

Proposed modifications of Standard Licence Condition 23 (SLC 23) of the gas and electricity domestic supply licences and consequential proposals

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Target audience: Energy suppliers, consumers, consumer organisations and representatives, and other interested parties.

Overview:

The Gas and Electricity Markets Authority proposes to modify the domestic supply licences in order to remove the 65 working day period available to suppliers for notifying customers after the effective date of a price increase or unilateral variation to a contract. It is proposed to remove this 65 working day period and require domestic energy suppliers to ensure that customers receive notice of a price increase or unilateral variation at least 30 calendar days in advance of the date on which the price increase or unilateral variation takes effect.

This final impact assessment identifies a wide range of impacts, costs and benefits of the proposed licence modifications along with other proposed consequential and clarificatory amendments. It builds on the information gathered through previous consultations including an information request to provide an assessment of the expected impact of our proposals on consumers and on competition.

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Context

The domestic gas and electricity standard licence 23 (SLC 23) came into effect in August 2007 following the supply licence review in 2006 (SLR). Currently, SLC 23 requires domestic suppliers to notify their consumers of a unilateral variation to 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 effective date of the unilateral variation.

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. In keeping with this objective, on 07 August 2009 we published the Probe retail market remedies document. During the Probe we were made aware that SLC 23 was not working in the best interests of the consumers. Whilst we made it clear at the time of the Probe that with respect to SLC 23 the best practice was to notify an increase as soon as possible and preferably in advance, we said that we would consider making further proposals in this area.

On 31 March 2010 we published an initial consultation inviting views from stakeholders on amending SLC 23. Following the close of the initial consultation, in May 2010 a formal information request was issued to all domestic suppliers to collect information for assessing current notification practices and to understand cost implications for changing current notification period. On 01 October 2010 we published a consultation presenting our minded-to position on proposals for modifying SLC 23 including consequential and clarificatory amendments. On 01 December 2010 we published a consultation on the draft impact assessment of our proposals.

Associated Documents

- Energy Supply Probe – Initial Findings Report (140/08), 6 October 2008
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=4&refer=Markets/RetMkts/ensuppro>
- Energy Supply Probe – proposed retail market remedies (41/09), 15 April 2009
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=199&refer=Markets/RetMkts/ensuppro>
- Consultation into the period for notifying unilateral contract variations, 31 March 2010
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=1&refer=Markets/RetMkts/Compl/pricechange>
- Consultation on proposals for amending Standard Licence Condition 23 (127/10), 01 October 2010
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=10&refer=Markets/RetMkts/Compl/pricechange>
- Consultation on draft impact assessment (149/10), 01 December 2010
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=11&refer=Markets/RetMkts/Compl/pricechange>

Table of Contents

Summary	4
1. Key issues and objectives	6
2. Options: Proposed amendments and impact on consumers and competition	8
Proposal 1	8
Proposal 2	14
Proposal 3	16
Proposal 4	18
Proposal 5	19
Proposal 6-Proposed implementation period	20
3. Impacts on sustainable development	22
Eradicating fuel poverty and protecting vulnerable consumers	22
Managing the transition to a low carbon economy	22
Promoting energy savings	22
Ensuring a secure and reliable gas and electricity supply	22
Supporting improved environmental performance	23
4. Other impacts and post implementation review	24
Impacts on health and safety	24
Risks and unintended consequences	24
Other impacts, costs and benefits	24
Post implementation review	24
5. Conclusion	25
6. Appendices	26
Appendix 1 – The Authority’s Powers and Duties	27
Appendix 2 – Feedback Questionnaire	30

Summary

On 31 March 2010 we published a consultation setting out our broad thinking on modifying SLC 23 of the domestic (Gas and Electricity) supply licence. In this consultation we stated our preference for an advance notification period, cited notification practices in other sectors, presented 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 the 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 (WD) 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 WD. Following the close of the initial consultation, a formal information request was issued to all domestic suppliers on 19th May 2010 to obtain further information on their views of the suppliers' existing practices.

On 01 October 2010 we published a consultation presenting our "minded to" proposals for amending SLC 23 along with other proposed consequential and clarificatory amendments. Our key proposal was to replace the current 65 WD retrospective notification period with at least 30 calendar days (CD) advance notification period. We also invited views from stakeholders on the proposal to implement any final amendments one month after any final decision to make modifications is made. Following the October 2010 consultation we published a draft impact assessment on 01 December 2010 inviting views from stakeholders. This consultation closed on 18 January 2011.

This impact assessment builds on our December 2010 draft impact assessment. Where appropriate we have reflected suggestions received from stakeholders who responded to the consultation. Our policy proposals are briefly listed below.

Proposal 1: Amendment of current SLC 23 such that suppliers provide at least 30 calendar days advance notice to customers of a price increase or unilateral variation which is to the significant disadvantage of the customer.

Proposal 2: Consequential amendment to sub-paragraph 23.6(a). This would enable customers to notify suppliers of their intention to switch to avoid the impact of price increase or variation from the time they become aware of the price increase or variation, up to the effective date of the price increase or variation.

Proposal 3: 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 blocking notice that their current supplier intends to prevent them from changing supplier on grounds of debt.

