

## Scottish Power Energy Retail Limited

### Notice of reasons under Section 49A of the Electricity Act 1989 and Section 38A of the Gas Act 1986 for the decision to make a Provisional Order under Section 25(2) of the Electricity Act 1989 and Section 28(2) of the Gas Act 1986

1. This Notice sets out the reasons why, on 21 September 2022, the Gas and Electricity Markets Authority (“the Authority”) made a Provisional Order in respect of likely contraventions by Scottish Power Energy Retail Limited (trading under “Scottish Power Limited”), Company number: SC190287, having its registered office at 320 St. Vincent Street, Glasgow, Scotland, G2 5AD.
2. Scottish Power Energy Retail Ltd (“SP”) is the holder of gas and electricity supply licences (“Licences”) granted by the Authority and is subject to the usual conditions thereunder, which are the “relevant conditions” for the purposes of the Electricity Act 1989 (“EA1989”) and the Gas Act 1986 (“the GA86”) (together, “the Acts”).
3. The Provisional Order was made as it appeared to the Authority that SP is contravening or likely to contravene Standard Licence Conditions (“SLCs”) 27.8A(b), 27.8A(c) and 27.8A(d) (“the Relevant SLCs”), of its Licences in respect of its debt collection policies. The text of the Relevant SLCs has been set out in the accompanying Provisional Order.
4. The Provisional Order was made as it appeared to the Authority that SP is contravening or likely to contravene these conditions by virtue of the following:
  - a. The Authority has engaged with SP since the beginning of 2022 regarding its debt collection policies and procedures. The engagement was initiated as the Authority received intelligence from several sources regarding SP’s potential non-compliance with its obligations in this area. Specifically, the intelligence received suggested that SP was not taking individual customers’ circumstances into consideration when setting debt repayment amounts and that it had a minimum amount that customers should pay, regardless of their circumstances.

- b. The Authority subsequently requested information from SP which included 100 call recordings of its customers<sup>1</sup> having discussions with SP regarding debt collection and repayment options; copies of SP's policies, procedures and training materials on debt repayment/management and copies of SP's customer communications. The Authority received the requested information from SP on 27 April 2022 and 23 June 2022.
- c. The information obtained from SP shows that Representatives<sup>2</sup> are not taking steps to obtain information from customers on their ability to pay and are not, therefore, assessing payment amounts which are appropriate for each individual customer's circumstances. The call recordings indicate that SP's Representatives have not received sufficient training to enable them to obtain information on a customer's ability to pay on a case-by-case basis and Representatives are instead following a script. By not obtaining information on a customer's ability to pay, SP is contravening and is likely to continue contravening SLC 27.8A(c).
- d. The Authority found evidence that SP is routinely setting fixed minimum repayments at £5 per week (per fuel) for accrued customer debt despite customers making it clear that they could not pay that amount (including customers on the Priority Service Register). In cases where customers express concerns about payment difficulty or request a repayment amount lower than £5 per week (per fuel) SP's governance policies dictate that these cases be escalated to allow the customer's ability to pay to be investigated, and staff with higher authorisation can set a repayment plan with a lower rate. However, the Authority has seen no evidence of this policy being applied. The Authority also has concerns about SP's training materials which do not reflect SP's internal governance policies relating to customers in payment difficulty and do not make clear that there is no minimum default repayment amount. By setting a minimum default repayment amount without considering each customer's ability to pay, SP is contravening and is likely to continue contravening SLCs 27.8A(b), (c) and (d).

---

<sup>1</sup> The call recordings were requested on two occasions, totalling 100 calls. The first request was early into the Authority's engagement with SP and the second was at a later stage when the Authority's concerns had been discussed with SP.

<sup>2</sup> Representative is defined in the Standard conditions of gas and electricity supply licences as: "in relation to the licensee, means any person directly or indirectly authorised to represent the licensee in its dealings with Customers" (SLC 1.2)

Representatives also appear to not be consistently signposting customers to debt advice services, as required in the Relevant SLCs, when customers are in payment difficulty.

