



Suppliers, customer representatives and other interested parties.

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*Promoting choice and value for all customers*

Your Ref:  
Our Ref:  
Direct Dial: 020 7901 7240  
Email: [andrew.wright@ofgem.gov.uk](mailto:andrew.wright@ofgem.gov.uk)

Date: 22 February 2008

Dear Colleague,

**Decision document: Regulation of marketing to domestic customers**

On 3 December 2007 Ofgem published a consultation document entitled "Regulation of marketing to domestic customers"<sup>1</sup>. That document consulted (pursuant to paragraph 25.12 of standard condition 25 of the gas and electricity supply licences) on the proposals to continue the licence condition dealing with marketing to domestic customers for a further year.

Having carefully considered the responses we received, the Authority considers that the development of competition in gas and electricity requires the extension of the licence condition for a further year. Therefore, the marketing conditions will continue from 31 March 2008.

This letter sets out the reasons for this decision.

In the December consultation document, we noted the changes proposed by the Government to consumer representation; the introduction of redress schemes; Consumer Protection from Unfair Trading Regulations and complaint handling standards. We suggested that although industry performance in reducing consumer complaints regarding marketing had continued to fall, it may be appropriate to maintain the marketing conditions, at least until these new arrangements were in place.

We therefore indicated that we were minded to extend the marketing licence conditions for a period of one year, with a view to consulting on removing them early in 2009. The December consultation asked two questions. These were:

1. Do you agree with the proposal to extend the marketing conditions until March 2009?
2. Alternatively, do you consider that industry self-governance arrangements, including the EnergySure Code are sufficiently effective that the marketing conditions can be removed in April 2008?

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<sup>1</sup> This document may be found on the Ofgem website:  
<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/DirectMktng/Pages/DirectMktng.aspx>

Ofgem received nine responses to the consultation. Six were from suppliers; two were from consumer groups and one from the Energy Retail Association, who responded on behalf of the majority of its members. Copies of the responses may be found on the Ofgem website<sup>2</sup>.

## **Consultation Responses**

### *Respondents who supported the removal of the marketing conditions*

Five suppliers, together with the ERA, considered that the licence condition could be removed in April 2008. They pointed to the performance of the industry in the reduction of complaints arising from doorstep selling. This view was echoed by the ERA, who reported that sales complaints recorded by energywatch had fallen to 3% of the level experienced in 2002 and in October 2007 represented 0.04 complaints per 1,000 transfers.

Suppliers and the ERA pointed to the effectiveness of the EnergySure Code as a self-governance mechanism in improving standards. The ERA noted that the EnergySure Code has continued to develop through independent auditing of the Code members, promotion of the EnergySure Code to Trading Standards and involvement of consumer bodies.

These respondents concluded that a sector specific licence condition was now unnecessary and that Ofgem should therefore remove the condition in line with the principles of Better Regulation. However one supplier noted that maintaining the marketing conditions would not cause them any concern.

### *Respondents who supported maintaining the marketing conditions for a further year*

One supplier supported Ofgem's proposal, considering that given the changes to consumer representation and the planned introduction of new regulations, it was prudent to retain the marketing conditions for a further year. However, they thought it imperative that Ofgem consult on removing the marketing conditions for April 2009.

Energy Action Scotland and energywatch recommended that the marketing conditions be retained until the effects of the changes in consumer representation and the Consumer Protection from Unfair Trading Regulations had been implemented. energywatch also questioned the openness of the EnergySure Code and the degree to which consumers were are of it.

energywatch were concerned about future arrangements for consumer protection. They suggested that the marketing conditions should be extended to cover telesales and the internet as consumers were increasingly using these sales channels. Our view is that existing consumer legislation, in particular the Consumer Protection (Distance Selling) Regulations 2000, covers unfair marketing practices through these sales channels. We are not aware of any evidence of misselling through these channels or of a significant increase in the levels of complaints to support widening the scope of the licence condition.

## **The Authority's decision**

Currently, there is considerable change being made to the arrangements for consumer representation and regulations for consumer protection. As we discussed in the December consultation, these changes, together with the continued work by the industry for self-regulation of doorstep selling, may result in circumstances where the marketing conditions are no longer necessary. However, at this time we consider that it is prudent to retain the marketing conditions, but to review them in one year's time, rather two.