Proposal 4: Proposal to make no change to the 15 working days period (subparagraph 23.6 (b) of SLC 23) for the supplier to receive notice under the Master Registration Agreement /Network Code which enable customer transfer from old supplier to new supplier.

Proposal 5: Clarificatory amendments (including correcting of a reference error) to SLC 23.4 (b), 23.6(a) and SLC 24.3 (c) which relate to clarity about ending the contract and the circumstances when the prohibition on termination fees applies.

Proposal 6- Proposed time frame: Proposal to provide suppliers one month to implement any final changes to SLC 23 (and other consequential amendments) following final decision on proposed amendments.

In light of the responses to the draft impact assessment consultation, Chapter 2 of this final impact assessment builds on our previous assessment of proposals and their relative impacts on consumers and competition. While suppliers have not provided us any quantitative information, some suggestions have been made with respect to advance notification period and implementation period

On the basis of our impact assessment, we continue to believe that our proposals overall will have a net positive impact on customers and on competition by improving customer confidence, enhancing customer engagement and competitive activity. As previously noted, we are mindful that there may be some implications for supplier costs and some impacts on the competitive dynamics of the market; we consider that any potential negative effects will be outweighed by the benefits to consumers.

1. Key issues and objectives

1.1. Under the current obligations of SLC 23 domestic suppliers are required to notify their consumers of a unilateral variation to 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.

1.2. At the time of releasing the Energy Supply Probe ('the Probe') initial findings report 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 07 August 2009 we published the Probe retail market remedies document¹ where we made some incremental changes to SLC 23 which included:

- (i) Providing customers in debt 30 working days to pay off their debt, in circumstances where notice of a price increase or unilateral variation is received less than 5 WD in advance of the date on which the price increase or unilateral variation has effect or after the date on which the price increase or unilateral variation has effect.
- (ii) Requiring suppliers' to provide clearer communication about the customer's right to avoid the price increase by terminating the contract.
- (iii) Requiring energy suppliers (from January 2010) to notify their consumers of a price increase or unilateral variation of their contract which increases 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. Thus, while the licence condition retained the 65 working days period we introduced provision for advance notification and noted that we regarded this as best practice. The 65 working days period served as a back-stop.

1.4. We also committed to undertake further work outside of the Probe which involved:

- (i) An initial consultation (March 2010) which invited views from stakeholders on changing the current 65 working days notice period². The consultation provided details of the background work on SLC 23. It stated our preference for an

¹ Energy Supply Probe - Proposed Retail Market Remedies, Ref 99/09 :

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

² Consultation into the period for notifying unilateral contract variations, 31 March 2010

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=1&refer=Markets/RetMkts/Compl/pricechange>

advance notification period, cited notification practices in other sectors, presented 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 the 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.

- (ii) Following the close of the March 2010 consultation, a formal information request to all domestic suppliers to gather information for assessing current notification practices and to understand cost implications for changing the current notification period.
- (iii) In October 2010, a consultation with our minded to position on proposals for modifying SLC 23 including other consequential amendments³. Most recently in December 2010 we published a draft impact assessment of our proposals inviting views from stakeholders.

1.5. Chapter 2 of this impact assessment sets out each of our proposed amendments to SLC 23 and assesses potential impact of each proposal on consumers and on competition.

1.6. It is our view that there are potential consumer detriments arising from the current arrangements in the following ways. On the basis of further work we have undertaken since the Probe and the information available to us, we propose to amend notification requirements under SLC 23 including consequential amendments to SLC 14 of the supply licences.

1.7. In proposing these amendments we have considered our principal objective, set out in legislation, which 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. We have also had appropriate regard to all relevant general statutory duties.

³ Consultation on proposals for amending Standard Licence Condition 23 (127/10), 01 October 2010
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=10&refer=Markets/RetMkts/Compl/pricechange>

2. Options: Proposed amendments and impact on consumers and competition

This chapter sets out each of our proposed amendments to SLC 23 and assesses potential impact of each proposal on consumers and on competition. In addition to our proposal for 30 calendar days advance notification this chapter also considers other notification periods suggested by stakeholders. Where appropriate we have attempted to reflect views and suggestions expressed by stakeholders on our proposed amendments.

Proposal 1

Notice of a price increase or unilateral variation at least 30 calendar days (CD) in advance of the date on which either takes effect

2.1. Under the current obligations of SLC 23, energy 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 (WD) after the variation takes effect.

2.2. In our consultation published on 01 October 2010 which presented our minded to proposals, we proposed amending SLC 23 such that suppliers would be required to provide customers with notice of a price increase or unilateral variation at least 30 CD in advance of the date on which the variation takes effect. As noted in our March 2010 consultation, this period of advance notification is in line with notification practices in other sectors⁴.

Impact on consumers

2.3. We have identified a number of positive impacts on consumers associated with this proposal. These are listed below.

- (i) The consumer will get an opportunity to budget for the extra costs or to economise on their energy consumption as a consequence of the increased costs. Further advance notification will enable customers to gauge impact of increased prices on their bill and this will encourage them to research for better deals to switch. These benefits are particularly relevant for consumers on low incomes.

⁴ 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 customers' detriment they 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.

