



Holders of Gas and Electricity
Supply Licences, DECC,
Consumer Focus, consumers and
their representatives and other
interested parties

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

Our Ref: 14/11
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Date: 09 February 2011

Dear Colleague,

Proposed licence modifications of Standard Licence Condition (SLC) 23 of the gas and electricity domestic supply licences: period for notifying unilateral contract variations and other consequential and clarificatory amendments

After considering responses to our consultation on a draft impact assessment and proposed text of the modifications to licence conditions published on 01 December 2010¹, the Gas and Electricity Markets Authority ('the Authority') has decided to proceed with a statutory consultation on the proposed modifications as set in the modification notices under section 11A of the Electricity Act 1989 and section 23 of the Gas Act 1986 published today.

Background

In October 2010², we published a consultation setting out our 'minded to' proposals for modifying the domestic supply licence conditions to address the issue of retrospective notifications of price increase and unilateral contract variations.

We proposed to remove the 65 working day period currently available to suppliers to notify their customers of a price increase (or other unilateral contract variation) after the effective date of the price increase (or other unilateral contract variation). We proposed that SLC 23 be modified to require domestic energy suppliers to ensure that customers receive notice of a price increase or other unilateral contract variation at least 30 calendar days in advance of the date on which the price increase (or other unilateral variation) takes effect. We also proposed some clarificatory and consequential amendments to SLC 23 and other licence conditions.

Following the close of the October 2010 consultation and taking into account the responses of all stakeholders we published a draft impact assessment along with proposed text of the relevant licences conditions on 01 December 2010 for further consultation. This consultation closed on 18 January 2011.

¹ 01 December 2010, consultation on draft impact assessment (Ref 149/10)

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=11&refer=Markets/RetMkts/Compl/pricechange>

² 01 October 2010, Consultation on "minded to" proposals (Ref 127/10):

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=10&refer=Markets/RetMkts/Compl/pricechange>

Overview of responses and Ofgem's view

We received 12 responses³ to the draft impact assessment. We note some suppliers have asked for more time to implement any final changes to SLC 23 including consequential changes. Two suppliers have asked for more time on grounds that they are undergoing major IT system changes. One supplier, while supportive of advance notification has requested Ofgem to reconsider our proposed 30 CD advance notification period and made some alternative suggestions to our proposal. These have been reflected in the final impact assessment document. Two suppliers suggested that we remove our proposal to provide all customers in debt with 30 working days to repay their debt and switch, following a price increase by their current supplier.

In general, consumer groups have shown support for our proposed changes. One consumer group suggested that suppliers must be required to give notification of all unilateral contract variations that disadvantage consumers, not just those deemed to be 'significant' and recommends that this be in the form of a stand alone, personal communication by post.

We have not received any specific comments regarding the drafting of the proposed modifications to the licence conditions and consequently they remain unchanged from the text set out for consultation in December 2010.

We have considered concerns raised by suppliers regarding the implementation time frame. However, given the extensive consultation process on this issue since last year, a further delay in implementing changes to SLC 23 may negatively affect consumer confidence in the market. We also note that despite our repeated requests for estimates for cost implications none of the suppliers have provided detailed cost estimates.

As such we continue to believe that the proposed one month implementation period is appropriate and should be retained in the statutory consultation. Where appropriate, we have assessed the relative impacts of respondents' suggestions to our proposals in the final impact assessment published along side this statutory consultation today. Non-confidential responses have been placed on the Ofgem website.

Notification practices under SLC 23

Ofgem has received some complaints regarding suppliers' notification practices. In particular, customers appear to be complaining about the content and clarity of notices received from their supplier in respect of information about the specific increase in charges⁴ which applies to them. We are concerned that some suppliers may not be complying with SLC 23 and relevant provisions of consumer protection law⁵, with the result that domestic customers may have been discouraged from effectively engaging with the market in terms of their ability to make informed decisions about switching supplier.

We would therefore like to use this opportunity to remind suppliers of their obligations under SLC 23 and consumer protection law when notifying customers about unilateral variations, including an increase in charges⁶. The key requirements are as follows:

³ 'Big 6', Ecotricity, First Utility, ERA, Consumer Focus, Citizen Advice and Which?

⁴ By "charges" we mean the definitions of 'Charges for the Supply of Gas' and 'Charges for the Supply of Electricity' provided for in Standard Condition 1 of the standard conditions of the gas and electricity supply licence, i.e. "as between the licensee and a Customer, charges made by the licensee in respect of the supply of [gas/electricity] to that Customer's premises, including any charges made for the provision of [a Gas Meter/an Electricity Meter]".

⁵ For example, the prohibition on unfair commercial practices contained in the Consumer Protection from Unfair Trading Regulations 2008.

⁶ By "charges" we mean the definitions of 'Charges for the Supply of Gas' and 'Charges for the Supply of Electricity' provided for in Standard Condition 1 of the gas and electricity supply licence, i.e. "as between the licensee and a Customer, charges made by the licensee in respect of the supply of [gas/electricity] to that Customer's premises, including any charges made for the provision of [a Gas Meter/an Electricity Meter]".

- the supplier must notify every customer affected by the unilateral variation in writing and inform that customer of the specific variation that applies to them⁷;
- the contents of the notice provided to the customer must also contain the specific information required by paragraph 4⁸ of SLC 23 and comply with clarity and prominence requirements provided for in paragraph 5⁹ of SLC 23, and
- the supplier will need to ensure that the contents of the notice do not amount to an unfair commercial practice for the purposes of the Consumer Protection from Unfair Trading Regulations 2008, for example, in respect of the provision of misleading information¹⁰ or the omission of material information¹¹.

We will continue to monitor suppliers' compliance with SLC 23 (as well as relevant provisions of consumer protection law) and we will consider whether it is appropriate to commence any formal investigations which may ultimately lead to enforcement action being taken. We encourage suppliers to review their notification processes and consider taking immediate steps to resolve any potential areas of concern. We will also consider whether it is appropriate to issue guidance on this aspect of SLC 23 should that prove to be necessary.

Next steps

Relevant licence holders and interested third parties are asked to review the proposed modifications and make any representations to Ofgem on or before 14 March 2011. In case any relevant licence holders wish to object to one or more of the proposed modifications, any such objections must be received by Ofgem on or before 14 March 2011¹².

Please note that any responses to the consultation will be placed on Ofgem's website unless marked as confidential. Subject to responses to the statutory consultation, in the event that the Authority decides to proceed with the modifications, it is intended that the modifications will take effect one month after the date the Authority's decision is published.

If you have any queries regarding the content of this letter please contact Meghna Tewari, Senior Economist, Retail and Market Processes (email: Meghna.tewari@ofgem.gov.uk, telephone: 0207 901 7374).

Yours faithfully,

Ian Marlee
Partner, GB Markets

⁷ This is the effect of "must give Notice of that variation to the customer" in paragraph 3 of SLC 23.

⁸ "(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 [Gas/Electricity] Supplier;
(d) inform the Domestic Customer that where he has any Outstanding Charges, his [Gas/Electricity] Supplier may be able to prevent a Proposed Supply Transfer; and
(e) explain the effect of paragraph 23.6" (i.e. the circumstances in which the supplier must treat the variation as ineffective and neither enforce nor take advantage of it).

⁹ "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."

¹⁰ See regulation 5 of the Consumer Protection from Unfair Trading Regulations 2008.

¹¹ See regulation 6 of the Consumer Protection from Unfair Trading Regulations 2008.

¹² On this occasion, due to the previous consultation exercises carried out by Ofgem, we have decided to consult for a period of 34 days.