, ranging from advice regarding energy use and switching to bill validation and energy efficiency.

6.3. Powers to regulate some aspects of TPI behaviour are currently held by the Office of Fair Trading and Trading Standards bodies under the BPMMRs.⁶⁹ Given the issues discussed in our previous consultations and our research findings that there was a need to improve transparency and trust in TPIs, we proposed taking three actions in our October 2012 consultation:

- develop options for a common TPI Code of Practice with input from a non domestic industry working group;
- consider issues relating to TPIs more broadly, across domestic and non-domestic markets, particularly whether the regulatory interaction Ofgem has with TPIs needs changing to best protect the interest of consumers; and
- pursue the case for Ofgem to be granted certain powers under the BPMMRs through publishing a consultation to provide required evidence for BIS to amend the relevant legislation.

6.4. This chapter sets out the actions we are pursuing and our reasoning for them.

⁶⁹ i.e. on the basis of their powers to enforce the Business Protection from Misleading Marketing Regulations 2008; <http://www.legislation.gov.uk/ukxi/2008/1276/contents/made>

Our Final Proposals and Actions

Non-domestic TPI Code of Practice

Working group to aid development of non-domestic TPI Code of Practice

6.5. We received strong representations that we needed to progress work in this area as soon as possible. Having received unanimous support for our proposal to drive forward work on a single Code, we set up and convened a non-domestic TPI Working Group in February 2013. This group encompasses a wide range of stakeholder views and will provide a focused forum for non-domestic stakeholders to help inform Ofgem’s development of proposals for a single Code of Practice for non-domestic TPIs. We expect to consult on its proposals later this year.

6.6. There was extensive interest from stakeholders to be part of this working group. To maintain a workable group size⁷⁰, stakeholders were selected to ensure broad coverage within relevant criteria. The final working group consists of 33 key industry stakeholders⁷¹ including a range of large and small suppliers, TPIs, TPI Code administrators and consumer bodies.

6.7. The objective of the TPI Code of Practice that we are developing is:⁷²

‘To protect the interest of business consumers by giving them the confidence that when they use Third Party Intermediaries for energy related services, they will be honest and transparent and effectively assist them with their energy needs’

6.8. The working group sessions will help inform:

- Ofgem’s thinking on the specific non-domestic TPIs who should be covered by the proposed TPI Code of Practice;
- the development of the contents of a proposed TPI Code of Practice ; and
- Ofgem’s thinking on the framework for monitoring and enforcing adherence to the proposed TPI Code of Practice.

6.9. The relevant documentation of the group has been published on Ofgem’s website.⁷³ This documentation may include materials such as terms of reference and meeting notes. Documentation will be posted on the website only after all confidentiality considerations have been taken into account.

⁷⁰ The group has representation from Small, Medium and Large organisations

⁷¹ All working documents from the working groups are available from the Ofgem website; see <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/stakeholder-engagement/Pages/index.aspx>

⁷² This was created by discussing a suitable objective with group members, research regarding TPI issues and extensive stakeholder discussions

⁷³ All working documents from the working groups are available from the Ofgem website; see <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/stakeholder-engagement/Pages/index.aspx>

Bespoke email to ensure all stakeholders views considered

6.10. Due to the overwhelming response of interested parties who offered to contribute to the TPI Code of Practice working group sessions, a bespoke email address has been setup to ensure that all stakeholder views are considered throughout the process. We publish our notes of the working group meetings on our website and invite comments to be sent to the following email address:

ThirdPartyIntermediaries@Ofgem.gov.uk.

6.11. If you have any views or considerations based on the TPI correspondence displayed on the Ofgem website, please send them in for review to the address above.

The status of our alternative proposals

6.12. When we originally put forward options around TPis, in November 2011, they included the option of inserting a specific marketing licence condition on suppliers. We note that, as set out in Chapter 4, we are now proposing to introduce binding SOC on suppliers that take effect when they engage with micro businesses in specific circumstances. We believe this will have a very similar effect to this original proposal, at the smaller end of the market.

6.13. We also noted in our October 2012 consultation that a number of respondents suggested an alternative proposal (to accrediting TPI Codes), where suppliers should only be allowed to use accredited TPis, once a form of reputable accreditation had been set up. As we said in October, we will consider the merits of this once further work has been done on developing options for a single code proposal and as part of our work in considering the regulatory framework it would have.

Why

6.14. In our October 2012 consultation, we said that TPis can offer invaluable services to consumers in the non domestic market. However, consumers should be able to trust the organisation and the service which is being provided to them. While these services and any fees associated should be transparent and have an easily identifiable route for redress, this is currently not always the case.

6.15. Escalated complaints from consumers regarding the behaviours of TPis are gathering presence in the energy market, including cases where customers have been misled or the information they were given was not clear and transparent. From November 2011 to October 2012, data from the Citizens Advice Consumer Service⁷⁴

74 Data from between November 2011 to March 2012 was collected by Consumer Direct, and from April 2012 to October 2012 it was collected by CACs. CACs took over Consumer Direct in April 2012 and provided us with all the data from November 2011 to October 2012.

(CAcs) shows 179 of the 422 contacts received are about alleged mis-selling received from businesses, contained references to TPI behaviour. During the same period 73 (11 per cent) of the micro business cases referred to Consumer Focus' ⁷⁵ Extra Help Unit (EHU)⁷⁶ have been about TPIs.

6.16. Furthermore, evidence from developing discussions from the TPI industry working group indicate that there is general frustration in this area of the market, not only for consumers but suppliers, TPIs and Consumer bodies.⁷⁷

6.17. Along with unanimous support for a code of practice from respondents, there was almost undisputed support for a Code of Practice to apply to all TPIs in the market, i.e. those that offer services to small businesses and also those interacting with large businesses.

6.18. There was strong agreement that a code should be governed by an independent body. A significant number of respondents felt that this responsibility should lie with Ofgem, particularly if we gain the powers to enforce the BPMMRs.⁷⁸

BPMMRs

6.19. In addition to the development of a Code of Practice, we are continuing to seek powers to use certain parts of the BPMMRs⁷⁹ which will provide a further statutory underpinning to the behaviours which will be required under the Code of Practice. Ofgem currently hold similar powers to enforce consumer protection law (for non-business consumers) under the Part 8 of the Enterprise Act 2002. A consultation seeking views on this and to provide required evidence for BIS to amend the relevant legislation was published in February and closes on 4 April 2013.⁸⁰

Wider TPI regulatory review

6.20. As noted in our October consultation, we will be launching a parallel piece of work to review the wider regulatory framework for *all* TPI related services in the

⁷⁵ These cases generally cover micro business customers as these customers are included in requirements concerning the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 http://www.legislation.gov.uk/ukxi/2008/1898/pdfs/ukxi_20081898_en.pdf

⁷⁶ The Extra Help Unit section of Consumer Focus generally takes complaints of a more serious nature, for example, where disconnection is threatened; see <http://www.consumerfocus.org.uk/>

⁷⁷ All working documents from the working groups are available from the Ofgem website; see <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/stakeholder-engagement/Pages/index.aspx>

⁷⁸ The Business Protection from Misleading Marketing Regulations 2008; see <http://www.legislation.gov.uk/ukxi/2008/1276/contents/made>

⁷⁹ The Business Protection from Misleading Marketing Regulations 2008. see: <http://www.legislation.gov.uk/ukxi/2008/1276/contents/made>

⁸⁰ BPMMR's consultation available from; <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/Gaining%20enforcement%20powers%20under%20the%20Business%20Protection%20from%20Misleading%20Marketing%20Regulations%20consultation.pdf>

energy market. This will consider if the current regulatory frameworks (if any) are appropriate and fit for purpose to produce positive outcomes for current and future customers.