- (ii) If consumers have 30 CD advance notification of a price increase or change in tariff structure (which may be a unilateral variation to the significant disadvantage of the consumer), they will be able to take and provide meter readings around the date when the price increase becomes effective. This is important for all consumers, not just those who wish to switch, as it allows them to be sure that their next bill accurately reflects the price increase, rather than being just an estimate. This is particularly important where there has been a run of estimated readings on the account.
- (iii) Where consumers are in debt with their current supplier, it is likely to be difficult to switch to another supplier. This group in particular will benefit from knowing about price increases in advance because it will give them greater opportunity to settle their debts before the price change is implemented, and to switch should they wish to do so. We note that if a customer is in debt, and is unaware of a price increase until some time after it has happened, there is a real risk that their debt could increase if they have not had the opportunity to look at ways to reduce their consumption or budget for the price change before it happens.
- (iv) We are also aware that suppliers may incur some increase in costs on account of our proposed 30 CD advance notification period and these costs are likely to be passed on to consumers. This increase in cost may arise due to suppliers' inability to make use of the billing cycle to issue price increase notifications, costs incurred on account of making changes to current systems and other administrative costs. On the basis of the data available to us we consider that these costs are unlikely to be significant. Our analysis of these costs is presented in the "Impact on competition" section below.
- (v) We have also examined the likely impact of this proposal on suppliers' pricing strategies. It is likely that as an effect of our proposal suppliers may need to adjust their pricing strategies and that the cost of some additional risk may be passed onto consumers. Under the current arrangements suppliers are able to pass through short term wholesale price volatility immediately to consumers. Under our proposal, they are only able to do so with a lag of 30 days or more. The magnitude of this impact will depend upon each supplier's hedging strategy. Given our observation of suppliers' hedging and pricing strategies, we consider that the cost of this additional risk is likely to be small.

Impact on competition

2.4. The following section discusses the likely impact of our proposal for at least 30 CD advance notice on competition including the potential impact on suppliers' costs and on suppliers' hedging strategies. In assessing cost implications we have used the data provided to us in response to the information request issued to all suppliers in May 2010.

- (i) The majority of suppliers were unable to provide firm estimates/data on costs for the options provided in the information request⁵. Only three suppliers provided detailed cost estimates, of these the highest cost estimate was 34p per customer per notification for all the three notification options given in our information request. This estimate assumes sending a separate notification (that is not using the billing cycle) to all customers. Other estimates on incremental costs range from 13p per customer per notification to 22p per customer per notification (mailing First Class). Another supplier noted that sending notifications over the course of ten working days would increase postage costs from 16p per letter, as it is under current timescales, to 27p per letter (First Class mailing). We calculated an estimate for the entire industry based on information of number notifications issued since 18 Jan 2009. Where suppliers have not provided these figures we have assumed the highest cost estimate provided to us (34p/customer) instead. On the basis of our analysis, we are currently of the view that suppliers will not incur a significant increase in their overall cost to serve.
- (ii) Other potential costs may include increases in administrative costs through recruiting additional call centre staff on a fixed term basis in order to handle the increased volume of contacts and additional staff training. One supplier suggested that it would incur £120k per notification round for handling contacts from customers to meet the increased inquiries while another supplier estimated (based on 2006 experience) that outsourcing particular contacts to an external call centre would be in excess of £600k. Suppliers could mitigate the impacts on call centres, and to some extent postage costs, by spreading the notifications over a longer period, that is, further in advance. However, we acknowledge that for competitive reasons, suppliers may feel their ability to do this is limited.
- (iii) Two suppliers raised the issue of loss in revenue on account of issuing advance notification. One supplier puts this estimate at around £1 million per day if the 30 CD advance notification is implemented on account of lack of flexibility to change prices within the advance notification period. We are not persuaded by this argument because we feel that periods of price decreases in the wholesale market may offer revenue gain opportunity to suppliers as well which will offset the loss of revenue caused on account of advance notification during periods of wholesale price increases. Suppliers contract for most of their power well ahead and therefore any impact is likely to be small.
- (iv) Some suppliers have raised the issue of impact of our proposal on their pricing strategy and their ability to respond immediately to wholesale price movements. Suppliers argue that a decrease in flexibility (in terms of how they pass on wholesale price changes) may result in an increase in costs which will be passed on to consumers. One respondent argued that 30 CD advance notification reduces the ability to respond quickly to a

⁵ The May 2010 information request sought cost estimates for three broad options for notification (a) notice within 10 days of price increase or variation (b) 30 days advance notice (c) any other period of advance notification.

competitor's price change. We think this potential impact may be significantly reduced given that all suppliers will be facing the same (proposed) 30 CD advance notification rule and that suppliers currently observed pricing strategies mean they change prices only a few times a year in response to concerted trends rather than one month of good/bad prices. Further, on the basis of the analysis undertaken as part of the Probe, we know that the Big 6 suppliers typically hedge their energy purchases over a period of around 12 - 24 months. Typically, a supplier will have bought the significant majority of its energy needs on the forward market and will only need to purchase a minority of its short term energy needs on the spot market. We consider that this significantly reduces the impact of any short term wholesale price increases on suppliers. While we accept that our proposals may increase the risk to some extent for suppliers and/or require them to make some adjustments to their pricing strategies, we are not currently persuaded that these cost impacts would be significant when weighed against the benefits of our proposals. We note that it is possible that our proposals could have differing impacts on suppliers and therefore the competitive dynamics of the market depending on their individual hedging strategies.