- e. The Authority is concerned that SP's customers (including customers in a Vulnerable Situation<sup>3</sup>) are increasingly at risk of disconnection or being in the position of needing to self-ration their consumption.
5. SP responded to the Authority's concerns in a letter, dated 7 February 2022. SP's response indicated that it does not accept the Authority's concerns. SP stated that it only sets a default minimum repayment amount of £5 per week (per fuel) where there is no engagement from the customer and that its Representatives are aware that this repayment amount is not a set minimum. SP asserted in its letter to the Authority, dated 25 August 2022, that it has rigorous policies in place to allow for lower repayment rates to be agreed upon and that Representatives with higher authorisation can approve these when call centre Representatives trigger these processes. However, as set out above, it appears to the Authority that SP's Representatives do not implement its policies in practice.
  6. In its letter from 25 August 2022, SP committed to taking steps to continuously improve its policies and training. This included making follow-up calls to customers where there was doubt about the affordability of agreed repayment rates. SP also stated it was exploring the possibility of expanding agents' access to setting lower repayment rates.
  7. However, throughout its engagement with the Authority SP has not admitted to any breach or potential breach of the SLCs or any wrongdoing by its Representatives, but rather has stated it is committed to continuously reviewing its policies, procedures and practices. The Authority is concerned that if SP believes its policies, procedures and practices to be compliant then it is unlikely to self-identify any deficiencies, or accept those identified by the Authority, and rectify them.

---

<sup>3</sup> As defined at SLC 0.9 of gas and electricity supply licences.

8. Additionally, whilst the Authority welcomes SP's commitment to making improvements to policies, procedures and practices on debt collection, the Authority has not received any follow-up information about the steps SP has taken (or intends to take) or whether this has resulted in the improvements necessary to secure compliance.
9. Therefore, the Authority considers it requisite to issue a Provisional Order in respect of contraventions or the likely contraventions of SLC 27.8A(b), SLC 27.8A(c) and SLC 27.8A(d).
10. The Authority considers that it is essential to uphold compliance with the relevant SLCs. Failure to do so risks significant consumer harm. The Authority considers it particularly important to resolve this matter and secure compliance from Scottish Power before winter as consumption naturally increases during this period and the imposition of unaffordable debt repayment plans will place a heavy burden on customers, particularly those in Vulnerable Situations<sup>4</sup>.
11. The Authority also considers it requisite to issue a Provisional Order (rather than consulting on a final Order) because the information obtained by the Authority suggests that if SP's current practices are to continue this will place a heavy burden on already struggling consumers. The Authority is conscious of the significance of £5 to customers in fuel poverty and the difficulties such customers will face if SP continues to set minimum default repayment charges without considering the individual customers' ability to pay. Therefore, the Provisional Order is intended to bring SP into compliance quickly with the conditions it is subject to.
12. The Authority has had regard to the matters in sections 25(3), (4A), (4B), (5), and (5A) and 26 of the Electricity Act and the equivalent provisions in the Gas Act. In particular:
  - a. It does not consider that it would be more appropriate to proceed under the Competition Act 1998 (that Act has no application to the present circumstances);
  - b. It is satisfied that the duties imposed on the Authority by the Electricity Act and the Gas Act do not preclude Authority from making the Provisional Order (on the contrary, it considers that its duties require it to make the Provisional Order);

---

<sup>4</sup> Has the meaning given to it at SLC 0.9 of the gas and electricity supply licences.

c. It does not consider that the contraventions are trivial.

13. Therefore, the Provisional Order requires:

(1) SP to immediately, but no later than 5 October 2022:

- a) Not act in contravention of the relevant SLCs (meaning SLC 27.8A(b), 27.8A(c) and 27.8A(d)).
- b) Ensure that its call handling representatives ("Representatives"<sup>5</sup>) cease informing customers there is an automatic, default or automatic repayment amount, in contravention of SLC 27.8A(d).
- c) Pause all disconnections for those customers on any active, previously agreed or delinquent debt repayment plans of £5 per week, per fuel, or less until SP has carried out a reassessment of those customers' circumstances under part 2 of this Order below.
- d) Review, and amend, if necessary, its arrangements<sup>6</sup> for Representatives and ensure that there are no arrangements in place that incentivise, target, or otherwise encourage Representatives to set up payment plans at a specific amount.
- e) Perform an immediate review and update of all policies and procedures relating to customers in payment difficulty ("CPD") and debt collection practices as follows. Representatives must not engage in setting debt repayment plans that do not comply with the relevant SLCs, and must immediately complete the following:
  - i. Training materials must be reviewed and rewritten to bring them in line with both SP's own internal governance policies on debt collection and compliance with the relevant SLCs;
  - ii. Remove all references to minimum, default or standard recovery amounts from any call guidance, scripts or training materials; and
  - iii. All Representatives are immediately to receive training following the new materials. This training must include (but is not limited to) content explaining that there is no minimum repayment amount and details of the debt repayment escalation process.
- f) SP to implement a regime of quarterly assurance and compliance reviews to ensure that Representatives are complying with all the provisions of the relevant SLCs when setting up repayment plans.