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<sup>2</sup>

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=73&refer=MARKETS/RETMKTS/COMPL/DIRECTMKTNG>

We anticipate that by then, the new arrangements for consumer representation and protection will have been introduced and a clearer picture will have emerged as to whether regulation of doorstep selling through the licence conditions is still required.

Accordingly, the Authority has decided that the development of competition is such that it requires an extension of the marketing conditions.

Attached to this letter are copies of a Notice made pursuant to paragraph 25.12 standard conditions 25 of the gas and electricity supply licences.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Wright', written over a horizontal line.

Andrew Wright  
**Managing Director, Markets**

## NOTICE

### NOTICE UNDER STANDARD CONDITION 25 OF THE ELECTRICITY SUPPLY LICENCE

#### Whereas:

1. Paragraph 25.11 of standard condition 25 (Marketing of Electricity to Domestic Customers) ("the Condition") of the electricity supply licence provides that the Condition shall cease to have effect on 31 March 2008 ("the termination date").
2. Paragraph 25.12 of the Condition provides that if the Gas and Electricity Markets Authority ("the Authority"), after consultation with relevant persons, gives notice that it considers that the development of competition in electricity supply is such as to require the continuation of any part of the Condition until such date not later than two years from the termination date as may be specified in the notice (the "new termination date"), then such part of the Condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date.
3. The Authority published a public consultation document entitled, "Regulation of marketing to domestic customers" on 3 December 2007 (document number 286/07). Copies of that document are available from the Ofgem Research and Information Centre, 9 Millbank, London SW1P 3GE (020 7901 7003) or the Ofgem website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).
4. The Authority stated in the public consultation document that it considers that the development of competition in electricity supply is such as to require the continuation of the Condition until 31 March 2009 or such earlier date that it may direct.
5. Prior to the close of the consultation period, the Authority received nine responses to the public consultation document. No responses were withdrawn. All non confidential responses are available from Ofgem Research and Information Centre or on the Ofgem website.
6. The Authority has carefully considered all responses made to the public consultation document.

In accordance with paragraph 25.12 of the Condition, the Authority hereby gives notice that the Authority considers that the development of competition in electricity supply is such as to require the continuation of the Condition until 31 March 2009 or such earlier date that the Authority may direct.

This notice shall have effect on and from 31 March 2008.

Words and expressions used in the Condition shall bear the same meaning in this notice unless the context otherwise requires.

Dated 22 February 2008

Signed.....

Andrew Wright  
**Managing Director, Markets**

## NOTICE

### NOTICE UNDER STANDARD CONDITION 25 OF THE GAS SUPPLY LICENCE

#### Whereas:

1. Paragraph 25.11 of standard condition 25 (Marketing of Gas to Domestic Customers) ("the Condition") of the gas supply licence provides that the Condition shall cease to have effect on 31 March 2008 ("the termination date").
2. Paragraph 25.12 of the Condition provides that if the Gas and Electricity Markets Authority ("the Authority"), after consultation with relevant persons, gives notice that it considers that the development of competition in gas supply is such as to require the continuation of any part of the Condition until such date not later than two years from the termination date as may be specified in the notice (the "new termination date"), then such part of the Condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date.
3. The Authority published a public consultation document entitled, "Regulation of marketing to domestic customers" on 3 December 2007 (document number 286/07). Copies of that document are available from the Ofgem Research and Information Centre, 9 Millbank, London SW1P 3GE (020 7901 7003) or the Ofgem website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)).
4. The Authority stated in the public consultation document that it considers that the development of competition in gas supply is such as to require the continuation of the Condition until 31 March 2009 or such earlier date that it may direct.
5. Prior to the close of the consultation period, the Authority received nine responses to the public consultation document. No responses were withdrawn. All non confidential responses are available from Ofgem Research and Information Centre or on the Ofgem website.
6. The Authority has carefully considered all responses made to the public consultation document.

In accordance with paragraph 25.12 of the Condition, the Authority hereby gives notice that the Authority considers that the development of competition in gas supply is such as to require the continuation of the Condition until 31 March 2009 or such earlier date that the Authority may direct.

This notice shall have effect on and from 31 March 2008.

Words and expressions used in the Condition shall bear the same meaning in this notice unless the context otherwise requires.

Dated 22 February 2008

Signed.....

Andrew Wright  
**Managing Director, Markets**