2.5. On the basis of the above analysis, we are not convinced that our proposal of at least a 30 CD advance notice period poses any significant adverse impact on suppliers' costs and on their ability to compete vigorously. We also do not believe that our proposal will directly limit the number or range of suppliers in the domestic gas and electricity supply markets. We hold the view that our proposal will complement the Probe remedies relating to billing and the introduction of annual statements and encourage consumer engagement. It is our view that the overall benefits to consumers of our proposal outweigh any potential adverse impacts.

Suggestions for advance notification period

2.6. The sections below discuss some suggestions on notification received in response to the March 2010, October 2010 and the recent draft impact assessment consultation published in December 2010.

(i) 1 week/7 days advance notice

2.7. Two suppliers suggested an advance notification period of around 1 week on grounds that such a period may reduce the impact on hedging strategies and may help achieve the consumer benefits we have identified.

2.8. In our view this proposal will have similar cost implications for suppliers as in the case of our proposed 30 CD advance notification period. These costs are largely related to issuing notices separately from the billing cycle and other administrative costs. We note that under a 7 day advance notification period suppliers' ability to respond quickly to movements in wholesale prices is potentially better than in the 30 CD advance notification period proposal.

2.9. However, in regard to the impact on consumers, we are not convinced that a 7 day advance notification period will provide the full benefits identified under our proposed at least 30 CD advance notification period (section 2.3 above). These benefits include consumers' ability to budget and economise their consumption and engage with the market for researching better deals to switch.

2.10. Overall, we do not consider this suggested option to be an improvement on our proposed at least 30 CD advance notification period.

(ii) 65 WD advance notice

2.11. One of the consumer groups suggested an advance notification period of 65 WD on grounds that it would provide consumers adequate time to explore other tariff options and enable suppliers to notify many of their customers in their regular billing cycle (which suppliers have emphasised is an important factor in reducing notification costs).

2.12. In our view the impact of a 65 WD advance notification period on suppliers' costs and on their ability to respond to wholesale prices could be higher. While a 65 WD advance notification period would provide a longer duration to consumers to research and engage with the market there is a risk that the costs arising from the additional risk due to the potential decrease in flexibility (in terms of immediately passing on changes in wholesale price) may become more significant under this option. We also note that under our 30 CD proposal suppliers would be able to notify earlier than this if they assessed that any additional cost due to loss of flexibility was more than offset by any savings by including notification in the billing cycle.

2.13. In our view this suggested option does not strike as good a balance between benefits to consumers and to competition as our proposed at least 30 CD advance notification period. Therefore, we have decided not to pursue this option further.

(iii) Public announcement 30 days in advance and individual notifications no later than 1 day before the effective date of price increase

2.14. One supplier suggested that price increases be announced publicly (in the media) 30 days in advance and individual notices be issued 1 day before the effective date of a price increase (although retrospective notifications would still be permitted in exceptional circumstances). This supplier argues that this option will ensure that the notification exercise takes place in an orderly way and ensures suppliers' ability to sell at new prices at the same time as the public announcement.

2.15. Under this suggested option we note suppliers may have more flexibility to manage their costs than under our proposed option. However, it is not entirely clear how this option will enable suppliers to manage wholesale price volatility. If there were to be any benefit to the supplier in the regard of adopting this approach it would imply that the public announcement would be non-binding or would not specify the exact value of the price increase. Therefore the information available to

the customer in terms of whether or not it would be better to switch would be limited, and insufficient for the customer to make an informed decision.

2.16. We note that this option would still permit notifications being issued after the effective date of a price increase. In line with our proposals for notification in advance, we do not believe that this option would work in favour of customers.

2.17. Overall, we do not consider this option to be an improvement on our proposed at least 30 CD advance notification period.

2.18. In response to the December 2010 draft impact assessment consultation, one supplier suggested the following two alternatives for notification period.

(iv) A minimum of 14 days advance notice period

2.19. The supplier argues that our proposed 30 CD notification period may have a lead time of around two months (taking into account estimated time needed for drafting communications and mailing) and therefore a 14 day advance notice period may be preferred over our proposed 30 CD since it may reduce this impact on lead time. We believe this proposed time period will have similar cost implications (issuing notices outside of the billing cycle and other administrative cost) for suppliers as in the case of 30 CD advance notification period. We also note that with a 14 day advance notice period suppliers' ability to respond quickly to movements in wholesale prices may be better than in the 30 CD advance notification period proposal.

2.20. With regard to impact on consumers, we are concerned that a 14 day advance notification period will not enable customers to realise the full benefits identified under our proposed at least 30 CD advance notification period, such as customers ability to research the market for a better deal or to budget and economise consumption.

2.21. Overall, we do not consider this option to be an improvement on our proposed at least 30 CD advance notification period.

(v) A minimum of 7 days individual notice, provided that 30 days notice or more has been given

2.22. Under this suggestion suppliers will be required to give 30 days advance notice by public announcement and to provide individual notices to customers 7 days before the effective date of the price increase (or variation). If suppliers do not provide 30 days advance notice by public announcement, then individual notification would need to be issued 30 days in advance.

