



All relevant licensees

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Dear Colleague

Notice under section 11A(2) of the Electricity Act 1989 and section 23(2) of the Gas Act 1986: Consultation on proposed licence modifications to the licence fee payment conditions in all gas and electricity licences and other consequential changes

Introduction

This letter sets out our proposal to amend the licence fee payment conditions in each gas and electricity licence,¹ the Ofgem Licence fee principles document (the "LFPD") as well as Standard Conditions 1, 25 and 31 of the gas and electricity supply licences and Standard Condition 1 of the electricity distribution licence. The detail of the changes proposed and the reasons for them are set out in this letter and the attached Notices and supporting Schedules.

Background

Removal of references to the Competition Commission

The Electricity and Gas (Internal Markets) Regulations 2011 (the 'Regulations') which came into force on 9 November 2011, repealed section 12 of the Electricity Act 1989 and section 24 of the Gas Act 1986 (Modification references to Competition Commission) and instead inserted section 11C to the Electricity Act and section 23B to the Gas Act 1986 (Appeal to the Competition Commission).

Under a modification reference, the Competition Commission (the "Commission") could direct Ofgem to recover the costs of the Commission from relevant parties, and pass them on to the Commission. Costs were recovered via the licence fee cost recovery mechanism. As these costs were not considered to be part of Ofgem's general running costs, the standard licence conditions and the LFPD made explicit reference to them.

Under the new appeals mechanism, introduced by the Regulations, the Commission has the power to order any party to an appeal to pay the costs incurred by the Commission in connection with an appeal directly to the Commission. For this reason, the explicit reference to the Commission's costs in the Standard Conditions of each gas and electricity licence and the LFPD is no longer required. Where an appeal is allowed, Ofgem will

¹ Standard Condition (SC) 3 of the Gas Transporters licence; SC 4 of the Gas Supply licence; SC 2 of the Gas Shippers licence; SC 2 of the Gas Interconnector licence; SC A4 of the electricity transmission licence; SC 4 of the electricity supply licence; SC 4 of the electricity generation licence; SC 5 of the electricity distribution licence; and SC 2 of the electricity interconnector licence.

continue to recover the Commission's costs through the licence fee cost recovery mechanism.

Our expectation is that we would collect licence fees from the network licensees apportioned between the licensees on the same basis as set out in our current LFPD.

We therefore propose to remove from the licence fee payment conditions any reference to the Commission and its costs in connection with a reference to it. The appendices to this letter sets out the Notices that we are issuing under section 11A(2) of the Electricity 1989 and section 23(2) of the Gas Act 1986. The supporting Schedule to each Notice sets out the proposed amendments to each licence condition. The proposed amendments to the LFPD are appended to this letter.

Legislative changes to consumer advocacy services

References to the Office of Fair Trading (OFT) and Consumer Direct

As you may be aware, Consumer Direct was replaced by the Citizens Advice consumer service with effect from 1 April 2012.

The Department for Business Innovation and Skills laid a Public Bodies Order (*The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013*) (the "Public Bodies Order") which is anticipated to come into force on 1 April 2013. The Public Bodies Order will amend section 8 (3A), (3B) and (10) of the Utilities Act 2000 by:

- omitting subsection (3A)(e): *'the expenses of the Office of Fair Trading which relate to the expansion of an OFT scheme to enable it to cater for gas and electricity consumers'*;
- amending subsection (3A)(f) by substituting *'the Office of Fair Trading'* with *'Citizens Advice or Citizens Advice Scotland'* and substituting *'any OFT scheme'* with *'any qualifying public consumer advice service'*;
- amending subsection (3B)(b) by substituting *'the OFT scheme'* with *'the qualifying consumer advice scheme'*;
- after subsection (3B) inserting *'(3C) A qualifying public consumer advice scheme is a scheme that is supported by Citizens Advice or Citizens Advice Scotland, or by them jointly, in a manner that the Office of Fair Trading is prohibited from using by section 8A of the Enterprise Act 2002.'*;
- amending subsection (10) by inserting in the appropriate place the following definitions:
 - *"Citizens Advice' means the National Association of Citizens Advice Bureaux";*
 - *"Citizens Advice Scotland' means the Scottish Association of Citizens Advice Bureaux;"* and
 - omitting the definition of *'OFT scheme'*.

We propose to reflect these changes, where relevant, in the licence fee payment conditions, the LFPD and in standard conditions 1, 25 and 31 of the gas and electricity supply licences. This consultation is being conducted on the basis that the Public Bodies Order will, in due course, be approved by Parliament and that the changes proposed by it will come into effect on 1 April 2013.

