



Suppliers, consumer groups and other interested parties

*Promoting choice and value for all gas and electricity customers*

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Dear Colleague,

### **Consultation on proposals for amending Standard Licence Condition 23 - Period for notifying unilateral contract variations and other consequential issues**

This consultation presents Ofgem's minded to position regarding amendment of the 65 working day period currently available to suppliers for notifying consumers of a unilateral contract variation after it takes effect, as set in Standard Licence Condition 23 (SLC 23) of the gas and electricity supply licences. It also presents other proposed consequential and clarificatory amendments to SLC 23 and other licence conditions. We seek your specific views on these proposals including a proposed time frame for implementation.

#### **1. Background**

- 1.1. Under the current obligations of the SLC 23 domestic suppliers are required to notify their consumers of a unilateral variation of their contract to increase prices or in any other way that is to the significant disadvantage to the consumer in advance or up to 65 working days after the variation takes effect. A copy of SLC 23 for gas and electricity is enclosed in Annex 1 and 2.
- 1.2. At the time of releasing the Energy Supply Probe ('the Probe') initial findings report<sup>1</sup> in Oct 2008, we were made aware that some suppliers were notifying price increases separately from the billing cycle and in some cases near to the 65 working day limit. There were also concerns regarding the prominence and transparency of information contained in the notification. Subsequently, Ofgem published an open letter in February 2009 seeking views from stakeholders on the revision of SLC23.
- 1.3. On 7<sup>th</sup> August 2009 we published the Probe retail market remedies document<sup>2</sup>. Whilst we made it clear that in our view the best practice was to notify of an increase as soon as possible and preferably in advance, we said that we would consider making further proposals in this area. We decided therefore to make some incremental changes, but committed to undertake further work outside of the Probe.
- 1.4. On 31<sup>st</sup> March 2010 Ofgem published an initial consultation inviting views from stakeholders on changing the current 65 working day notice period. The consultation provided details of the background work on SLC 23. It stated our preference for advance notification period, cited notification practices in other sectors, presented

<sup>1</sup> Energy Supply Probe - Initial Findings Report, Ref 140/08

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=4&refer=Markets/RetMkts/ensuppro>

<sup>2</sup> Energy Supply Probe - Proposed Retail Market Remedies, Ref 99/09 :

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=199&refer=Markets/RetMkts/ensuppro>

some findings of consumer research and briefly discussed issues relating to consumer detriment. The consultation invited views from stakeholders on: (a) notification period options including views on the most appropriate advance period for notification; (b) views on aligning notification period requirement on suppliers to notify customers of a unilateral variation of their contract which cause significant detriment to the consumer with any changes to the current 65 working day period for notifying customers of a price increase, and (c) views on possible changes to amend the rule regarding new suppliers' notice of transfer within 15 working days. The March '10 consultation can be found on our website at <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=1&refer=Markets/RetMkts/Compl/pricechange>. Following the close of the initial consultation, a formal information request was issued to all domestic suppliers' on 19<sup>th</sup> May 2010 to obtain further information for policy development purposes.

- 1.5. It is pertinent to highlight that relevant provisions of the Energy Act 2010 came into force on 8 June 2010 which provide the Government with powers to modify licence conditions in respect of requirements for domestic suppliers to notify customer of unilateral variations to prices and any contractual terms. The Government has on many occasions made clear its intention to exercise these powers in the event that Ofgem's process does not secure changes to SLC 23 in a timely manner.
- 1.6. Following the review of the information provided to Ofgem in response to the March consultation, the subsequent information request, and Ofgem's views on potential consumer detriment, we have reached a minded to position regarding proposed amendments to SLC 23. The proposed amendments principally cover the period for notifying domestic customers of unilateral variation, but also cover other amendments to SLC 23 and other licence conditions. The proposed amendments are set out in the following sections. We are currently minded to proceed with a statutory consultation on the proposed amendments.