2.23. The supplier acknowledges that these suggested notification periods still create issues in relation to suppliers' management of their hedging strategy. However, they

argue that these proposals will help manage customer communications better as compared to our proposed at least 30 CD advance notice period.

2.24. In our view not only is it unclear how this option will enable suppliers to manage wholesale price volatility better, given the conditional nature of this proposal (7 day advance individual notice if public announcement is made 30 days in advance or 30 days advance individual notice if public announcement is not made 30 days in advance) we believe that this proposal will be confusing for customers. There is also likelihood that some customers may miss seeing this public announcement.

2.25. As noted under suggestion (iii) (paragraph 2.15 above), if there were to be any benefit to the supplier in the regard of adopting this approach it would imply that the public announcement would be non-binding or would not specify the exact value of the price increase. Therefore, the information available to the customer in terms of whether or not it would be better to switch would be limited, and insufficient for the customer to make an informed decision.

2.26. Overall, we do not consider that this proposal is an improvement over our proposal for at least 30 CD advance notification period.

Proposal 2

Consequential amendment to sub-paragraph 23.6(a) such that customers can notify suppliers of their intention to switch to avoid the impact of price increase or variation from the time they become aware of the price increase or variation up to the effective date of the price increase or variation.

2.27. Under the current requirements of SLC 23 sub-paragraph 23.6(a) customers must notify their current supplier that they would like to end the contract in order to avoid being affected by a price increase or variation. The customer may give this notice after they have become aware of the price increase or variation by any means (e.g. a press announcement), but must ensure that such notice is given no later than 20 working days after the date on which they received direct notice of a price increase or variation from their current supplier.

2.28. In our October 2010 consultation we proposed amending this provision of SLC 23 such that the 20 WD period applies from the date a price increase or unilateral variation takes effect. The impact of our proposal was to increase the overall period currently available to customers to notify suppliers of their intention to switch from 20 WD to approximately 40 WD. The rationale for making this proposal was to provide more time to consumers to make an informed switching decision. Further, this time could potentially enable tariff rate information to be updated on switching sites and through other sales channels (for e.g. face to face sales under SLC 25 which include providing customers with comparisons and/or estimates), thereby enabling consumers to a make an informed switching decision.

2.29. While consumer groups⁶ supported our proposal a number of suppliers opposed it. Suppliers argued that our proposal provided an “extra” 20 WD period to customers and this is not necessary given that we are proposing “at least 30 CD advance notice”. Further, suppliers argued that our proposal can potentially make the process more onerous and may increase their costs (no supplier provided cost estimates or other relevant data on this specific proposal). One supplier suggested a 14 WD period from the effective date of a price increase or unilateral variation on grounds that their suggested period of 14 WD will be in line with standard contract cooling off periods. We note that the impact of this suggestion would be to reduce the effect of our proposal but the potential implications for suppliers would remain, albeit to a lesser degree.

Ofgem’s revised proposal

2.30. After considering the responses to this proposal we have decided to revise our minded to proposal such that customers can avoid the price increase provided they notify their current supplier that they want to switch away at any time between the date they become aware of the price increase or unilateral variation (which will normally be the date they receive direct notification, but could be earlier if there is a public announcement in the media) and when that unilateral variation comes into effect. The effect of the proposal is that the customer will always have at least a 30 CD period in which they can give notice to their supplier that they intend to switch supplier.

Impact on consumers

2.31. The positive effect on consumers of our revised proposal will be to give them at least a 30 CD window (between when they are notified of the variation and when the variation comes into effect) in which to notify their supplier that they intend to switch. If all the requirements in SLC 23.6 have been complied with, the effect of our proposal would be that domestic customers have the ability to end their existing contract and switch supplier without being adversely affected by a unilateral contract variation (i.e. they will not be subject to a price increase or other variation of contractual terms and cannot be charged termination fees). It will also ensure that the customer is not penalised if there are delays in completing the switch and will not make the process onerous for suppliers.

2.32. We note that updated information on tariff prices on switching sites and other sales channels is vital for customers to make an informed switching choice. Therefore, it is our intention to work with suppliers, Consumer Focus and switching sites to ensure that prices are updated such that tariff information is available in a timely manner. We also note that our revised proposal will continue to be in line with the consumer protection provisions of the Gas and Electricity Directives⁷ and with the principles underlying general consumer protection law.

⁶ Consumer Focus support is subject to better understanding of costs.

⁷ Directive 2009/73/EC of the European Parliament and Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and

2.33. In response to the draft impact assessment consultation, Which? and Consumer Focus have expressed some disappointment at our decision to recast our previous proposal. Nonetheless, Which?, Consumer Focus and Citizens Advice have all supported our revised proposal. We also appreciate Consumer Focus's keenness to work with suppliers, switching sites and us to ensure that consumers can benefit from timely information on tariffs for making switching decisions

2.34. Which? has also suggested that in order to ensure that protection is aligned across existing and new customers, all tariff offerings must be guaranteed for a set period of time and this period be 12 weeks. They argue this would prevent a situation in which consumers switch to a new tariff only to find that by the time the switch has been completed, the price has increased leaving them on a worse deal than they would have had with their original tariff.

