



Holders of Gas Supply, Electricity Supply licence, DECC, consumers and their representatives and other interested parties

Promoting choice and value for all gas and electricity customers

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Date: 31 May 2011

Dear Colleagues,

Draft guidance on sub-paragraphs 3 (a) and (b) of Standard Licence Condition 23 of the gas and electricity supply licences (SLC 23)

Ofgem is proposing to publish¹ guidance² on the interpretation of the following expressions used within SLC 23:

- *"to increase the Charges for the Supply of [Gas/Electricity]"* as set out in sub-paragraph 3(a) of SLC 23; and
- *"in any other way that is to the significant disadvantage of the customer"* as set out in sub-paragraph 3(b) of SLC 23.)

We invite stakeholders to offer their views on the draft guidance contained in this letter. Subject to responses, we will consider publishing a final version of guidance on the above expressions.

Background

Paragraph 3 of SLC 23 provides that a domestic supplier is required to notify their customers in writing of any unilateral variations to contractual terms which increase the charges for the supply of gas and/or electricity or variations which in any other way are to the "significant disadvantage" of the customer.

Ofgem recently made amendments to SLC 23³. One of the key changes was to require domestic suppliers to notify their customers of unilateral variations to contractual terms at least 30 days in advance of such a variation taking effect. These changes came into effect on 28 April 2011 following consultation with relevant stakeholders.

¹ Any final guidance would be published pursuant to section 35(1) of the Gas Act 1986 and section 48(1) of the Electricity Act 1989.

² Ofgem had previously published draft commentary/interpretation on the standard licence conditions for gas and electricity during the Supply Licence Review. See:
[http://www.ofgem.gov.uk/Markets/RetMkts/Compl/SLR/Documents1/Appendix%2011%20SLR%20-%20Supplementary%20document%20\(gas\)%20\(Final\).pdf](http://www.ofgem.gov.uk/Markets/RetMkts/Compl/SLR/Documents1/Appendix%2011%20SLR%20-%20Supplementary%20document%20(gas)%20(Final).pdf)
[http://www.ofgem.gov.uk/Markets/RetMkts/Compl/SLR/Documents1/Appendix%2010%20SLR%20-%20Supplementary%20document%20\(electricity\)%20\(Final\).pdf](http://www.ofgem.gov.uk/Markets/RetMkts/Compl/SLR/Documents1/Appendix%2010%20SLR%20-%20Supplementary%20document%20(electricity)%20(Final).pdf)

³ Decision letter : modification of SLC 23 and consequential amendments
http://www.ofgem.gov.uk/Markets/RetMkts/Compl/pricechange/Documents1/SLC%2023%20Mod_direction_covelletter.pdf

During the course of our consultations on proposals for amending SLC 23 we received requests from a number of stakeholders to provide clarity on some of the provisions within SLC 23 including the expression "significant disadvantage". We mentioned our intention to issue guidance in the final impact assessment published on 09 February 2011⁴.

It is important to note that this guidance is issued for the purposes of clarity of the version of SLC 23 in existence at the time of publication of this guidance. A copy of SLC 23 is enclosed in Annex 1.

Ofgem's draft guidance on sub-paragraph 3(a) and 3(b) of SLC 23

"To increase the Charges for the Supply of Gas/Electricity"

Sub-paragraph 3(a) of SLC 23 contains the expression *"to increase the Charges for the Supply of [Gas/Electricity]..."*, and for the purposes of standard licence condition the expression *"Charges for the Supply of [Gas/Electricity]"* is defined as meaning *"... as between the licensee and a Customer, charges made by the licensee in respect of the supply of [Electricity/Gas] to that Customer's premises, including any charges made for the provision of an [Electricity/Gas Meter]"*⁵.