Consumer Direct's details on the back of bills

Standard Condition 31.1(a) of the gas and electricity supply licences requires suppliers to inform each of its domestic customers that Consumer Direct can assist in providing information and advice to domestic customers. This is achieved by providing that information on or with each bill or statement of account (or by providing it annually if no bill or statement of account has been sent).

From 1 April 2012 Citizens Advice consumer service took over the role and functions performed by Consumer Direct following the latter's abolition. Therefore, suppliers will need to include the Citizens Advice consumer service's details in place of those for Consumer Direct. Citizens Advice consumer service fully support the inclusion of its details on the back of domestic customer bills or statements.

We do not anticipate that it will be necessary to change the description of the assistance provided to consumers that is currently contained in Standard Condition 31.1(a) of the gas and electricity supply licences ("*can assist in providing information and advice*"), but, we would welcome comments on this point.

We recognise that suppliers may have already changed the back of their domestic bills to refer to the Citizens Advice consumer service rather than to Consumer Direct. This follows Consumer Focus' request to suppliers in June 2012 that they begin to provide contact details for the Citizens Advice consumer service on the back of all bills and in relevant correspondence as soon as possible. We do not propose to prescribe the exact wording of Citizens Advice consumer service's contact details or their position on suppliers' bills; this is a matter that suppliers should decide in conjunction with the Citizens Advice consumer service. Similarly, we would expect suppliers to agree with the Citizens Advice consumer service their preferred method(s) of contact with consumers and reflect this on their bills and statements.

Licensees will need to be aware of the need to change other references from Consumer Direct to the Citizens Advice consumer service (for example, on websites and literature).

Consumer Direct in other licence conditions and statutory instruments

There is reference to Consumer Direct in Standard Condition 25 of the gas and electricity supply licences, which deal with marketing to domestic customers (see SLC 25.12(e)). We intend to amend SLC 25.12(e) at the same time as SLC 31.1(a). There is also reference to Consumer Direct in The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, which we will amend in due course.

The proposed modifications to SLC 31.1(a) and SLC 25.12(e) are set out in the attached supporting Schedules to the relevant Notices.

We would be grateful for any comments, in particular whether any references to Consumer Direct have been overlooked.

Next steps

We are issuing the following licence modification Notices which consult on the proposed changes:

- Appendix 1 – Notice under section 23(2) of the Gas Act 1986 – Gas Transporters Licence
- Appendix 2 – Notice under section 23(2) of the Gas Act 1986 – Gas Supply Licence
- Appendix 3 – Notice under section 23(2) of the Gas Act 1986 – Gas Shippers Licence
- Appendix 4 – Notice under section 23(2) of the Gas Act 1986 – Gas Interconnector Licence
- Appendix 5 – Notice under section 11A(2) of the Electricity Act 1989 – Electricity Transmission Licence
- Appendix 6 – Notice under section 11A(2) of the Electricity Act 1989 – Electricity Supply Licence
- Appendix 7 – Notice under section 11A(2) of the Electricity Act 1989 – Electricity Generation Licence
- Appendix 8 – Notice under section 11A(2) of the Electricity Act 1989 – Electricity Distribution Licence

- Appendix 9 – Notice under section 11A(2) of the Electricity Act 1989 – Electricity Interconnector Licence

Relevant licence holders and other interested parties have 34 days to make representations on the proposed changes before we reach a decision. The consultation period has been adjusted to take account of the Christmas and New Year bank holidays. The LFPD which has been appended to this letter sets out the changes that we propose to make to it. This includes minor administrative changes relating to references to the National Weights and Measures Laboratory and to the definitions of gas and electricity customers.

We intend to make the proposed modifications soon after receiving and considering any responses. If the Authority² decides to make the proposed modifications they will take effect 56 days after our decision is published. We anticipate that any modifications will take effect from 1 April 2013.

If you wish to respond to this consultation, please do so by **23 January 2013**. Please email your response to paul.heseltine@ofgem.gov.uk or send this by post to Ofgem, 9 Millbank, London, SW1P 3GE.

Unless marked confidential, all responses will be published by placing them on our website at www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

If you have any queries regarding the content of this letter, please contact Marcus Clements (marcus.clements@ofgem.gov.uk) in respect of the legislative changes to the consumer advocacy arrangements, and Gavin Jenkins (gavin.jenkins@ofgem.gov.uk) in respect of the changes relating to the Regulations.

Yours faithfully,

Paul Heseltine
Associate Director Finance and Risk Management

² The terms "Authority", "Ofgem" and "we" are used interchangeably in this document.