2.35. We consider this issue to have a broader scope, dealing with the overall quality of switching and delays in the switching process. It is our intention to consider this suggestion separately.

Impact on competition

2.36. We do not have any compelling evidence to indicate that the effect of our revised proposal would have a detrimental effect on competition. In fact our proposal will further incentivise customers to engage with the market and make customers more amenable to switching. This in turn will contribute to enhancing competitive activity in the market. Further it will reduce suppliers' uncertainty over to whom the price increase will apply.

2.37. Overall, we believe that our revised proposal will strike the appropriate balance with expected benefits to consumers (along with encouraging competitive activity) whilst mitigating suppliers' concerns.

Proposal 3

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 WD period to pay off outstanding charges from the date the customer receives blocking notice that their current supplier intends to prevent them from changing supplier on grounds of debt.

2.38. As part of the Probe remedies, sub-paragraph 23.6(c) was put in place to provide customers with 30 WD to pay off debt in circumstances where they wish to switch away from their current supplier in response to a price increase or unilateral variation, but are prevented from doing so on the grounds of debt. Sub-paragraph 23.6(c) (and sub-paragraph 14.9(c) of SLC 14) currently applies only in

Directive 2009/72/EC of the European Parliament and Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC.

circumstances where notice of a price increase or unilateral variation is received less than 5 WD in advance of the date on which the price increase or unilateral variation has effect or after the date on which the price increase or unilateral variation has effect. If the debt is paid off within 30 WD of receiving the blocking notice from the supplier, the customer can switch and avoid the effect of the price increase.

2.39. Our proposal (as presented in the October 2010 consultation) is to retain this protection for customers in debt, which will require amending SLC 23 and SLC 14. Our proposal will ensure that all customers in debt will have 30 WD to repay debt.

Impact on consumers

2.40. The rationale for our proposal is to retain an important protection for customers in debt in view of the impact of our proposal for at least 30 CD advance notice since the natural consequence of our proposal is that the current SLC 23.6 (C) would become redundant⁸. It is our view that the proposed consequential amendment will benefit consumers in debt and would increase the overall protection to consumers such that all consumers in debt will get 30 WD from the date they receive the blocking notice to repay their debt.

2.41. In response to our October 2010 consultation, one of the consumer groups have suggested that Ofgem undertake a review of the range of outstanding debts that consumers face and compare the 30 WD repayment period with debt repayment periods in other sectors. The 30 WD period for debt repayment was put in place as part of the Probe remedies. This period was considered appropriate following detailed consultation with stakeholders. Therefore, given the extensive analysis that took place at the time, and a lack of evidence to suggest the situation has changed, we do not consider it necessary to review the 30 WD period for debt repayment.

2.42. We are of the view that our proposal will improve on the current requirement by extending this provision to all customers in debt and not only to those customers in debt who receive a price increase notice less than 5 WD in advance or after the effective date of the price increase or variation.

Impact on competition

2.43. Since suppliers have not provided any quantitative information we are unable to present the impact of this proposal in terms of potential costs for suppliers. Some suppliers⁹ argue against this proposal on grounds that the proposed at least 30 CD advance notification period may allow customers in debt to have adequate time to repay debt or unpaid charges and switch. Suppliers have also argued that our proposal may potentially reward customers in debt particularly those in long term debt by delaying the process for the price increase to apply to them. However, we note that this was already the case with the current licence condition. We would also

⁸ 30 WD period for repaying debt currently applies if the customer receives notice 5 WD in advance or after the effective date of the price increase.

⁹ Suppliers have not provided any data to substantiate their views.

like to highlight that if a customer is ultimately unable to switch supplier because they cannot pay off their debt then the price increase will apply retrospectively from the effective date.

2.44. Finally, we do not see any significant adverse impact of our proposal on competitive activity. We believe that the net impact of our proposal will be to improve upon an important safeguard for customers in debt such that all customers in debt have 30 WD to repay their debt. Our proposal will also enable customers to engage more effectively with the market, thereby encouraging competitive activity.

Proposal 4

Proposal to make no change to the 15 WD (subparagraph 23.6 (b) of SLC 23) period for notice under relevant industry codes (the Master Registration agreement/Network code)

2.45. Under the current requirements of SLC 23, provided a customer has notified their supplier within 20 WD that they are ending the contract, the effect of subparagraph 23.6 (b) of SLC 23, is that a supplier must treat a price increase or unilateral variation as ineffective if the current supplier receives notice under industry code processes within 15 WD to the effect that a new supplier will begin to supply the consumer within a reasonable period of time.

2.46. On the basis of previous responses we proposed retaining this requirement in its original form in our October 2010 consultation. We also noted 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 possible¹⁰.

2.47. The majority of respondents including consumer bodies have expressed support for our proposal to make no change to this provision of SLC 23. One of the smaller suppliers while agreeing with our proposal pointed out that it is not appropriate to expect the "losing supplier" (that is, the supplier who the customer is switching away from) to continue to supply a leaving customer at a potential loss in case the gaining supplier delays the process.

2.48. One of the smaller suppliers in its response to the December 2010 draft impact assessment consultation argues that this clause is no longer necessary since customers will have 30 CD advance notice of price increases.