## 2. Proposals

### **Domestic customers must receive Notice of a unilateral variation at least 30 calendar days in advance of the date on which the variation takes effect**

- 2.1. We are currently minded to remove the current 65 working day period for notifying customers and require domestic suppliers to ensure that customers receive Notice of a unilateral variation at least 30 calendar days in advance of the date on which the variation takes effect.
- 2.2. The information available to us points to potential consumer detriment from current arrangements and it is our view that this option improves the current arrangements in favour of consumers. Some key benefits envisaged from moving to proposed new arrangements are as follows:
  - a) It is likely that under the current arrangements consumers are denied an opportunity to budget for the extra costs or make decisions regarding economising their energy usage in light of the increased costs. Some of Ofgem's research indicates that consumers on low income would value more time so that they can budget their energy consumption. This proposal to remove the 65 working days notification period and require at least 30 days advance Notice may help address this detriment.
  - b) Some consumer groups (in their consultation response) have highlighted that in case of consumers with an existing debt it is likely to be difficult to switch to another supplier under the current 65 working day period. Without advance notice, consumers repaying debt are unable to consider decreasing

their usage and/or managing their budget to compensate for higher prices. As a result their debt is likely to increase.

- c) Delay in notification of an increase denies the consumer the opportunity to take and provide meter readings around the date when the rise becomes effective. If consumers have advance notification of a price increase or change in tariff structure, they are able to take and provide meter readings around the date when the rise becomes effective. Apart from instances where suppliers dispute the readings, this will ensure the accuracy of energy bill for all consumers
  - d) Information available to us suggests that consumers do not favour retrospective notifications. Consumer research undertaken by Which? in May-June 2009 also showed that 98% of consumers preferred advance notification. As noted in our March consultation, Ofgem's Consumer Panel research in January 2010 showed that while some Panel members indicated a preference for advance notification, many members were not overly concerned with the length of time allowed to suppliers to notify them of price increase. This difference in the results of our Consumer Panel research and consumer research undertaken by Which? may be due to a number of reasons including timing. The Which? research was conducted against a backdrop of price rises. We are of the view that a change in favour of advance notification will inspire greater customer confidence in the energy sector.
- 2.3. Based on the information on costs available to us, we are not convinced that suppliers will incur sustained ongoing operational costs of a sufficiently high magnitude to outweigh the benefits of the proposed move to an advance notification period. We expect suppliers to take steps to ensure that the information contained in the notifications is sufficiently clear such that consumers do not need to call them for further clarifications. We also expect that over time consumers will become increasingly familiar with the new arrangements for advance notification and this may further reduce any pressure on call centres during periods of price changes.
- 2.4. As noted in our March consultation, this period of advance notification is in line with notification practices in other sectors. For instance, in the financial sector "The Lending Code" requires banks to inform their current account customers personally at least 30 days before increasing an overdraft charge or introducing a new overdraft charge. Other rules require that if terms and conditions are changed to the customer's detriment customers should be given at least 30 days personal notice (for example, by letter, e-mail, etc) before the change takes effect. In the telecoms sector, contractual terms and conditions (for example BT's) dictate that 30 days advance notice be given of a price increase. Renewal notices in other competitive sectors, for example house and car insurance, are sent in advance giving the customer the option of switching before automatic renewal.

#### **Unilateral variations to supply charges and other contract terms**

- 2.5. SLC 23 requires suppliers to notify consumers of any unilateral variation which increases the charges for the supply of electricity or gas, or which may be to the significant disadvantage to the consumer. Ofgem has previously sought views on aligning the notification period for both types of unilateral variation.
- 2.6. In the March consultation we stated that we are minded to align the requirement on suppliers to notify customers of a unilateral variation of their contract which is to the significant disadvantage of the customer with any changes to the 65 working day period for notifying customers of a price increase. Some stakeholders including consumer groups have shown support for this proposal.

- 2.7. We are proposing to align the notification period for both types of unilateral variation. It is our view that this approach is both consistent and is likely to improve consumer protection in the event of any unilateral contract variations which may be to the significant disadvantage of the customer.

### **Proposed consequential changes to SLC 23 and other licence conditions**

- 2.8. This section highlights the amendments which Ofgem considers are necessary as a consequence of the proposed change to a 30 day advance Notice period.

#### ***(a) 20 Working Day period to notify supplier***

Sub-paragraph 23.6(a) of the SLC 23 gives customers 20 working days after the date on which they receive Notice of a unilateral variation to notify their supplier that they would like to end the contract in order to avoid being affected by a price increase or other variation.

In the interest of consumers it is our view to retain this provision and we are minded to amend this provision such that it applies from the date a price increase or other variation takes effect. This will enable customers to make the decision to switch supplier and will ensure that the entire process of switching supplier is completed before the unilateral contract variation takes effect.

