



Making a positive difference
for energy consumers

Industry participants, customers
and other interested parties

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Date: 03 December 2013

Dear Colleague,

Enforcing three week switching

We want to modify Standard Licence Condition (SLC) 14A¹ of the gas and electricity supply licences. We propose that:

- suppliers must take all reasonable steps to ensure that a customer's switch to a new supplier happens within three weeks
- the three-weeks will start either at the end of the cooling-off period or immediately after any agreement between the customer and the supplier to start the transfer during the cooling-off period.

Appendix 1 sets out our draft licence amendments.

We invite views on these proposals. Please send responses to smartermarkets@ofgem.gov.uk by 31 January 2014.

Why are we proposing these changes?

Fast and reliable switching enables customers to engage in the retail energy market. This engagement supports competition and benefits consumers.

Our proposals are a first step towards wider improvements to switching that have been discussed as part of our Change of Supplier project². They also support the government's call for the industry to improve switching. We understand that suppliers are currently looking to speed up customer switching. Our proposals complement this work and set a minimum standard for all consumers while these changes are being developed. While we

¹ Find links to the latest versions of the gas and electricity supply licence conditions on our website: <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

² We established the Smarter Markets Programme to consider the reforms that will be needed to improve retail energy markets for consumers in the context of the roll out of smart metering. The Change of Supplier project is one of the initiatives that have been developed under this programme. See our website for more information: <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/smarter-markets-programme>

think switching should be faster still, securing a reliable three-week switch is important now so consumers can be confident that they can move to their chosen supplier in a set period.

We are concerned and disappointed that domestic suppliers have not consistently met the current expectation that consumers should be switched within three weeks. The main findings from our analysis of information provided by the large domestic suppliers for the period Q1 2012 to Q1 2013 are that:

- the proportion of domestic switches taking longer than three weeks (without a valid reason³) was over 20% in electricity and over 80% in gas
- the significantly worse performance in gas reflects difficulties with the central gas industry systems that support switching which have now been resolved
- there were some improvements in meeting the three-week target, but, as companies typically addressed shorter delays first, a higher proportion of longer delays remained
- variation in performance among suppliers suggests that there are in-house problems and that there is scope for suppliers to do more to improve performance.

The current licence conditions require suppliers to include a term in consumers' supply contracts on switching times. If a customer's new supplier fails to complete the switch within three weeks, the consumer can take action under their supply contract. The number of cases where suppliers have failed to meet the three-week target and the variation in performance between suppliers are evidence that more direct regulation is needed.

We think the three-week switching requirement should be an explicit licence obligation on suppliers rather than a contractual requirement with consumers. This would be in line with our duty to protect the interests of consumers, as it would let us investigate compliance with the licence requirements and take enforcement action where necessary.⁴ Under the current licence obligation, we can step in only where a supplier has failed to include the three-week switching term in its contracts with customers.

We also want to modify SLC 14A of the gas and electricity supply licences in anticipation of the government making regulations in line with the Consumer Rights Directive (CRD) (2011/83/EU) on customer cancellation rights and cooling off periods. The CRD will apply to all consumers entering into distance and off-premises energy contracts.

Our proposals to secure a reliable three-week switch respond to the messages that consumers gave us when we conducted qualitative research on what domestic⁵ and non domestic⁶ customers want from a new change of supplier process. Domestic consumers said they wanted a reliable and accurate transfer and for it to be as efficient and streamlined as possible. The primary concern for business customers was that the process was reliable and hassle free.

Details of the proposed changes

We propose two changes to SLC 14A.

1) Obligation to complete a supplier transfer within three weeks

We want to introduce a direct obligation for the supplier to take all reasonable steps to complete the switch within three weeks. This will be in addition to the existing obligation to include a term in each contract with customers.

³ SLC14A lists these reasons, for example where the current supplier objects to the transfer request.