In Ofgem's view the expression *"to increase the Charges for the Supply of [Gas/Electricity]..."* is likely to capture an increase in any of the following charges⁶:

- standing charges;
- unit charges (including any unit rate which forms part of a multiple unit rate tariff structure for e.g. E7, E10, DTS);
- late payment charges;
- termination fees;
- administrative charges for paying supply charges by credit cards;
- charges made by a supplier in respect of disconnections and re-connections;
- charges for paper billing / copies of bills;
- charges made by a supplier for testing, moving or replacing a meter;
- (where applicable) charges made by a supplier for hiring/renting a meter;
- changes to a discount scheme, such as a reduction in the prompt pay discount;
- in respect of prepayment meter customers, charges for replacing a prepayment meter card; and
- call out charges made by a supplier for metering related issues.

"To the significant disadvantage of the customer"

Sub-paragraph 3 (b) of SLC 23 contains the expression "in any other way that is to the significant disadvantage of the customer". In Ofgem's view the expression "significant disadvantage" is designed to capture any unilateral changes to contractual terms which may leave the domestic customer worse off than before.

By way of illustrative and non-exhaustive examples, in the table below we have set out relevant categories of unilateral changes and examples of unilateral changes which we would regard as being "to the significant disadvantage of the customer":

⁴ <http://www.ofgem.gov.uk/Markets/RetMkts/Compl/pricechange/Documents1/Final%20ImpactAssessment.pdf>

⁵ See paragraph 3 of standard condition 1 of the electricity supply licence and paragraph 2 of standard condition 1 of the gas supply licence.

⁶ For the avoidance of doubt these examples are indicative and non-exhaustive.

Illustrative and non-exhaustive categories	Illustrative and non-exhaustive examples
Changes to the services provided or the quality of service level	<ul style="list-style-type: none"> • changes to reward or voucher schemes linked to the supply contract, including the removal of the scheme, reduced levels of rewards/vouchers or narrowing of eligibility of criteria. • changes which reduce the availability of payment methods and paper billing.
Changes to the duration of the contract and any conditions for renewal of the contract	<ul style="list-style-type: none"> • an increase in the duration of a fixed term period. • inserting or changing terms which allow a supplier to renew the contract for a further fixed term period. • changing terms which apply to any process for opting out of contract renewals by: <ul style="list-style-type: none"> a. increasing the length of a notice period which must be given by a customer or decreasing a time period in which a customer must respond to the supplier. b. putting in place additional requirements which must be satisfied by a customer.
Changes to conditions for termination of the contract	<ul style="list-style-type: none"> • any increase in the notice periods for termination. • any decrease in a time period in which a customer must respond to the supplier. • putting in place additional requirements which must be satisfied by a customer.
Changes to charges for early termination of the contract (to the extent that changes are not already captured by the expression "an increase in the Charges for the Supply of [Gas/Electricity]"	<ul style="list-style-type: none"> • changes which extend the circumstances where cancellation/ early termination fees will be payable.
Changes to compensation and refund arrangements which apply if any service quality levels specified in the contract are not met, including any arrangements which apply in the event of inaccurate or delayed billing	<ul style="list-style-type: none"> • Any changes which seek to reduce or exclude the supplier's liability.

Next Steps

This is draft guidance and we invite stakeholders to offer views on our interpretation of sub-paragraphs 3(a) and 3(b) of SLC 23, along with any additional or alternative examples which should be included in the proposed guidance. Responses to this consultation should be sent (preferably in electronic form) by no later than 5:00 p.m. on 12 July 2011 to:

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Unless marked confidential, all responses will be published on our website at www.ofgem.gov.uk. You may request for your response to be kept confidential. Ofgem shall endeavour to respect this request in so far as this would be compatible with Ofgem's statutory functions and 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 faithfully,

David Hunt
Head of Retail Market

Annex 1: SLC 23 of the electricity supply licence⁷

Condition 23. Notification of Domestic Supply Contract terms

Notification of Principal Terms

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 at least 30 days in advance of 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 by changing his Electricity Supplier;
- (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 subparagraphs 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 –

⁷ Text of SLC 23 for Gas is similar.

- (a) the Domestic Customer notifies the licensee after he becomes aware (by any means) of the variation on or before the date on which the variation has effect that he is ending the Domestic Supply Contract by changing his Electricity Supplier; 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:
 - (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.