#### ***(b) 30 Working Day period to pay outstanding charges***

Sub-paragraph 23.6(c) of SLC 23 was put in place as part of the Probe remedies to provide customers with 30 Working Days to pay off outstanding charges in circumstances where they wish to change supplier in response to a unilateral variation but are prevented from doing so on the grounds of outstanding charges. To facilitate these requirements, amendments were also made to SLC 14 (Customer Transfer Blocking).

This provision was put in place to safeguard customers in debt and provide them extra time to manage their debt. Whilst sub-paragraph 23.6(c) of SLC 23 (and sub-paragraph 14.9(c) of SLC 14) only currently applies in circumstances where Notice of a unilateral variation is received less than 5 Working Days in advance, we are minded to retain this protection for customers in debt and propose amending SLC 23 and SLC 14 so that the protection applies where the customer receives notice of the variation at least 30 calendar days in advance. Effectively, this will increase the time available with consumers in debt to pay off their debt in response to a price change. With the proposed changes, the 30 Working Day period in paragraph 23.6(c) of SLC 23 (and paragraph 14.9(c) of SLC 14) for paying outstanding charges will continue to apply from the date the customer receives Notice that the supplier intends to prevent them from changing supplier.

### **Proposed clarificatory amendments to SLC 23 and SLC 24**

- 2.9. This section highlights Ofgem's proposed clarificatory amendments to SLC 23 and SLC 24.

#### ***(a) References to ending the contract***

At present sub-paragraphs 23.4(b) and 23.6(a) refer to customers ending contracts in response to a unilateral variation, without expressly referring to the customer changing supplier. Given that the process of ending the contract for the purposes of SLC 23 involves changing supplier, we consider that this should be clear on the face of the obligations. We therefore propose to make amendments to this effect.

## **(b) Prohibition on termination fees**

The effect of sub-paragraph 24.3(a) of SLC 24 is that a domestic supplier may be prohibited from charging a termination fee in circumstances where they have given the customer Notice of a unilateral variation. The original intention was that the prohibition on termination fees would only apply in circumstances where the domestic customer has notified the supplier that they are ending the contract within the timeframe specified by SLC 23. However, we have noticed a cross-referencing error with paragraph 24.3(c), which appears to have arisen from the amendments made by the Probe remedies. In circumstances where a domestic supplier has given the customer Notice of the unilateral variation, the effect of this error would appear to be that the supplier is prohibited from charging a termination irrespective of whether the customer notified the supplier that they are ending the contract. We therefore propose to rectify this error by amending paragraph 24.3(c) to refer to subparagraph 23.6(a) of SLC 23, rather than paragraph 23.5.

## **15 Working Day Period for Notice under the Master Registration Agreement /Network Code**

- 2.10. Provided a customer has notified their supplier within 20 working days that they are ending the contract, the effect of subparagraph 23.6 (b) of SLC 23, is that a supplier must treat a unilateral variation as ineffective if the current supplier receives notice under industry code processes within 15 working days to the effect that a new supplier will begin to supply the consumer within a reasonable period of time.

On the basis of the March consultation responses we are minded to retain this requirement in its original form. We also note that under the new Gas and Electricity Directives all transfers will have to be completed within three weeks and therefore it is likely that suppliers will need to take steps to ensure that the transfer process is initiated as quickly as possible<sup>3</sup>.

## **Time period for implementing proposed amendments to SLC 23**

- 2.11. Subject to responses to this consultation, we are minded to propose that suppliers would have one month to implement any final licence modifications. Therefore, in the event that a decision is ultimately taken to make any licence modifications, those modifications would come into effect one month after the date on which the decision is published.
- 2.12. In light of the previous modifications made to SLC 23 as a result of the Probe remedies and Ofgem's statements regarding best practice with advanced notification, we take the view that suppliers should have already made system and process changes to facilitate the advance notification of unilateral variations. We therefore consider that a short implementation period is reasonable in the circumstances and would be sufficient for adjustments to systems and processes.