⁴ Information on Ofgem's approach to compliance can be found here:

<https://www.ofgem.gov.uk/investigations/ofgems-powers>

⁵ <https://www.ofgem.gov.uk/publications-and-updates/ofgem-consumer-first-panel-research-inform-ofgems-review-change-supplier-process>

⁶ <https://www.ofgem.gov.uk/publications-and-updates/non-domestic-consumers-and-change-supplier-process-qualitative-research-finding>

2) Linking the Relevant Date to an agreement between the supplier and the customer to proceed with the switch

While current practice can allow the customer to waive any cooling-off arrangements, the CRD provides a standardised 14-day cooling-off period. If the supplier and customer agree to initiate a transfer during this period, the customer will retain any cooling-off rights until the end of the 14 days. This may encourage the customer to take advantage of the contract terms they have chosen with their new supplier earlier. However, the current definition of the 'Relevant Date' for the start of the three-week period in SLC 14A does not recognise such an arrangement.

We propose to change the definition of the Relevant Date for starting the three-week period (SLC 14A.9(b)(ii)) so that, where the supplier and the customer agree to proceed with the switch during the cooling-off period, the day after that date will be the Relevant Date. This clarification will give greater confidence to consumers that their switch will then take place within three weeks.

Background to the licence conditions

SLC 14A was introduced in November 2011 by the Department of Energy and Climate Change (DECC)⁷ to implement the EU Third Internal Energy Package. This package gives consumers a right to be able to switch their energy suppliers with three weeks. SLC 14A required suppliers to include this right in their contracts with domestic and non-domestic customers.

SLC 14A lets the customer choose a later date for the switch. It also sets conditions for the three-week limit to apply, for example:

- the new supplier must be given all the necessary information
- the current supplier must not object to the transfer.

Gas and electricity suppliers and gas transporters must also improve their systems and processes for switching, where needed, to allow them to meet the three-week requirement. This is a condition of their licences.

One reason it was hard to meet the three-week limit was that the gas registration systems required at least 15 working days to process a change of supplier. In some instances this meant that suppliers could not transfer customers within three weeks. To fix this, modifications were made to the gas network codes⁸ to allow the period of time that the current supplier had to object to a transfer to vary and accommodate non-working days. These changes were implemented in November 2013.

Industry performance in meeting the three-week requirement

Large suppliers have provided information on their performance against the three-week switching target between Q1 2012 and Q1 2013. For more than 20% of domestic electricity customers, the switch took longer than three weeks, with no valid reason for the delay. In most cases the delay was less than seven days. However, for some of those who were delayed, the delay was more than 14 days.

Performance varied between suppliers. While four of the Big Six suppliers managed to achieve a three-week switch for close to 90% of domestic electricity customers, of the other two, one managed only 50% and the other less than 20%.⁹

⁷ The Electricity and Gas (Internal Markets) Regulations 2011
http://www.legislation.gov.uk/uksi/2011/2704/pdfs/uksi_20112704_en.pdf

⁸ A modification was made to the UNC, Modifications 0403 - EU Third Package: 21 day switching with flexible objection period. www.gasgovernance.co.uk/0403. An equivalent modification was made to the IGT UNC.

⁹ We note the views of some parties that account should be taken, when comparing supplier performance, of their different acquisition systems/processes and interpretations of the classification of valid/invalid delays.

The evidence we have shows that, for non-domestic customer switches, delays without valid reasons are less widespread. We would expect this as the market will coordinate switching around the anniversary of contracts, with the customer requesting a switching date well in advance. In this market, around 60% of switches took longer than three weeks but were for valid reasons, for example at the request of the customer. Delayed switching for electricity for invalid reasons was around 5% throughout the period.

The performance for gas switches has been impacted by the design of the registration systems that support switching. The changes to the gas registration systems, described above and introduced in November 2013, will permit suppliers to achieve the three-week requirement.

We will continue to monitor supplier performance against the three-week standard, and we are considering whether to publish this information.