2.49. Consumer Focus had earlier suggested two potential options: (1) request that, during switching, the new supplier requests a transfer from the old supplier within 15 WD, in the spirit of the ERA's 'Peace of Mind' guarantee¹¹; and (2) the

¹⁰ We note that DECC is currently consulting on proposals for implementing the requirements of the new gas and electricity directives.

¹¹ Under ERA's peace of mind guarantee scheme, energy suppliers are committed to working together to ensure that the switching process is as simple as possible. For details

introduction of a licence condition, as the easiest and most effective way of ensuring that all notifications of transfer are put through within 15 WD. Another consumer body has suggested that we take steps to ensure that customers do not suffer on account of delays by suppliers. While at this stage we see no compelling reason to revise or modify this proposal and will continue to look closely into the working of this provision especially in view of the new Gas and Electricity Directives.

Since the proposal is to do nothing there is no impact on consumers and on competition.

Proposal 5

Clarificatory amendments (including correcting of a reference error) to (i) SLC 23 which refers to ending the contract and (ii) SLC 24 regarding the prohibition on termination fees

(i) Reference to ending the contract

2.50. 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 proposed to make amendments to this effect in the consultation.

(ii) Prohibition on termination fees

2.51. 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 fee irrespective of whether the customer notified the supplier that they are ending the contract. We therefore proposed 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.

2.52. The majority of suppliers support these clarificatory amendments. One of the suppliers has also requested clarificatory amendment to para 31 A.1 (b) of SLC 31A which covers information about electricity/gas consumption patterns. It is our

intention to consider providing guidance on this matter in due course. Consumer bodies have also expressed support for these proposed clarificatory amendments.

Since these are clarificatory amendments we do not see any significant impact on consumers and on competition.

Proposal 6 - Proposed implementation period

Proposal to provide suppliers one month to implement any final amendments to SLC 23 including other consequential amendments

2.53. Taking into account previous modifications made to SLC 23 as a result of the Probe remedies we proposed an implementation period of one month as reasonable and sufficient for adjustments to systems and processes.

2.54. Three suppliers support this timeframe. Consumer groups have also expressed support for this proposed time frame. However, some suppliers in their responses raised the issue of cost implications and requested sight of the impact assessment before committing to this time frame.

2.55. A couple of suppliers requested more time on grounds of current systems revamps that they are undergoing. One of the Big 6 has indicated that the broad underlying change to advance notification is manageable within a month's notice but full compliance with detailed procedures will take longer.

2.56. In response to the December 2010 consultation, some suppliers have expressed reservations for the proposed implementation period of a month and have requested more time. Whilst suppliers have not forwarded us any details on cost estimates they have cited difficulties in making necessary system changes in this period.

2.57. Given the views of the suppliers and the absence of data to establish what exact cost implications would arise on account of this proposed time frame, we expect suppliers to use the opportunity to comment on this impact assessment to provide us with any quantitative information to support their views.

2.58. It is our view that unless we are provided with compelling evidence to the contrary we are minded to implement final changes to SLC 23 one month after final decision on amendments.

Impact on consumers

2.59. The impact of our proposed time frame will be that customers including customers on low income will be able to realise the benefit from our proposals sooner rather than later. This is of particular importance as we have been engaging with stakeholders on this issue since early last year. There is a risk that

consumer confidence will be adversely affected if there is a long delay in implementing our proposed changes.

Impact on competition

2.60. We do not see any material adverse impact of our proposed time frame on competition. We note that despite our repeated requests¹² for data (cost estimates) on this proposal suppliers have not provided us details of this information. We also note that suppliers can ensure compliance by holding off any price increase announcement (unilateral variations that may cause significant disadvantage to customers) until their systems are fully compliant.

2.61. We would like to highlight that following the Probe some changes were introduced to the SLC 23. One of these changes was to introduce an element of potential advance notification in SLC 23. The impact of this change is that under the current arrangements of SLC 23 suppliers are required to notify their customers in advance of a price increase but no later than 65 WD after the effective date of the price increase. Thus, the 65 WD period is more of a backstop. It is disappointing that despite this move in favour of advance notification and the consultative process which was started early last year, some suppliers are citing difficulties in moving to an advance notification regime and requesting more time.

Other suggestions

(i) Guidance on the term "significant disadvantage"

2.62. Which? has requested clarification on the term "significant disadvantage" in SLC 23. They suggest removing the term "significant" and suggest that suppliers be required to notify customers of all unilateral variations that disadvantage consumers. Currently SLC 23 applies to all unilateral variations to contractual terms which result in (i) an increase to any charges for supply; or (ii) which are to the significant disadvantage of the customer.

(ii) Guidance on tracker tariffs which include exit fees

2.63. Consumer Focus has reiterated its request for guidance on the application of SLC 23 to tracker tariffs. They have requested guidance before any final amendments to SLC 23 are adopted to avoid any consumer confusion.

2.64. As noted in previous consultation, we intend to take up these issues separately.

¹² We requested suppliers to provide us data on cost implication for the proposed one month implementation period in our consultation on "minded to" proposals (published in October 2010) and in our recent draft impact assessment consultation (published in December 2010)

3. Impacts on sustainable development

This chapter assesses potential impacts on sustainable development. These include eradicating fuel poverty and protecting vulnerable customers, managing the transition to a low carbon economy, promoting energy savings, ensuring a secure and reliable gas and electricity supply and supporting improved environmental performance.