## **Transparency of information provided through notifications.**

- 2.13. On the basis of information available to us and Ofgem's view on potential consumer detriment we have concerns that some suppliers are not fully implementing the spirit and letter of certain obligations of SLC 23 relating to transparency of information provided to customers through notices.
- 2.14. We fully expect all suppliers to take all necessary steps to ensure appropriate clarity of information whilst communicating information to customers. We will not hesitate

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<sup>3</sup> However, we note that DECC is currently consulting on proposals for implementing the requirements of the new gas and electricity directives.

in investigating potential licence breaches in the event that there is evidence that suppliers are failing to give customers direct notice of unilateral contract variations or fail to adhere to prominence and clarity requirements in respect of the contents of notices.

### 3. Questions for Stakeholders

We invite stakeholders to provide their specific views on the following:

1. What are your views on our "minded to" position of requiring domestic suppliers to give customers Notice of a unilateral variation at least 30 calendar days in advance of the date on which the variation takes effect? Please provide any data/information to substantiate your views where appropriate.
2. What are your specific views on the proposed consequential amendment to retain paragraph 23.6(a) of the SLC 23 such that customers have a 20 working day period *from the date of a price increase (or other variation) takes effect* to notify their supplier that they would like to switch in order to avoid the application of a price increase (or other variation)? Please provide any data/information to substantiate your views where appropriate.
3. What are your specific views on the proposed consequential amendment to sub-paragraph 23.6(c) of SLC 23 (and sub-paragraph 14.9(c) of SLC 14) such that customers in debt will have a 30 working day period to pay off outstanding charges from the date the customer receives Notice that the supplier intends to prevent them from changing supplier? Please provide any data/information to substantiate your views where appropriate.
4. What are your specific views on the proposed clarificatory amendments to SLC 23 and SLC 24? Please provide any data/information to substantiate your views where appropriate.
5. What are your specific views on the proposed one-month time frame for implementing these proposals? Please provide any data/information to substantiate your views where appropriate.
6. What are your specific views on the minded to decision not to propose any amendments to 15 Working Day Period for the supplier to receive Notice under the Master Registration Agreement /Network Code? Please provide any data/information to substantiate your views where appropriate.

### 4. Next steps

- 4.1. Following review of responses to this consultation we intend to take a final decision on the licence modification proposals and whether to proceed with a statutory consultation. In the event that Ofgem proceeds with a statutory consultation we intend to publish an Impact Assessment at the same time.
- 4.2. Responses to this consultation should be sent (preferably in electronic form) no later than by 5:00 p.m. on Friday 15 October 2010 to:

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- 4.3. Unless marked confidential, all responses will be published by placing them on Ofgem's website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk). You may request for your response to be kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000. Respondents who wish to have their responses remain confidential should clearly mark their document(s) to that effect and include the reasons for confidentiality.

Yours sincerely,

**Emma Kelso**

**Associate Partner  
Retail & Market Processes**

## **Annex 1- SLC 23 of the gas supply licence**

### **Condition 23. Notification of Domestic Supply Contract terms**

#### **Notification of Principal Terms for Gas**

23.1 Before it enters into a Domestic Supply Contract with a Domestic Customer, the licensee must take all reasonable steps to bring the Principal Terms of that contract to the attention of that customer.

#### **Notification before Domestic Supply Contract ends**

23.2 On or about 30 Working Days before a Domestic Supply Contract is due to end, the licensee must inform the Domestic Customer (who is party to that contract) in Writing of the Principal Terms of the Deemed Contract that will apply after the Domestic Supply Contract ends if he does not enter into a new Domestic Supply Contract.

#### **Notification of unilateral variation**

23.3 If, in accordance with the terms of a Domestic Supply Contract with a Domestic Customer, the licensee unilaterally varies a term of the contract:

- (a) to increase the Charges for the Supply of Gas to a Domestic Premises; or
- (b) in any other way that is to the significant disadvantage of the customer, the licensee must give Notice of that variation to the customer in accordance with paragraph 23.4.

23.4 The Notice referred to in paragraph 23.3 must:

- (a) be given either in advance of the date on which the variation has effect or no later than the end of 65 Working Days after the date on which the variation has effect;
- (b) inform the Domestic Customer that he may end the Domestic Supply Contract if the variation is unacceptable to him; and
- (c) inform the Domestic Customer where he may obtain impartial advice and information about changing his Gas Supplier;
- (d) inform the Domestic Customer that where he has any Outstanding Charges, his Gas Supplier may be able to prevent a Proposed Supply Transfer; and
- (e) explain the effect of paragraph 23.5.

23.5 The licensee must present the information required in paragraph 23.4 in a form that is clear and easy to understand and must place the information required in sub-paragraphs 23.4(b) and (c) in a prominent position on the Notice.