The Change of Supply project

We are proposing this change now, together with additional reforms, to secure a reliable three-week switch for consumers while other reforms, described below, are under way.

During 2013, we discussed changes to the switching process with the industry, DECC and consumer groups at our Change of Supplier Expert Group¹⁰. Our initial findings are that improvements can be made to the industry systems and processes that support switching. We will consult on our longer term proposals to radically improve switching for consumers in Q1 2014.

In its October 2013 Annual Energy Statement, the government challenged the industry to see what changes could be made in the short term to speed up switching. We welcome the focus the government is bringing to this area. Suppliers are working to respond to this challenge, and we are supporting their efforts to develop changes to industry codes and working practices.

Impact assessment

DECC published an impact assessment of its original proposal to introduce SLC 14A¹¹. This indicated that introducing SLC 14A would have administration and system costs. However, it also showed that, customers would benefit from faster switching and that better switching could improve competition.

We do not consider that our proposed amendments to SLC 14A change the overall intent of the industry requirements. Our proposals seek to change the regulatory framework that governs the three-week switching obligation and are designed to improve industry performance in meeting the existing three-week standards. We therefore do not think a new impact assessment is required.

Next steps

Subject to responses, we intend to issue our conclusions in Q1 2014. They will be accompanied by a statutory consultation seeking to modify the licence condition to have effect from summer 2014.

We would like to hear views on any of the issues set out in this letter. In particular, we would like to hear from energy suppliers, consumer representatives and industry parties

¹⁰ <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/smarter-markets-programme>

¹¹ Third Package: Articles concerning customers' right to switch energy supplier within 3 weeks and receive final account closure within 6 weeks of switching.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43252/1156-ia-third-package-fuel-switching.pdf

who have an interest in switching. We would especially welcome responses to the following questions:

Question 1: Do you agree with our proposed changes to Standard Licence Condition 14A?

Question 2: Do you agree with proposed implementation timetable?

Responses should be sent to smartermarkets@ofgem.gov.uk by 31 January 2014.
Alternatively they can be sent by post to:

Andrew Wallace
Smarter Markets
Ofgem
9 Millbank
London
SW1P 3GE

Unless marked confidential, all responses will be published in our library and on our website, www.ofgem.gov.uk. You may ask for your response to be kept confidential. We will 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 want your response to be confidential, mark the document to that effect and include your reasons for confidentiality. Please put any confidential material in an appendix.

If you have any questions about this consultation letter, please contact Andrew Wallace (020 7901 7067, andrew.wallace@ofgem.gov.uk).

Yours faithfully

Maxine Frerk
Partner, Retail Markets and Research

Appendix 1: Draft modified standard Licence Condition 14A

This appendix sets out the proposed modification to SLC 14A of the gas supply licence standard conditions. We propose to make equivalent changes to the electricity supply licence standard conditions. Additions from the current licence condition are marked as double underlined and omissions are marked with strikethrough. We have not marked the consequential changes to the individual paragraph numbering and references that we have made throughout this condition.

Condition 14A. Customer transfer

Obligation to complete a Supplier Transfer within three weeks

14A.1 The licensee must take all reasonable steps to complete a Supplier Transfer within 21 days of the Relevant Date unless:

- (a) the Customer requests that the Supplier Transfer be completed at a later date; or
- (b) the Customer notifies the licensee that he does not wish the Supplier Transfer to take place; or
- (c) one or more of the conditions in paragraph 14A.3 applies.

14 A.2 The licensee must include a term in each Contract that has been entered into with a Customer on or after the day after the day on which the Electricity and Gas (Internal Markets) Regulations 2011 are made, providing that the licensee will complete any Supplier Transfer in accordance with that Contract within 21 days of the Relevant Date unless:

- (a) the Customer requests that the Supplier Transfer be completed at a later date; or
- (b) the Customer notifies the licensee that he does not wish the Supplier Transfer to take place; or
- (c) one or more of the conditions in paragraph 14A.3 applies.