6.21. We expect that the importance of TPIs as an interface between consumers and the energy companies will grow. For example, the introduction of smart and advanced meters and an increased focus on energy efficiency measures by government and businesses, including Green Deal, is likely to increase the service opportunities for TPIs and potentially their value and interactions with consumers.

6.22. In addition to our ongoing work for non domestic TPIs, this programme will include areas where TPIs are active in the domestic sector. For example collective switching schemes and community energy programmes. There is also a close link to the domestic Confidence Code⁸¹, which Ofgem takes ownership of in March. We are looking at these issues in the round as they may have significant overlaps and may collectively drive us along a different road than when considered in isolation. For example, the range of options may include sticking with a tapestry of different structures, right up to the options of applying to regulate TPIs.

6.23. In this context, we have been engaging with DECC to clarify, through an amendment to the Gas Act 1986 and Electricity Act 1989, that we could use our existing powers to apply for TPI activities to be licensed, in the event we concluded that was in the best interests of consumers. We are doing this to ensure that if this is the option we decide on, after consideration of all options and consultation responses, there is no delay in implementing this approach. DECC consulted on this towards the end of 2012 and has since introduced clauses in the Energy Bill to amend these Acts accordingly.

6.24. Respondents to the October 2012 consultation were supportive of Ofgem conducting a wider TPI review to introduce a regulatory framework. Views differed on whether or not the non-domestic and domestic sectors should be reviewed in unison. We note our joined-up approach in this review does not prevent us from implementing different structures to domestic and non domestic TPIs, given some notable differences in these sectors.

How

6.25. In the summer of 2013 we will publish an *Issues and Options* paper, which will encompass all of the areas mentioned above (in respect of non-domestic and domestic issues). This will discuss the wider review of the TPI market and our options for a regulatory framework that is 'fit for purpose' in light of market developments.

⁸¹ Consumer Focus Confidence code is available here (Ofgem will take over responsibility for this on 25th March 2013):
http://www.consumerfocus.org.uk/assets/1/files/2009/11/154_20081017141314_e_@@_Consumer_Focus_Confidence_Code.pdf

TPI work taken out of RMR

6.26. Moving ahead, the non-domestic TPI Code work will no longer be part of the RMR programme. It will be brought under the umbrella of our wider TPI work. In part, this is because conclusions about the regulatory structure will be required before this Code can be properly implemented and enforced.

Appendices

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Supplementary appendix published separately (Ref 38a/13)

Appendix	Name of Appendix
1	The Retail Market Review – Impact Assessment for the final non-domestic proposals

Appendix 1 – Consultation Response and Questions

1.1. The purpose of this consultation is to seek representations on the effect of Ofgem’s final policy proposals and our envisaged approach to transposing the effect of the proposals into licence conditions. Ofgem would like to hear the views of interested parties, particularly business consumers and business representatives, non-domestic energy suppliers and TPIs.

1.2. In conjunction with this statutory consultation we are also consulting on draft guidance on some of the key terms used in the SOC licence condition. Following a review of consultation responses, we will consider whether to designate the guidance on key terms as guidance subject to the guidance provision.

1.3. Responses should be received by 1 May 2013 and should be sent to:

Jonathon Lines
Retail Markets and Research
Ofgem
9 Millbank
London
SW1P 3GE
rmr@ofgem.gov.uk

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem’s library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: Our statutory consultation on the new licence conditions will close on 1 May 2013. Once we have considered any responses, the Authority will make a final decision on whether to implement the reforms by June. Further details regarding proposed next steps and implementation timelines can be found in the Executive Summary of the main document. Any questions on this document should, in the first instance, be directed to:

Jonathon Lines
Retail Markets and Research
Ofgem



The Retail Market Review – Final non-domestic proposals

9 Millbank
London
SW1P 3GE
rmr@ofgem.gov.uk

Appendix 2 – Summary of consultation responses to The Retail Market Review - Updated proposals for businesses, 26 October 2012

1.7. There were 42 responses to our RMR consultation. We received broad support for most of our proposals. The Standards of Conduct remained the most contentious, although support had increased since our previous consultation in November 2011.

1.8. Suppliers were split on the feasibility of the implementation timetable. A number of third party intermediaries (TPIs) and consumer groups believed the proposed timetable was too long and that any additional delays would be unacceptable.

1.9. All suppliers broadly agreed with our success criteria. Stakeholders were interested in Ofgem publishing objective, quantifiable criteria and wanted to see more surveys of business consumers.

SLC 7A – Protections for small businesses

Expanding SLC 7A

1.10. The majority of respondents were supportive of our proposed definition to expand the number of micro businesses captured by SLC 7A. However, some suppliers preferred a definition based solely on energy consumption, removing the employee and turnover criteria altogether. One TPI also shared this view. They explained that employee and turnover information is not readily available and there is no requirement to ensure businesses provide this information to Companies House.⁸² A number of suppliers said they would be unaffected by the expansion as they already applied the requirements of SLC 7A to larger businesses outside of the definition.

1.11. Consumer groups welcomed the proposals. They reiterated the importance of ensuring consistency between Ofgem, complaints and redress organisations and government. Suppliers raised issues on how they should treat businesses with multiple sites and there were concerns that the expanded protections may limit choices open to the most engaged small business consumers.

1.12. Whilst most respondents had no significant issues with the implementation timescales, a number of suppliers said that they would prefer longer than four

⁸² <http://www.companieshouse.gov.uk/>

months to make the required system changes. One supplier said that it could take them at least 12 months to implement changes to their systems.

1.13. One supplier also made comments on the proposed timescales, specifically in relation to their ability to change contracts during a fixed term period. Another supplier preferred a staggered approach to implementation accounting for the significant changes also required by the domestic RMR proposals.

1.14. Two TPIs were worried by any delay and questioned why it should take suppliers four months to implement changes to their systems.

Contract end dates and termination information on bills

1.15. The majority of respondents were supportive of the proposal for contract end dates and termination information to be displayed on bills for small businesses. A small number of suppliers questioned whether these proposals would provide any significant value for consumers and considered that bills were already crowded with information.

1.16. Some suppliers requested clarification on whether these requirements applied to rolling contracts, and some raised concerns that consumers could be confused about what these dates meant. There were additional comments from a small number of suppliers regarding the significant costs and time associated with system changes, and an increased scope for TPI interference.

Simplification of termination procedures

1.17. Most respondents were supportive of Ofgem requiring suppliers to allow small businesses to give termination notice at any time during their contract, subject to any notice period. A consumer group and supplier highlighted the potential detriment this could cause to consumers if they gave termination notice soon after their contract started, but did not take further action when the contract expired. These consumers could be subject to out of contract or deemed rates.

1.18. Responses were mixed on whether we should amend licence condition 7A.3 to give suppliers the ability to terminate a contract during a fixed term in specific circumstances. The main example referenced was in relation to cases where an increase in electricity consumption would require the installation of half hourly metering. The current licence drafting prohibits this unless there is a mutual agreement between the consumer and supplier to cancel the contract. Other respondents felt that allowing a change to 7A.3 may not benefit consumers.

Customer transfer blocking – Objections

1.19. The majority of suppliers agreed that our current licence condition governing objections to supply transfer (SLC 14) required no changes and that improvements in this area could be driven through industry processes. Two suppliers considered problems were caused by failures to comply with existing rules, and new rules were

not necessary. A minority of responses considered that SLC 14 ought to be strengthened, to limit the suppliers' grounds for objection and improve communication to consumers.