---

<sup>5</sup> As defined in SLC 1 of the Gas and Electricity Supply licences

<sup>6</sup> This includes, but is not limited to, remuneration packages; reward, bonus and incentive schemes; performance management schemes; disciplinary procedures; and terms and conditions of employment

- g) SP are to provide the following to the Authority by no later than 4pm 5 October 2022:
- i. Copies of all updated policies, procedures and training materials revised as result of this Order;
  - ii. A letter of assurance, signed by a Director with responsibility for retail, stating that the training for all Representatives has been completed; Representatives understand the debt repayment escalation process and that there is no minimum amount for debt repayment plans; and that no untrained Representatives are involved in setting up repayment plans. Additionally, this letter must confirm that no Representatives are incentivised, targeted, or otherwise encouraged to set up payment plans at a specific amount. Assurances must also be provided that SP have implemented a regime of regular assurance and compliance reviews and as required in section (f) of this order and the form of these reviews.

(2) By no later than 4pm on 26 October 2022, SP are to:

- a) Contact all customers on debt repayment amounts of £5 per week, per fuel, or below to gain information and assess whether the amount is based on each individual customer's ability to pay as required under SLC 27.8A(b) and SLC 27.8A(c). Where customers indicate or express concerns that the amount is not affordable, SP must review the customer's individual circumstances and reset the debt repayment amount on a case-by-case basis as required under SLC 27.8A(c).
  - i. SP must provide the Authority with the results of this exercise including raw data on how many customers were repaying £5 per week on 21 September 2022, how many customers were contacted, the number of reassessments, repayment plan rates before the exercise per customer and repayment rates after per customer.
  - ii. If not all the customers that are repaying £5 per week were contacted a justification why.
  - iii. SP must provide this to the Authority as soon as reasonably practicable but no later than 4pm 31 October.
- b) When contacting the customers set out in (a) above, ensure each customer has been made aware of all available support, as required in SLC 27.8A(b) and SLC 31G<sup>7</sup>
- c) Fully engage with Citizens Advice Bureau, Citizen's Advice Scotland's Extra Help Unit and Ombudsman Services to ensure all referrals and off supply incidents are reassessed in line with the SLCs.

---

<sup>7</sup> SLC 31G provides that the licensee must provide the consumer with all relevant information in a form and at a frequency that is sufficient to enable them to make decisions. This includes information on how to access appropriate assistance and advice debt prevention and management (SLC 31G.2(b)).

- (3) By no later than 4pm on 31 October 2022, provide the Authority with an independent audit report (commissioned at SP's own expense and prepared by an independent professional acceptable to the Authority<sup>8</sup> with a framework and remit also acceptable to the Authority<sup>9</sup>) confirming SP's compliance with sections 1 and 2 above and identifying any areas in SP's policy and processes that do not comply with its regulatory obligations (including the application and adherence to such policies and procedures) alongside a remedial action plan.
- (4) The remedial plan actions are to be completed and a Director with responsibility for retail is to confirm completion in writing to the Authority no later than 21 November 2022.

14. The Provisional Order has been served to SP on Wednesday 21 September 2022.

15. The Authority will, in due course, consider whether to confirm the Provisional Order (with or without modifications). Unless earlier confirmed or revoked by the Authority, the Provisional Order will lapse on 21 December 2022.

16. The issuance of the Provisional Order is without prejudice to any further or other enforcement action the Authority may decide to take, in relation to this or any other outstanding or future breaches. The Authority will consider whether it is appropriate to impose a financial penalty on SP in relation to this breach.

Dated:

Signed:

**Charles Hargreaves**

Deputy Director, Enforcement

Duly Authorised on behalf of the Gas & Electricity Markets Authority

---

<sup>8</sup> Scottish Power must consult with the Authority's Senior Responsible Officer prior to engaging its proposed auditor.

<sup>9</sup> Scottish Power must consult with the Authority's Senior Responsible Officer prior to providing its appointed auditor with remit for their audit. The Authority will provide Scottish Power with direction on the scope, data and performance metrics to be included in the report.