14A.3 The conditions in this paragraph are that, on or after the Relevant Date:

- (a) a Relevant Gas Supplier has prevented the Proposed Supplier Transfer in accordance with paragraph 14.2 or 14.4 of standard condition 14 (Customer transfer blocking); or
- (b) a Supply Exemption Holder is currently supplying gas to the premises and has objected to the Proposed Supplier Transfer under paragraph 2 of Schedule 2AB to the Act; or
- (c) the licensee does not have all of the information it requires in order to complete the Supplier Transfer, despite having taken all reasonable steps to obtain the missing information from the Customer, and cannot readily obtain that information from another source; or
- (d) the Customer is currently taking a supply of gas through an Exempt Distribution System and the licensee is unable to start supplying gas to the premises because:

- (i) a connection which the licensee or the Customer requires to be made in pursuance of paragraph 7(2) of Schedule 2AA to the Act has not yet been made; or
- (ii) the distribution exemption holder has specified, in a notice under paragraph 1(6)(a)(i) of Schedule 2AA to the Act, a metering arrangement which it considers would be required for access to be given to a third party supplier (within the meaning of that Schedule) and that metering arrangement is not yet in place; or
- (e) the licensee is prevented from completing the Supplier Transfer due to any other circumstance which is outside the control of the licensee and which it has taken all reasonably practicable steps to resolve.

- 14A.4 Where a condition in paragraph 14A.3 applies the Supplier Transfer must be completed as soon as reasonably practicable and, in any event, within 21 days of the date on which the condition ceases to apply (or, if more than one condition applies, when all relevant conditions cease to apply).
- 14A.5 Where the condition in 14A.3(b) applies, the licensee must not complete the Supplier Transfer before the objection by the Supply Exemption Holder under paragraph 2 of Schedule 2AB to the Act is resolved in accordance with paragraph 1(8) of that Schedule.
- 14A.6 The licensee must not charge a Customer for any costs associated with carrying out a Supply Transfer. The obligation in this paragraph is without prejudice to contractual conditions relating to the termination of a Non-Domestic Supply Contract and to any obligation in the Contract to pay a termination fee.

Obligation to improve switching systems

- 14A.7 In order to achieve the objective of completing all Supplier Transfers within 21 days of the Relevant Date, the licensee must take all reasonable steps to improve the systems and processes governing the Supplier Transfer process.

Obligation to cooperate in respect of a Supplier Transfer

- 14A.8 The licensee must comply with any reasonable request from another Gas Supplier or supply exemption holder to provide information or to take any other steps which are reasonably necessary in order to enable that Gas Supplier or supply exemption holder to complete a Supplier Transfer within 21 days of the Relevant Date.

Information for Authority

- 14A.9 The licensee must give the Authority any Information that the Authority reasonably requests for the purpose of establishing:
- (a) what steps the licensee has taken in accordance with its obligations under paragraph 14A.6 and/or
 - (b) the number of Supplier Transfers that have been completed by that licensee within 21 days of the Relevant Date.

Definitions for condition

14A.10 For the purposes of this condition:

"Relevant Date" means:

- (a) the day after the day on which a Customer enters into a Contract with a new Gas Supplier; or
- (b) if after entering into the Contract there is a period of time within which the Customer may decide not to proceed with the Contract (the "Cooling Off Period"), the earlier of:
 - (i) the day after the day on which the Cooling Off Period ends;
 - (ii) the day after the day on which the Customer and the Licensee agree that the transfer may proceed during the Cooling Off Period; and
 - (iii) 14 days after the day on which the Customer entered into the Contract

"Supplier Transfer" in relation to any premises at which a Gas Supplier is supplying gas, means the transfer of responsibility for that supply from that Gas Supplier to another Gas Supplier.

"Exempt Distribution System"

"Distribution Exemption Holder" and

"Supply Exemption Holder" have the meanings given in Part 1 of the Act.