1.20. Respondents were broadly supportive of Ofgem collecting data from industry sources to improve our monitoring of objections. But there were concerns over the robustness and accuracy of this data from third parties and some considered we should continue to collect data from suppliers to supplement this. There were wider concerns among suppliers regarding whether Ofgem should publish objections data. A significant number argued that it could be easily misinterpreted and of little value to consumers. However, consumer groups and TPIs supported publishing objections data.

Standards of Conduct

1.21. Our proposals to introduce binding Standards of Conduct (SOC) for billing, contracting and transfers for small businesses were, in general, more positively received than our previous consultation in November 2011. More than half of respondents supported our proposals in principle, especially consumer groups. A significant minority were opposed to the SOC; particularly suppliers that only operated in the non-domestic market.

1.22. Suppliers who opposed the SOC felt the non-domestic market showed greater signs of competition than the domestic market, and in instances where customers were unhappy, consumers would switch supplier. Some suppliers were more supportive of our proposals, although this was contingent on clarification of our enforcement approach. One supplier was against the SOC and supported self-regulation. The perceived regulatory risk was a key concern for many suppliers.

1.23. Suppliers particularly wanted more clarity on enforcement. Without this they consider they would be exposed to regulatory risk and unable to judge if they are compliant with the SOC. Suppliers were more in favour of a two-stage approach to enforcement involving initial dialogue with Ofgem and an opportunity to remedy any problem areas. Suppliers also requested further clarification of how enforcement would work if SOC took effect immediately as proposed.

1.24. Both suppliers and a consumer groups requested greater clarity over the terms used in the proposed SOC, including definitions of billing, contracts and transfers. Some respondents felt that the proposed drafting and terminology were too open to interpretation. They also requested more detail on the reasonable person test and additional guidance, including examples of what compliance and non-compliance would look like in practice.

1.25. The majority of respondents agreed that the proposed SOC should be limited to the areas of billing, contracting and customer transfers. Respondents also generally agreed with our assessment that the majority of problems in the market were focussed on smaller businesses and that the SOC should cover only these businesses. A small number of respondents still believed that the SOC should apply

to all non-domestic consumers and cover all interactions between the supplier and consumer.

Third party intermediaries

1.26. There was unanimous support for Ofgem to develop options for a single code of practice for TPIs operating in the non-domestic market. Similarly there was almost undisputed support for this code to apply to all TPIs in the market regardless of the size of the consumer.

1.27. There was strong agreement that this code should be governed by an independent body - most considered this should be Ofgem, particularly if we obtain powers to enforce certain parts of the Business Protection from Misleading Marketing Regulations 2008 (BPMMRs). There were also suggestions that alternative bodies could be appointed to administer the code.

1.28. A number of suppliers and TPIs said that a code of practice should be backed by a licence condition requiring suppliers to only work with TPIs accredited to the code.

1.29. Respondents were supportive of a wider TPI review although there was a range of views on whether the domestic and non-domestic should both be included in its scope. One view noted that the European Union are proposing to regulate TPIs and we should consider consistency with their approach.

Appendix 3 – Statutory Consultation

Notice for Gas Supply

The purpose of this appendix is to provide stakeholders with full details of how Ofgem envisages transposing the RMR non-domestic proposals into licence conditions. The table below provides a summary of each licence condition (in numerical order) that would be modified or inserted in respect of the RMR proposals.

<u>Licence condition</u>	<u>Status</u>	<u>RMR proposals</u>
1	Modification of existing provision	
7A	Amendments to existing definitions and new provisions added	Expanding protections for micro business customers
7B	New Condition	Non-domestic standards of conduct

To: All holders of a gas supply licence who are in respect of any one or more modification relevant licence holders for the purposes of section 23(12) of the Gas Act 1986.

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

WHEREAS:

1. Each of the companies to whom this notice is addressed holds a gas supply licence granted, or treated as granted, pursuant to section 7A(1) of the Gas Act 1986 (the "Act").
2. In accordance with section 23(2), (3) and (4) of the Act, the Gas and Electricity Markets Authority (the "Authority") gives notice ("Notice") that it proposes to modify the standard conditions of the gas supply licence by:
 - (a) modifying standard condition 1;
 - (b) modifying standard condition 7A; and
 - (c) inserting new standard condition 7B.
3. Subject to responses to the statutory consultation, in the event that the Authority decides to proceed with the modifications, it is intended that the modifications will take effect on the following dates (which in the event that the Authority ultimately decides to make licence modification, will all be dates which are at least 56 days after the date on which the Authority's decision is published):

Modifications	Date
Standard condition 1	A date which is 56 days after the date on which the Authority's decision is published.
Standard condition 7A (including paragraph 7A.14 of standard condition 7A for the purposes of standard condition 7A)	A date which is 206 days after the date on which the Authority's decision is published.
Paragraph 7A.14 of standard condition 7A (for the purposes of standard condition 7B)	A date which is 56 days after the date on which the Authority's decision is published.
Standard condition 7B	A date which is 56 days after the date on which the Authority's decision is published.

4. The reasons why the Authority proposes these modifications have been published by the Authority in the following documents:

(a) The Retail Market Review – Final non-domestic proposals (38/13), 22 March 2013;

(b) The Retail Market Review – Updated proposals for businesses (134/12), 26 October 2012;

(c) The Retail Market Review: Non-domestic Proposals (157/11), 1 December 2011;

(d) The Retail Market Review – Findings and Initial Proposals (34/11), 21 March 2011;

These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003) or from the Ofgem website at www.ofgem.gov.uk.

5. The effects of the proposed licence modifications are described in the documents referred to in paragraph 4 of this Notice and, in particular, the following document: The Retail Market Review – Final non-domestic proposals (38/13), 22 March 2013.

These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003) or from the Ofgem website at www.ofgem.gov.uk.

6. The envisaged text for the proposed modifications is set out in the schedule to this Notice.

7. Any representations on the proposed modifications may be made on or before 1 May 2013 and sent to:

Jonathon Lines
Ofgem
9 Millbank
London SW1P 3GE
Or by email to rmr@ofgem.gov.uk

Colin Sausman
Partner Retail Markets & Research
Ofgem

Authorised on behalf of the Authority

22 March 2013

SCHEDULE

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

1. Modifications to standard condition 1

The text below which is highlighted by track changes constitutes the envisaged modifications to standard condition 1 (insertions are shown by underlined text in red):

Affiliate Gas Licensee means any Subsidiary, Holding Company, or Subsidiary of a Holding Company of the licensee which holds a gas supply licence granted or treated as granted pursuant to section 7A(1) of the Gas Act 1986.

2. Modifications to standard condition 7A

The text below which is highlighted by track changes constitutes the envisaged modifications to standard condition 7A (insertions are shown by underlined text in red and deletions are shown by strikethrough text):

Condition 7A. Supply to Micro Business Consumers

Identification and treatment of Micro Business Consumers

7A.1 If the licensee intends to:

- (a) enter into a Non-Domestic Supply Contract with a Customer; or
- (b) extend the duration of a Non-Domestic Supply Contract (including the duration of any fixed term period which may form part of a Contract of an indefinite length)

the licensee must either take all reasonable steps to identify whether that Non-Domestic Customer is a Micro Business Consumer, or deem that Non-Domestic Customer to be a Micro Business Consumer.