23.6 The licensee must treat the variation as ineffective and neither enforce nor take advantage of it where –

- (a) the Domestic Customer notifies the licensee after he becomes aware (by any means) of the variation but no later than 20 Working Days after the date on which he receives Notice given under paragraph 23.3 that he is ending the Domestic Supply Contract; and



(b) no later than 15 Working Days after the Domestic Customer has notified the licensee in accordance with sub-paragraph 23.6 (a), the licensee received Notice under the Network Code by way of the Relevant Gas Shipper that another Gas Supplier will begin to supply the Domestic Customer's Domestic Premises within a reasonable period of time after the date on which that Notice has been given; or

(c) where the Notice of variation referred to in paragraph 23.3 is given either less than 5 Working Days in advance of the date on which the variation has effect or after the date on which the variation has effect; and

(i) the conditions in sub-paragraphs 23.6(a) and (b) are met; and

(ii) the Domestic Customer has paid any Outstanding Charges within 30 Working Days after the Domestic Customer receives Notice that the licensee intends to ask or allow the Relevant Gas Shipper to prevent the Domestic Customer's Proposed Supplier Transfer.

23.7 The licensee is not required to comply with paragraph 23.3 to such extent as the Authority may direct.

## **Annex 2 - SLC 23 of the electricity supply licence**

### **Condition 23. Notification of Domestic Supply Contract terms**

#### **Notification of Principal Terms For Electricity**

23.1 Before it enters into a Domestic Supply Contract with a Domestic Customer, the licensee must take all reasonable steps to bring the Principal Terms of that contract to the attention of that customer.

#### **Notification before Domestic Supply Contract ends**

23.2 On or about 30 Working Days before a Domestic Supply Contract is due to end, the licensee must inform the Domestic Customer (who is party to that contract) in Writing of the Principal Terms of the Deemed Contract that will apply after the Domestic Supply Contract ends if he does not enter into a new Domestic Supply Contract.

#### **Notification of unilateral variation**

23.3 If, in accordance with the terms of a Domestic Supply Contract with a Domestic Customer, the licensee unilaterally varies a term of the contract:

(a) to increase the Charges for the Supply of Electricity to a Domestic Premises; or

(b) in any other way that is to the significant disadvantage of the customer, the licensee must give Notice of that variation to the customer in accordance with paragraph 23.4.

23.4 The Notice referred to in paragraph 23.3 must:

(a) be given either in advance of the date on which the variation has effect or no later than the end of 65 Working Days after the date on which the variation has effect;

(b) inform the Domestic Customer that he may end the Domestic Supply Contract if the variation is unacceptable to him;

(c) inform the Domestic Customer where he may obtain impartial advice and information about changing his Electricity Supplier;

(d) inform the Domestic Customer that where he has any Outstanding Charges, his Electricity Supplier may be able to prevent a Proposed Supply Transfer; and

(e) explain the effect of paragraph 23.6.

23.5 The licensee must present the information required in paragraph 23.4 in a form that is clear and easy to understand and must place the information required in sub-paragraphs 23.4 (b) and (c) in a prominent position on the Notice.

23.6 The licensee must treat the variation as ineffective and neither enforce nor take advantage of it where –

(a) the Domestic Customer notifies the licensee after he becomes aware (by any means) of the variation but no later than 20 Working Days after the date on which he receives Notice given under paragraph 23.3 that he is

ending the Domestic Supply Contract; and

(b) no later than 15 Working Days after the Domestic Customer has notified the licensee in accordance with sub-paragraph 23.6(a), the licensee receives Notice under the Master Registration Agreement that another Electricity Supplier will begin to supply the Domestic Customer's Domestic Premises within a reasonable period of time after the date on which that Notice has been given; or

(c) where the Notice of variation referred to in paragraph 23.3 is given either less than 5 Working Days in advance of the date on which the variation has effect or after the date on which the variation has effect; and

(i) the conditions in sub-paragraphs 23.6(a) and (b) are met; and

(ii) the Domestic Customer has paid any Outstanding Charges within 30 Working Days after the Domestic Customer receives Notice that the licensee intends to prevent the Domestic Customer's Proposed Supplier Transfer.

23.7 The licensee is not required to comply with paragraph 23.3 to such extent as the Authority may direct.