

APPENDIX A – SPECIFIC COMMENTS ON DRAFT LICENCE CONDITIONS

In addition to the comments provided on the final policy proposals, we have set out below our comments on the proposed drafting of the accompanying Licence Conditions. We would be happy to discuss these comments in more detail if that would be beneficial.

SLC 7A

SLC7A.12A and SLC7A.12B(b) state that customers on contracts with a period of indefinite length, e.g. evergreen customers, are entitled to “give notice to terminate ... at any time”, with the notice period limited to a period “no longer than 90 days” in SLC7A.11. We seek clarification that Ofgem intend this licence condition to be interpreted as meaning that the maximum termination period for such customers is 90 days.

Amendments to SLC 7A

We have concerns about the drafting of the extended definition of a Micro Business Consumer in SLC7A.14. A Micro Business consumer is, today, defined in article 2(1) of the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (“the Order”). This definition requires customers to be identified as Micro Business based on one (or more) of their annual electricity consumption, their annual gas consumption, or their FTE and turnover/balance sheet. Where a non-domestic customer holds their gas and electricity supplies with the same supplier, i.e. dual fuel customers, suppliers treat the customer as Micro Business for both fuels if they meet the definition for one of the fuels. In other words, the Order applies across fuels.

Ofgem propose to extend the Micro Business Consumer definition by introducing new criteria into SLC7A.14 based on higher consumption criteria than is contained in the Order. The extended Micro Business definition is based on a combination of the existing Order and a licence-based extension of the consumption criteria. The latter is fuel-type specific, i.e. the proposed amendment to the Electricity Supply Licence introduces a requirement to treat a consumer as Micro Business if their electricity consumption is “not more than 100,000 kWh”, while the proposed amendment to the Gas Supply Licence introduces a requirement to treat a consumer as Micro Business if their gas consumption is “not more than 293,000 kWh”.

If a customer currently meets one of the consumption criteria in the Order, then they will be a Micro Business for both fuels. Under the proposed Ofgem drafting of SLC7A.14, a dual fuel customer with consumption greater than one of the Order thresholds but less than the licence condition threshold could be treated as Micro Business for that fuel only; this could lead to the situation of the consumer being a Micro Business and a non-Micro Business at the same time. This will potentially be confusing for customers and create operational complexity for suppliers. Ofgem should amend SLC7A.14 in the Gas and Electricity Supply Licences to include the higher consumption criteria for both gas and electricity.

SLC 7B

SLC7B.3(b) should be clarified to protect customers against “undue” detriment, and not all detriment per se. As currently drafted, non-domestic suppliers could be found in breach of the Standards of Conduct for any act detrimental to the customer’s interests. Depending on the interpretive scope of the “designated activities”, this could include the removal of supply following the detection of theft or change of supplier objections arising from unpaid debt.

The drafting of SLC7B.6 indicates that the objection rights contained in the Terms and Conditions of a Micro Business Consumer Contract could be considered by Ofgem in relation to the tests of the Standards of Conduct. As the Standards of Conduct take precedence in the event of a contradiction with the existing objections licence conditions (SLC 14.2), it would help suppliers to comply with the Standards of Conduct if Ofgem confirmed whether contractual terms could be deemed as unfair and whether their previous guidance on information provision to objected customers is now effectively binding.

SLC7B.8 creates an obligation for non-domestic suppliers to publish a “Treating Customers Fairly Statement” on an annual basis. If the Standards of Conduct are introduced in August 2013, it would help suppliers prepare the appropriate communications if we understood when the first Statement is required. As all suppliers will require a period to implement and embed the new requirements, it would seem reasonable that the first Statement should be published no later than the end of 2014.

Amendments to SLC 7B

By using the word “must”, SLC7B.11 obligates suppliers to have regard to guidance accompanying the Standards of Conduct. We believe this has the effect of making Ofgem’s guidance on the Standards of Conduct binding, something we are aware Ofgem has been keen to avoid. Ofgem should amend “must” to “may”. We provide a separate section outlining our thoughts on the guidance below.

Ofgem should clarify the extent of the “designated activities” in SLC7B.12. For example, it is not clear whether an assessment of “the accuracy of a Bill or statement of Account” limits the assessment of fairness to just that area, or where that accuracy is affected by a meter failure, extends its scope in to the adequacy of meter maintenance provision. This is of material importance to the implementation of the Standards of Conduct. Ofgem should clarify how it should be interpreted as soon as possible.

APPENDIX B – SPECIFIC COMMENTS ON SLC 7B GUIDANCE

1. The guidance on “honest” and “transparent” outlines that suppliers should not “deliberately or unconsciously” take advantage of the customer in various ways, including the customer’s “lack of knowledge or experience” or their “unfamiliarity with the subject matter of the product”. The use of “unconsciously” leaves suppliers open to unnecessary uncertainty about compliance. For example, where a customer pretends to hold more knowledge about the subject matter when agreeing the price for an energy contract, suppliers may find themselves unconsciously taking advantage of that lack of knowledge. Ofgem should confirm that a reasonableness test will apply to this element of the guidance.
2. The guidance on “appropriate” could be interpreted as introducing a number of new obligations into the non-domestic supply licence, many which are inappropriate for business customers. This guidance appears to have been copied from the guidance provided to domestic suppliers, where “appropriate” has a different context. Ofgem should provide specific non-domestic guidance which takes in to account the context of a business to business relationship. We note that the proposed guidance contradicts Ofgem’s open letter of 21st December 2012 which stated that the introduction of an Ability to Pay type regime was neither “necessary [nor desirable for non-domestic customers, where the nature of the detriment is different and where equivalent issues of vulnerability and fuel poverty do not exist”¹.

¹Ofgem open letter on debt and disconnection, 21st December 2012
<http://www.ofgem.gov.uk/Sustainability/Cp/Ewbc/Documents/1/Non-dom%20disconnection%20openletter%2020-12-2012.pdf>