7A.2 Where any Contract or Contract extension as described in paragraph 7A.1 is entered into with a Non-Domestic Customer that has been identified as, or deemed to be, a Micro Business Consumer, that Contract shall be a “Micro Business Consumer Contract” for the purposes of this Condition.

7A.3 The licensee must not include a term in a Micro Business Consumer Contract which enables it to terminate the Contract or apply different terms and conditions to that Contract during a fixed term period on the grounds that the Customer no longer satisfies the definition of Micro Business Consumer.

Notification of Micro Business Consumer Contract terms and other information

7A.4 Before the licensee enters into a Micro Business Consumer Contract, it must take all reasonable steps to bring the following information to the attention of the Micro Business Consumer and ensure that the information is communicated in plain and intelligible language:

- (a) a statement to the effect that the licensee is seeking to enter into a legally binding Contract with the Micro Business Consumer; and
- (b) the Principal Terms of the proposed Contract.

7A.5 The licensee must ensure that all the express terms and conditions of a Micro Business Consumer Contract are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

- 7A.6 Where the licensee enters into, or extends the duration of, a Micro Business Consumer Contract for a fixed term period, it must prepare a statement (hereafter referred to as a “Statement of Renewal Terms”) which:
- (a) is set out in Writing;
 - (b) is drafted in plain and intelligible language;
 - (c) displays the following information in a prominent manner:
 - (i) the date the fixed term period is due to end, or if that date is not ascertainable the duration of the fixed term period;
 - (ii) the Relevant Date, or if not known at the time of providing the Statement of Renewal Terms, a description of how the Relevant Date will be calculated by reference to the end of the fixed term period;
 - (iii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee at any time before the Relevant Date in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies;
 - (iv) a postal and Electronic Communication address to which the Customer may send a notification in Writing for that purpose; and
 - (v) a statement explaining the consequences of the Micro Business Consumer not renewing the Micro Business Consumer Contract or agreeing a new Contract before the Relevant Date.
- 7A.7 Where the licensee enters into or extends the duration (including the duration of any fixed term period) of a Micro Business Consumer Contract, it must take all reasonable steps to provide the Micro Business Consumer with the following information within 10 days, or do so as soon as reasonably practicable thereafter:
- (a) a copy of all the express terms and conditions of the Micro Business Consumer Contract; and
 - (b) if the Micro Business Consumer Contract contains a fixed term period, the Statement of Renewal Terms.
- 7A.8 On or about 30 days before the Relevant Date, the licensee must provide the Micro Business Consumer with:
- (a) the Statement of Renewal Terms (unless the licensee has already prevented the Micro Business Consumer from extending the duration of the Micro Business Consumer Contract);

- (b) a copy of any relevant Principal Terms that might apply to the Micro Business Consumer after the fixed term period of the Micro Business Consumer Contract ends, including:
 - (i) terms that would apply in the event the Customer does nothing;
 - (ii) terms that would apply if the Customer sends (or has already sent) a notification in Writing before the Relevant Date to prevent renewal of the Micro Business Consumer Contract but does not appoint another supplier.

7A.9 Where pursuant to paragraph 7A.8 the licensee is required to provide a Micro Business Consumer with any relevant Principal Terms, it must ensure that the Principal Terms are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

7A.10 Where pursuant to paragraph 7A.8(b) the licensee provides a Micro Business Consumer with any offers of terms that relate to Charges for the Supply of Gas, it must ensure that at least one offer is made in Writing which may be accepted at any time before the Relevant Date.

Information on Bills etc

7A.10A Where the licensee has entered into a Micro Business Consumer Contract for a fixed term period, the licensee must provide the information specified in paragraph 10B on each Bill and statement of account and display that information in a prominent position and ensure that it is drafted in plain and intelligible language.

7A.10B The specified information is:

- (a) the date the fixed term period of a Non-Domestic Supply Contract is due to end;
- (b) where the licensee has entered into a Micro Business Consumer Contract for a fixed term period and it may, in accordance with that Micro Business Consumer Contract, be extended for a further fixed term period:
 - (i) the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Consumer Contract);
 - (ii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee before the Relevant Date (or, where applicable, such a later date as may be specified in the Non-Domestic Supply Contract) in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and

(c) where the licensee has entered into a Micro Business Consumer Contract for a fixed term period and it does not have the ability to extend that contract for a further fixed term period:

(i) the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and

(ii) a statement to the effect that this is the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies.

Length of notice periods in Micro Business Consumer Contracts

7A.11 The notice period for termination of a Micro Business Consumer Contract must be no longer than 90 days.

7A.12 Paragraph 7A.11 is without prejudice to the licensee's ability to enter into a Micro Business Consumer Contract with a Customer for a fixed term period which is longer than 90 days.

Termination of Micro Business Consumer Contracts for a period of indefinite length

7A.12A Without prejudice to any notice period that complies with paragraph 7A.11, in relation to any Micro Business Consumer Contract that does not include a fixed term period, the licensee must ensure that the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.

Termination of Micro Business Consumer Contracts for a fixed term period

7A.12B In relation to any Micro Business Consumer Contract which includes a fixed term period, the licensee must ensure that:

(a) a Micro Business Consumer is entitled to give notice of termination before the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Supply Contract) in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and

(b) without prejudice to any notice period which complies with paragraph 7A.11, if, at the end of any fixed term period, a Micro Business Consumer is not subject to a further fixed term period, the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.

Extending the duration of Micro Business Consumer Contracts

7A.13 Where the licensee has entered into a Micro Business Consumer Contract for a fixed term period, it may only extend the duration of that Contract for a further fixed term period if:

(a) it has complied with paragraphs 7A.7 and 7A.8;

(b) the Micro Business Consumer has not sent the licensee a notification in Writing before the Relevant Date in order to prevent it from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and

(c) the duration of the further fixed term period is 12 months or less.

Definitions for condition

7A.14 In this condition:

“Micro Business Consumer”

means a Non-Domestic Customer:

(a) which is a ~~has the meaning given to~~ “relevant consumer” (in respect of premises other than domestic premises) for the purposes of ~~in~~ article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268); or

(b) which has an annual consumption of gas of not more than 293,000 kWh.

“Relevant Date”

means the date which is at least 30 days, and no longer than 90 days, before the date any fixed term period of a Micro Business Consumer Contract is due to end.

2. Insertion of new standard condition 7B

The underlined text set out below constitutes the envisaged drafting in respect of the proposed insertion of condition 7B in the standard conditions of the gas supply licence:

Standard Condition 7B – Customer Objective and Standards of Conduct for non-domestic supply activities

Application of standard condition

7B.1 Standard condition 7B applies to all Designated Activities in respect of a Micro Business Consumer.

Customer Objective

7B.2 The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated fairly ('the Customer Objective').

7B.3 For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer fairly if their actions or omissions:

- (a) significantly favour the interests of the licensee; and
- (b) give rise to a likelihood of detriment to the Micro Business Consumer.

Standards of Conduct

7B.4 The Standards of Conduct are that:

(a) the licensee behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;

(b) the licensee provides information (whether in Writing or orally) to each Micro Business Consumer which:

(i) is complete, accurate and not misleading (in terms of the information provided or omitted);

(ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language;

(iii) relates to products or services which are appropriate to the Micro Business Consumer to whom it is directed; and

(iv) is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);

(c) the licensee:

(i) makes it easy for a Micro Business Consumer to contact the licensee,

- (ii) acts promptly to put things right when the licensee makes a mistake, and
- (iii) otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.

Compliance with the Standards of Conduct

7B.5 The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective.