Eradicating fuel poverty and protecting vulnerable consumers

3.1. We have discussed the likely impacts of our proposals on some groups of vulnerable customers – notably those on low incomes - in Chapter 2 as part of wider impacts on consumers. It is our view that on balance our proposals will enable consumers to make provision for budgeting and to decide whether to economise their consumption where this is possible. We note that this ability is likely to be especially useful for customers on low incomes, including the fuel poor.

3.2. In regard to our proposal to retain the 30 WD period for all customers in debt such that all customers in debt have 30 WD to repay their debt and switch to avoid effect of a price increase (as discussed in Chapter 2), we are of the view that our proposal will improve on the current requirement by extending this provision to all customers in debt. While not all customers in debt are necessarily vulnerable, we note that those on low incomes are likely to make up a significant proportion of this group.

Managing the transition to a low carbon economy

3.3. It is our view that the proposed amendments will not have any significant implications for managing the transition to a low carbon economy. Further, we have not been provided with any information or data on the implication of our proposals on managing transition to low carbon economy.

Promoting energy savings

3.4. While we do not have compelling information to establish the impact of our proposals on promoting energy savings, it is our view that our proposals will enable consumers to have adequate advance warning to make decision on adjusting their consumption where this is possible.

Ensuring a secure and reliable gas and electricity supply

3.5. We believe our proposals would not have any significant impact on any factors that ensure a secure and reliable gas and electricity supply and we did not receive any consultation responses which suggested otherwise.

Supporting improved environmental performance

3.6. We do not believe there would be any significant impact on incentives to invest in improving environmental performance. The respondents have not provided any views/data on any potential implication of our proposals on environmental performance.

4. Other impacts and post implementation review

This chapter assesses other potential impacts including risks and unintended consequences. It also provides a brief overview of our intended post implementation review.

Impacts on health and safety

4.1. We do not believe that any of our proposals would lead to a significant impact on health and safety. We also note that responses to our consultations did not indicate any adverse impacts of our proposals on health and safety.

Risks and unintended consequences

4.2. We have described our view of the potential impacts on consumers and competition in Chapter 2. However, there may be unintended consequences and risks arising from our proposals. For example, some respondents have raised the likelihood that due to our proposed amendments suppliers may raise prices earlier and by higher amounts than would otherwise be the case, and wait longer to lower prices. It is our view that in a market where all suppliers will be under similar obligations we would not expect suppliers to be able to do this.

4.3. We invite respondents to highlight other potential risks and unintended consequences.

Other impacts, costs and benefits

4.4. We have discussed potential impact on costs in chapter 2. At this stage we have not identified other impacts on costs and benefits but would welcome any views on this issue.

Post implementation review

4.5. We would expect to evaluate the impact of the proposed licence modifications in a number of ways, including through our ongoing market monitoring activities and through investigations into specific complaints.

5. Conclusion

5.1. We are proposing to introduce the amendments as detailed in Chapter 2. We believe that our proposals will have a net positive impact on customers and on competition by improving consumer confidence, enhancing customer engagement and competitive activity. We are mindful of certain implications for suppliers. However, at this stage we feel that the net benefits of our proposals outweigh negative impacts.

6. Appendices

Index

Appendix	Name of Appendix	Page Number
1	The Authority's Powers and Duties	27
2	Feedback questionnaire	30

Appendix 1 – The Authority’s Powers and Duties

1.1. 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).

1.2. The Authority's powers and duties are largely provided for in statute, principally 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. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.¹³

1.3. 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 accordingly¹⁴.

1.4. 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 consumers are their interests taken as a whole, including their interests in the reduction of gas and electricity supply emissions of targeted greenhouse gases and in the security of the supply of gas and electricity to them.

1.5. The Authority is required to carry out its functions in the manner it considers is best calculated to further the principal objective, whenever 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.

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

¹³ Entitled “Gas Supply” and “Electricity Supply” respectively.

¹⁴ 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.

1.7. 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 them¹⁵; and
- the need to contribute to the achievement of sustainable development.

1.8. In performing its duties, the Authority must have regard to the interests of individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas.¹⁶

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

- promote efficiency and economy on the part of those licensed¹⁷ 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.

1.10. In carrying out the functions referred to, 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.

The Authority may, in carrying out a function under the Gas Act and the Electricity Act, have regard to the interests of consumers in relation to communications services and electronic communications apparatus or to water or sewerage services (within the meaning of the Water Industry Act 1991), which are affected by the carrying out of that function.

¹⁵ Under Part 1 of the Gas Act, the Utilities Act, and certain parts of the Energy Acts in the case of Gas Act duties, or Part 1 of the Electricity Act, the Utilities Act and certain parts of the Energy Acts in the case of Electricity Act duties.

¹⁶ The Authority may have regard to other descriptions of consumer.

¹⁷ Or persons authorised by exemptions to carry on any activity.

1.11. 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 Regulation¹⁸ 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.

¹⁸ Council Regulation (EC) 1/2003

Appendix 2 – 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:

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

1.2. Please send your comments to:

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