7B.6 In the event of a conflict between this condition and paragraph 14.2 of standard condition 14, this condition will prevail.

Exception to scope of condition

7B.7 Apart from any matters relating to Deemed Contracts, standard condition 7B does not apply in respect of the amount or amounts of any Charges for the Supply of Gas or any other type of charge.

Provision and publication of information

7B.8 The licensee must prepare and update annually information (hereafter referred to as the "Treating Customers Fairly Statement") which:

- (a) is set out in Writing;
- (b) uses a heading which clearly highlights that the information relates to how the licensee is seeking to treat customers fairly; and
- (c) includes the following information:
 - (i) the main actions taken and being taken by the licensee in line with the Customer Objective and Standards of Conduct; and
 - (ii) the service and treatment Micro Business Consumers can expect from the licensee.

7B.9 If the licensee or any Affiliate Gas Licensee has a Website, the licensee must publish the Treating Customers Fairly Statement on that Website in a position that is capable of easily being accessed by any person.

7B.10 If any person requests a copy of Treating Customers Fairly Statement, the licensee must provide a Written copy to that person free of charge as soon as reasonably practicable.

Guidance

7B.11 The licensee must have regard to any guidance on standard condition 7B (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect),

the Authority may issue and may from time to time revise (following further consultation).

Definitions for condition

7B.12 For the purposes of this condition:

“Billing” all matters relating to the provision of a Bill or statement of account to a Customer, including the content and calculations relating to such a Bill or statement of account and the collection and use of information relating to the consumption of gas.

“Contractual Information” includes the drafting and content of a Non-domestic Supply Contract or Deemed Contract and the provision of information relating to the Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer which is being supplied by the licensee.

“Customer Objective” is to be interpreted in accordance with paragraph 7B.2.

“Customer Transfers” includes, but is not limited to, any matters that relate to a Customer’s ability to change supplier and/or affect the timeframe for changing supplier (including related terms and conditions of a Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer).

“Designated Activities” mean each of the following:

- (a) the accuracy of a Bill or statement of Account;
- (b) the timeframe for a Micro Business Consumer receiving a Bill or statement of account and the timeframe for the payment of a Bill;
- (c) any written or oral communications regarding Billing or Contractual Information;
- (d) Customer Transfers;
- (e) any matters relating to Deemed Contracts; and
- (f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer).

“Fair” and cognate expressions are to be interpreted in accordance with paragraph 7B.3.

“Micro Business Consumer” has the meaning given in standard condition 7A.

“Standards of Conduct” means one or more of sub-paragraphs 7B.4(a) to (c).

“Treating Customers Fairly Statement” is to be interpreted in accordance with paragraph 7B.8.

Appendix 4 – Statutory Consultation Notice for Electricity Supply

The purpose of this appendix is to provide stakeholders with full details of how Ofgem envisages transposing the RMR non-domestic proposals into licence conditions. The table below provides a summary of each licence condition (in numerical order) that would be modified or inserted in respect of the RMR proposals.

<u>Licence condition</u>	<u>Status</u>	<u>RMR proposals</u>
1	Modification of existing provision	
7A	Amendments to existing definitions and new provisions added	Expanding protections for micro business customers
7B	New Condition	Non-domestic standards of conduct

To: All holders of an electricity supply licence who are relevant licence holders for the purposes of section 11A(10) of the Electricity Act 1989.

NOTICE OF PROPOSED MODIFICATION PURSUANT TO SECTION 11A OF THE ELECTRICITY ACT 1989 OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 6(1)(d) OF THE ELECTRICITY ACT 1989.

WHEREAS:

1. Each of the companies to whom this notice is addressed holds an electricity supply licence granted, or treated as granted, pursuant to section 6(1)(d) of the Electricity Act 1989 (the “Act”).

2. In accordance with section 11A (2), (3) and (4) of the Act, the Gas and Electricity Markets Authority (the “Authority”) gives notice (“Notice”) that it proposes to modify the standard conditions of the electricity supply licence by:

- (a) modifying standard condition 1;
- (b) modifying standard condition 7A; and
- (c) inserting new standard condition 7B.

3. Subject to responses to the statutory consultation, in the event that the Authority decides to proceed with the modifications, it is intended that the modifications will take effect on the following dates (which in the event that the Authority ultimately decides to make licence modification, will all be dates which are at least 56 days after the date on which the Authority’s decision is published):

Modifications	Date
Standard condition 1	A date which is 56 days after the date on which the Authority’s decision is published.
Standard condition 7A (including paragraph 7A.14 of standard condition 7A for the purposes of standard condition 7A)	A date which is 206 days after the date on which the Authority’s decision is published.
Paragraph 7A.14 of standard condition 7A (for the purposes of standard condition 7B)	A date which is 56 days after the date on which the Authority’s decision is published.
Standard condition 7B	A date which is 56 days after the date on which the Authority’s decision is published.

4. The reasons why the Authority proposes these modifications have been published by the Authority in the following documents:

(a) The Retail Market Review – Final non-domestic proposals (38/13), 22 March 2013;

(b) The Retail Market Review – Updated proposals for businesses (134/12), 26 October 2012;

(c) The Retail Market Review: Non-domestic Proposals (157/11), 1 December 2011;

(d) The Retail Market Review – Findings and Initial Proposals (34/11), 21 March 2011;

These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003) or from the Ofgem website at www.ofgem.gov.uk.

5. The effects of the proposed licence modifications are described in the documents referred to in paragraph 4 of this Notice and, in particular, the following document: The Retail Market Review – Final non-domestic proposals (38/13), 22 March 2013.

These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003) or from the Ofgem website at www.ofgem.gov.uk.

6. The envisaged text for the proposed modifications is set out in the schedule to this Notice.

7. Any representations on the proposed modifications may be made on or before 1 May 2013 and sent to:

Jonathon Lines
Ofgem
9 Millbank
London SW1P 3GE
Or by email to rmr@ofgem.gov.uk

Colin Sausman
Partner Retail Markets & Research
Ofgem

Authorised on behalf of the Authority

22 March 2013

SCHEDULE

PROPOSED MODIFICATION PURSUANT TO SECTION 11A OF THE ELECTRICITY ACT 1989 OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCE GRANTED OR TREATED AS GRANTED UNDER SECTION 6(1)(d) OF THE ELECTRICITY ACT 1989.

1. Modifications to standard condition 1

The text below which is highlighted by track changes constitutes the envisaged modifications to standard condition 1 (insertions are shown by underlined text in red):

Affiliate Electricity Licensee means any Subsidiary, Holding Company, or Subsidiary of a Holding Company of the licensee which holds an electricity supply licence granted or treated as granted pursuant to section 6(1)(d) of the Electricity Act 1989.

2. Modifications to standard condition 7A

The text below which is highlighted by track changes constitutes the envisaged modifications to standard condition 7A (insertions are shown by underlined text in red and deletions are shown by strikethrough text):

Condition 7A. Supply to Micro Business Consumers

Identification and treatment of Micro Business Consumers

7A.1 If the licensee intends to:

- (a) enter into a Non-Domestic Supply Contract with a Customer; or
- (b) extend the duration of a Non-Domestic Supply Contract (including the duration of any fixed term period which may form part of a Contract of an indefinite length)

the licensee must either take all reasonable steps to identify whether that Non-Domestic Customer is a Micro Business Consumer, or deem that Non-Domestic Customer to be a Micro Business Consumer.

7A.2 Where any Contract or Contract extension as described in paragraph 7A.1 is entered into with a Non-Domestic Customer that has been identified as, or deemed to be, a Micro Business Consumer, that Contract shall be a “Micro Business Consumer Contract” for the purposes of this Condition.

7A.3 The licensee must not include a term in a Micro Business Consumer Contract which enables it to terminate the Contract or apply different terms and conditions to that Contract during a fixed term period on the grounds that the Customer no longer satisfies the definition of Micro Business Consumer.

Notification of Micro Business Consumer Contract terms and other information

7A.4 Before the licensee enters into a Micro Business Consumer Contract, it must take all reasonable steps to bring the following information to the attention of the Micro Business Consumer and ensure that the information is communicated in plain and intelligible language:

- (a) a statement to the effect that the licensee is seeking to enter into a legally binding Contract with the Micro Business Consumer; and
- (b) the Principal Terms of the proposed Contract.

7A.5 The licensee must ensure that all the express terms and conditions of a Micro Business Consumer Contract are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

- 7A.6 Where the licensee enters into, or extends the duration of, a Micro Business Consumer Contract for a fixed term period, it must prepare a statement (hereafter referred to as a "Statement of Renewal Terms") which:
- (a) is set out in Writing;
 - (b) is drafted in plain and intelligible language;
 - (c) displays the following information in a prominent manner:
 - (i) the date the fixed term period is due to end, or if that date is not ascertainable the duration of the fixed term period;
 - (ii) the Relevant Date, or if not known at the time of providing the Statement of Renewal Terms, a description of how the Relevant Date will be calculated by reference to the end of the fixed term period;
 - (iii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee at any time before the Relevant Date in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies;
 - (iv) a postal and Electronic Communication address to which the Customer may send a notification in Writing for that purpose; and
 - (v) a statement explaining the consequences of the Micro Business Consumer not renewing the Micro Business Consumer Contract or agreeing a new Contract before the Relevant Date.
- 7A.7 Where the licensee enters into or extends the duration (including the duration of any fixed term period) of a Micro Business Consumer Contract, it must take all reasonable steps to provide the Micro Business Consumer with the following information within 10 days, or do so as soon as reasonably practicable thereafter:
- (a) a copy of all the express terms and conditions of the Micro Business Consumer Contract; and
 - (b) if the Micro Business Consumer Contract contains a fixed term period, the Statement of Renewal Terms.
- 7A.8 On or about 30 days before the Relevant Date, the licensee must provide the Micro Business Consumer with:
- (a) the Statement of Renewal Terms (unless the licensee has already prevented the Micro Business Consumer from extending the duration of the Micro Business Consumer Contract);

- (b) a copy of any relevant Principal Terms that might apply to the Micro Business Consumer after the fixed term period of the Micro Business Consumer Contract ends, including:
 - (i) terms that would apply in the event the Customer does nothing;
 - (ii) terms that would apply if the Customer sends (or has already sent) a notification in Writing before the Relevant Date to prevent renewal of the Micro Business Consumer Contract but does not appoint another supplier.

7A.9 Where pursuant to paragraph 7A.8 the licensee is required to provide a Micro Business Consumer with any relevant Principal Terms, it must ensure that the Principal Terms are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

7A.10 Where pursuant to paragraph 7A.8(b) the licensee provides a Micro Business Consumer with any offers of terms that relate to Charges for the Supply of Electricity, it must ensure that at least one offer is made in Writing which may be accepted at any time before the Relevant Date.

Information on Bills etc

7A.10A Where the licensee has entered into a Micro Business Consumer Contract for a fixed term period, the licensee must provide the information specified in paragraph 10B on each Bill and statement of account and display that information in a prominent position and ensure that it is drafted in plain and intelligible language.

7A.10B The specified information is:

- (a) the date the fixed term period of a Non-Domestic Supply Contract is due to end;
- (b) where the licensee has entered into a Micro Business Consumer Contract for a fixed term period and it may, in accordance with that Micro Business Consumer Contract, be extended for a further fixed term period:
 - (i) the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Consumer Contract);
 - (ii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee before the Relevant Date (or, where applicable, such a later date as may be specified in the Non-Domestic Supply Contract) in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and

(c) where the licensee has entered into a Micro Business Consumer Contract for a fixed term period and it does not have the ability to extend that Micro Business Consumer Contract for a further fixed term period:

(i) the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and

(ii) a statement to the effect that this is the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies.

Length of notice periods in Micro Business Consumer Contracts

7A.11 The notice period for termination of a Micro Business Consumer Contract must be no longer than 90 days.

7A.12 Paragraph 7A.11 is without prejudice to the licensee's ability to enter into a Micro Business Consumer Contract with a Customer for a fixed term period which is longer than 90 days.

Termination of Micro Business Consumer Contracts for a period of indefinite length

7A.12A Without prejudice to any notice period that complies with paragraph 7A.11, in relation to any Micro Business Consumer Contract that does not include a fixed term period, the licensee must ensure that the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.

Termination of Micro Business Consumer Contracts for a fixed term period

7A.12B In relation to any Micro Business Consumer Contract which includes a fixed term period, the licensee must ensure that:

(a) a Micro Business Consumer is entitled to give notice of termination before the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Supply Contract) in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and

(b) without prejudice to any notice period which complies with paragraph 7A.11, if, at the end of any fixed term period, a Micro Business Consumer is not subject to a further fixed term period, the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.

Extending the duration of Micro Business Consumer Contracts

7A.13 Where the licensee has entered into a Micro Business Consumer Contract for a fixed term period, it may only extend the duration of that Contract for a further fixed term period if:

- (a) it has complied with paragraphs 7A.7 and 7A.8;
- (b) the Micro Business Consumer has not sent the licensee a notification in Writing before the Relevant Date in order to prevent it from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and
- (c) the duration of the further fixed term period is 12 months or less.

Definitions for condition

7A.14 In this condition:

- | | |
|---------------------------|---|
| “Micro Business Consumer” | <u>means a Non-Domestic Customer:</u>
<u>(a) which is a</u> has the meaning given to “relevant consumer” (in respect of premises other than domestic premises) <u>for the purposes of</u> in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268); <u>or</u>
<u>(b) which has an annual consumption of not more than 100,000 kWh.</u> |
| “Relevant Date” | means the date which is at least 30 days, and no longer than 90 days, before the date any fixed term period of a Micro Business Consumer Contract is due to end. |

2. Insertion of new standard condition 7B

The text set out below in red constitutes the envisaged drafting in respect of the proposed insertion of condition 7B in the standard conditions of the electricity supply licence:

Standard Condition 7B – Customer Objective and Standards of Conduct for non-domestic supply activities

Application of standard condition

7B.1 Standard condition 7B applies to all Designated Activities in respect of a Micro Business Consumer.

Customer Objective

7B.2 The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated fairly ('the Customer Objective').

7B.3 For the purposes of this condition, the licensee would not be regarded as treating a Micro Business Consumer fairly if their actions or omissions:

- (a) significantly favour the interests of the licensee; and
- (b) give rise to a likelihood of detriment to the Micro Business Consumer.

Standards of Conduct

7B.4 The Standards of Conduct are that:

(a) the licensee behaves and carries out any actions in a Fair, honest, transparent, appropriate and professional manner;

(b) the licensee provides information (whether in Writing or orally) to each Micro Business Consumer which:

(i) is complete, accurate and not misleading (in terms of the information provided or omitted);

(ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language;

(iii) relates to products or services which are appropriate to the Micro Business Consumer to whom it is directed; and

(iv) is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence);

(c) the licensee:

(i) makes it easy for a Micro Business Consumer to contact the licensee,

- (ii) acts promptly to put things right when the licensee makes a mistake, and
- (iii) otherwise ensures that customer service arrangements and processes are fit for purpose and transparent.

Compliance with the Standards of Conduct

7B.5 The licensee must take all reasonable steps to achieve the Standards of Conduct and ensure that it interprets and applies the Standards of Conduct in a manner consistent with the Customer Objective.

7B.6 In the event of a conflict between this condition and paragraph 14.2 of standard condition 14, this condition will prevail.

Exception to scope of condition

7B.7 Apart from any matters relating to Deemed Contracts, standard condition 7B does not apply in respect of the amount or amounts of any Charges for the Supply of Electricity or any other type of charge.

Provision and publication of information

7B.8 The licensee must prepare and update annually information (hereafter referred to as the "Treating Customers Fairly Statement") which:

- (a) is set out in Writing;
- (b) uses a heading which clearly highlights that the information relates to how the licensee is seeking to treat customers fairly; and
- (c) includes the following information:
 - (i) the main actions taken and being taken by the licensee in line with the Customer Objective and Standards of Conduct; and
 - (ii) the service and treatment Micro Business Consumers can expect from the licensee.

7B.9 If the licensee or any Affiliate Electricity Licensee has a Website, the licensee must publish the Treating Customers Fairly Statement on that Website in a position that is capable of easily being accessed by any person.

7B.10 If any person requests a copy of Treating Customers Fairly Statement, the licensee must provide a Written copy to that person free of charge as soon as reasonably practicable.

Guidance

7B.11 The licensee must have regard to any guidance on standard condition 7B (including in respect of definitions which appear in standard condition 1) which, following consultation (which may be conducted before this condition takes effect),

the Authority may issue and may from time to time revise (following further consultation).

Definitions for condition

7B.12 For the purposes of this condition:

“Billing” all matters relating to the provision of a Bill or statement of account to a Customer, including the content and calculations relating to such a Bill or statement of account and the collection and use of information relating to the consumption of electricity.

“Contractual Information” includes the drafting and content of a Non-domestic Supply Contract or Deemed Contract and the provision of information relating to the Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer which is being supplied by the licensee.

“Customer Objective” is to be interpreted in accordance with paragraph 7B.2.

“Customer Transfers” includes, but is not limited to, any matters that relate to a Customer’s ability to change supplier and/or affect the timeframe for changing supplier (including related terms and conditions of a Non-domestic Supply Contract or Deemed Contract that applies to a Micro Business Consumer).

“Designated Activities” mean each of the following:

- (a) the accuracy of a Bill or statement of Account;
- (b) the timeframe for a Micro Business Consumer receiving a Bill or statement of account and the timeframe for the payment of a Bill;
- (c) any written or oral communications regarding Billing or Contractual Information;
- (d) Customer Transfers;
- (e) any matters relating to Deemed Contracts; and
- (f) any matters which fall within the scope of standard conditions 7A, 14, 14A and 21B (in so far as they relate to a Micro Business Consumer).

“Fair” and cognate expressions are to be interpreted in accordance with paragraph 7B.3.

“Micro Business Consumer” has the meaning given in standard condition 7A.

“Standards of Conduct” means one or more of sub-paragraphs 7B.4(a) to (c).

“Treating Customers Fairly Statement” is to be interpreted in accordance with paragraph 7B.8.

Appendix 5 – Proposed Guidance for Standards of Conduct

1.30. The content below represents proposed guidance relating to the proposed licence condition on Standards of Conduct. We consider this guidance will help provide further clarity regarding how some of the terminology used in this licence condition should be interpreted. As part of this consultation we are seeking views on this proposed guidance.

Illustrative guidance on concepts used in Standards of Conduct

<i>Expression</i>	<i>Illustrative guidance</i>
"honest" and "transparent"	<p>The requirements to be honest and transparent encapsulate the following:</p> <p>Honesty requires that the actions and omissions of a supplier are truthful, free of any form of deceit, and sincere. Transparency requires that information about a product (including the terms and conditions) is expressed fully, and in a manner which is clear and easy to understand and which avoids concealed pitfalls or traps.</p> <p>When communicating directly with consumers, acting in a transparent manner would include (but not be limited to) proactively providing consumers with appropriate and/or relevant information (orally or in writing) to make them aware of their rights and the supplier's obligations. It would also encapsulate actively responding to any questions.</p> <p>Transparency and honesty would require appropriate and prominent signalling to be given to aspects of a product or contractual rights which might operate to the disadvantage of the customer. It also requires that a supplier does not, whether deliberately or unconsciously, take advantage of the customer's necessity or desperation, lack of experience or knowledge, unfamiliarity with the subject matter of the product, or weak bargaining position.</p>

	<p>An example of transparency and honesty would be for the supplier to disclose all relevant information the supplier has in response to a consumer’s query via telephone even if this information does not favour the supplier. This query may relate to the price of the product or the quality of service provided by the supplier.</p>
<p>“appropriate”</p>	<p>Encapsulates adapting behaviour to take into account particular circumstances arising in a given situation, including but not limited to: cultural or other sensitivities, the position of vulnerability, disabilities or intellectual and technical (includes IT skills and having access to the internet), and capabilities of consumers.</p> <p>An example of when a supplier may be insensitive to a consumer’s circumstances when they are in a vulnerable position may include where a consumer is in financial difficulty, are suffering from stress and/or are in debt.</p> <p>An example of inappropriate behaviour in this scenario would involve the supplier’s customer service representative adopting an aggressive/rude tone when speaking to a consumer on the phone.</p>
<p>“professional manner”</p>	<p>Encapsulates acting with reasonable care and skill, having good knowledge of the product and relevant aspects of the energy sector, dealing with consumers in a courteous manner and having relevant knowledge of the rights of consumers’ and supplier’s obligations.</p> <p>It also covers matters of taste and decency. The behaviour should not put the industry in disrepute.</p> <p>Aggressive, intimidating, rude or condescending behaviour would be examples of acting contrary to this requirement.</p>

<p>“plain and intelligible language”</p>	<p>As per the SLC 7A guidance, we would look to the interpretation the Court and the Office of Fair Trading (OFT) have taken in the context of the Unfair Terms in Consumer Contracts Regulations 1999.</p> <p>For example, plain and intelligible language requires:</p> <p><i>“...not only that the actual wording of individual clauses or conditions be comprehensible to consumers, but that the typical consumer can understand how the term affects the rights and obligations that he and the seller or supplier have under the contract...I would consider it proper when assessing whether terms are in plain intelligible language to take into account clear and accessible presentation with, for example, useful headings and appropriate use of bold print, which can contribute to the intelligibility to the typical consumer of the language.”</i></p>
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Appendix 6 - The Authority's Powers and Duties

1.31. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority (“the Authority”), the regulator of the gas and electricity industries in Great Britain. This appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.32. The Authority's powers and duties are largely provided for in statute (such as the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Acts of 2004, 2008 and 2010) as well as arising from directly effective European Community legislation.

1.33. References to the Gas Act and the Electricity Act in this appendix are to Part 1 of those Acts.⁸³ Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This appendix must be read accordingly.⁸⁴

1.34. The Authority's principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases and in the security of the supply of gas and electricity to them.

1.35. The Authority is generally required to carry out its functions in the manner it considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or commercial activities connected with,

- the shipping, transportation or supply of gas conveyed through pipes;
- the generation, transmission, distribution or supply of electricity;
- the provision or use of electricity interconnectors.

1.36. Before deciding to carry out its functions in a particular manner with a view to promoting competition, the Authority will have to consider the extent to which the interests of consumers would be protected by that manner of carrying out those functions and whether there is any other manner (whether or not it would promote

⁸³ Entitled “Gas Supply” and “Electricity Supply” respectively.

⁸⁴ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

competition) in which the Authority could carry out those functions which would better protect those interests.

1.37. In performing these duties, the Authority must have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them⁸⁵; and
- the need to contribute to the achievement of sustainable development.

1.38. In performing these duties, the Authority must have regard to the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.⁸⁶

1.39. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed⁸⁷ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and secure a diverse and viable long-term energy supply, and shall, in carrying out those functions, have regard to the effect on the environment.

1.40. In carrying out these functions the Authority must also have regard to:

- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.41. The Authority may, in carrying out a function under the Gas Act and the Electricity Act, have regard to any interests of consumers in relation to communications services and electronic communications apparatus or to water or

⁸⁵ Under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Acts in the case of Electricity Act functions.

⁸⁶ The Authority may have regard to other descriptions of consumers.

⁸⁷ Or persons authorised by exemptions to carry on any activity.

sewerage services (within the meaning of the Water Industry Act 1991), which are affected by the carrying out of that function.

1.42. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation⁸⁸ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

⁸⁸ Council Regulation (EC) 1/2003.

Appendix 7 – Glossary

A

Advanced Meter

A meter that, as defined in SLC 12, is capable of recording consumption at a high level of granularity, at least half-hourly for electricity and hourly for gas. Advanced meters must also be able to provide suppliers with remote access to this data.

B

Business Protection from Misleading Marketing Regulations (BPMMR) powers

Statutory powers that prohibit businesses from advertising products in a way that misleads traders and set out conditions under which comparative advertising, to consumers and businesses, is permitted.

C

Citizens Advice

A free service to give information and advice to consumers about their energy concerns, as well as other problems.

Code of Practice

A set of guidelines and principles to be followed by members of some profession, trade, or group.

Collective switching

Switching consumers as a collective in order to negotiate a cheaper deal.

The Confidence Code

A voluntary code of practice for online domestic price comparison services.

Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland formed by The Consumers, Estate Agents and Redress (CEAR) Act 2007.

D

Deemed contracts

A deemed contract is normally in place when any type of customer moves in to new premises and starts to consume gas and/or electricity, without agreeing a contract with a supplier. A deemed contract may also exist where an existing contract comes to an end but the customer continues to consume gas and/or electricity.

Department for Business Innovation and Skills (BIS)

A UK government department created in June 2009 by the merger of the Department for Innovation, Universities and Skills (DIUS) and the Department for Business Enterprise and Regulatory Reform (BERR). It is responsible for policy in areas such as business regulation and support, consumer affairs, trade, training, regional development and further and higher education, among others.

Distribution system

A local network that connects electricity/gas from the transmission system to end consumers at lower voltage/lower pressure.

E

Elexon

Elexon delivers the Balancing and Settlement Code. Their systems capture the contracted volumes from generators and suppliers so they can see what they said they would produce or consume.

F

Forum of Private Business

An organisation which campaigns for the interests of small and medium-sized businesses.

G

Green Deal

A scheme that allows householders to improve the energy efficiency of their homes and repay the cost through energy bills.

H

Half hourly meter

Half hourly meters tend to be used by large commercial businesses with high electricity demand. Customers with maximum demand in excess of 100kW are mandated to be metered every 30 minutes. Meter information is received automatically by suppliers.

I

Incumbent supplier

Before privatisation, the 14 electricity regions of England, Wales and Scotland each had a Public Electricity Supplier (PES) with a monopoly of electricity supply and distribution. Competition has been introduced in supply, so these 14 suppliers (consolidated into 5) are known as incumbent suppliers (or ex-PES). The 14 regions and their incumbent supplier are detailed below. For gas there is only one incumbent supplier, British Gas.

Region	Supplier Group
London	EDF Energy
Seeboard	
SWEB	
East Midlands	E.ON UK
Eastern	
Norweb	
Midlands	RWE npower
Northern	
Yorkshire	
Scottish Hydro	Scottish and Southern Energy
Southern	
Swalec	
Manweb	Scottish Power
Scottish Power	

Industrial and Commercial (I&C) customer

Refers to larger non-domestic consumers

Independent supplier

This will usually mean entrants to the energy supply sector, after the introduction of the competitive market, i.e. it excludes former incumbents.

K

kWh

Kilowatt-hour is a unit used to measure energy consumption in both electricity and gas.

M

Market concentration

A measure of the number of firms and their respective market shares within the market.

Market share

The proportion of total customers (usually proxied by the number of meter points) within a market that are registered to a particular supplier.

Master Registration Agreement (MRA)

Along with its supporting documentation, the MRA provides a governance mechanism to manage the processes established between electricity suppliers and distribution companies to enable electricity suppliers to transfer customers.

Micro business consumer

A business that;

- consumes not more than 55,000 kWh of electricity per year, **or**
- consumes not more than 200,000 kWh of gas per year, **or**
- employs fewer than 10 persons and whose annual turnover or balance sheet does not exceed €2m.

MWh

A megawatt hour. Equal to 1000 kWh.

N

New entrant

An entrant that does not have an incumbent customer base.

Non-domestic consumer

A customer that uses energy wholly or mainly for commercial purposes.

Non-domestic energy supplier

A supplier that only supplies energy to business consumers.

O

Objection

A consumer's current supplier can object to and block the transfer of supply of electricity or gas to another supplier under certain circumstances specified in the contract. These will typically be if the consumer is still in contract, or is in debt.

Ombudsman Services: Energy

An independent service that resolves disputes between consumers and energy suppliers.

Out of contract prices

Rates applied to consumers who have not agreed a pricing arrangement or their pricing arrangement has expired or been terminated.

P

Profile Class

Where half-hourly metering is not installed, profile classes are used to provide an electricity supplier with an expectation as to how electricity will be consumed through the day. Domestic customers are class 1 and 2. Non-domestic consumers are classes 3-8.

R

Rollover

An energy contract that automatically renews at the end of the contract period.

S

Secure and Promote

A licence condition proposed to secure existing positive developments and push for further improvements in wholesale market liquidity.

Self regulation

Industry regulation without binding licence conditions.

Small and medium size enterprises (SMEs)

The EU Commission defines as enterprises which employ fewer than 250 persons and annual turnover not exceeding €50m and/or an annual balance sheet total not exceeding €43m.

Smart meter

A generic term for innovative forms of metering that provides increased levels of functionality above that of a basic meter. It usually includes at a minimum the ability to read the meter remotely via a communication channel.

Standard licence condition (SLC)

The legally binding conditions that gas and electricity suppliers must meet to supply to domestic and non-domestic customers, in accordance with the Gas Act (1986) and Electricity Act (1989).

Switching

The process of changing gas or electricity supplier, or changing to a new tariff with the same supplier.

T

Termination procedure

The process of ending an energy supply contract.

Transmission system

The system that transfers electricity/gas at high voltage/pressure around the UK before distribution to end consumers. For electricity this will be the overhead lines, underground cable and substations. For gas this is the high pressure pipes and compressor stations.

X

Xoserve



The Retail Market Review – Final Proposals for non-domestic customers

Xoserve delivers transportation transactional services on behalf of all the major gas network transportation companies. Xoserve is jointly owned by the five major gas distribution network companies and National Grid's gas transmission business.

Appendix 8 – Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

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