

Barry Coughlan
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27 May 2014

Dear Barry,

Open letter consultation on the modification of relevant licence conditions to enable the delivery of the Government Electricity Rebate

Thank you for the opportunity to respond to Ofgem's consultation concerning its proposed approach to a new Licence Condition facilitating the Government Electricity Rebate.

We have been concerned for some time about the overall impact of policy costs on consumers' bills and welcome the Government's decision to alleviate the costs of the Warm Home Discount scheme by providing funding for a £12 per annum rebate on electricity bills. We appreciate the opportunities that we have had for engagement with both DECC and Ofgem in the development of the policy to date. We think that the aims and objectives of the proposal overall are sensible and will provide a transparent framework for the delivery of the rebate.

We agree that a Licence Condition is appropriate in order to ensure that there is a clear framework for administering the rebate and that all electricity suppliers apply the rebate in the same way. This will create a level playing field for delivering the rebate and provide additional reassurance to customers. We also believe that this is necessary in light of the Retail Market Review (RMR) discount rules.

However, as Ofgem notes, the format of the licence condition is simply to allow the Secretary of State to direct licensees to make the rebate payment – there is no mention of the subsequent refund of the payment by the Government. We think that the refund is an essential part of the arrangement and that the licence condition should mention this, especially as the second payment is after the next General Election. In particular, the condition should state that:

- (a) to be valid, the direction must recite the fact that the Secretary of State has undertaken to the licensee to repay to it all duly verified payments made in pursuance of the direction within [30 days] of the verification information being submitted; and
- (b) no subsequent direction can be made unless the payments made under the previous direction have been fully repaid.

In terms of other comments at this stage:

- **Simplicity of administration.** It will be important that the overall package is straightforward and not costly for suppliers to operate – this will affect the content of the direction as well as the licence condition. It may be sensible for the two to be finalised together so that there are no gaps or unintended consequences.
- **Sunset Clause.** We agree with the need for a sunset clause to limit the obligation and ensure that the Licence Condition is used for the intended purposes only. However, we wonder whether it is sensible to limit the programme to two rebates. Under the 1932 Concordat, if the scheme is to be permanent, it will need to be put on a proper statutory footing, but there may be unclarity as to how soon this happens given the forthcoming General Election. For this reason, we would recommend a more flexible sunset clause – for example that the Condition will lapse if no direction is issued within 18 months of the previous direction or (if no direction has been issued) of the Condition coming into effect.

We have provided comments on your specific consultation questions in the Annex 1 to this letter and have provided some drafting comments to reflect our points in Annex 2. If you wish to discuss, please do not hesitate to contact me, or Pamela Mowat on 0141 568 3207.

Yours sincerely,



Rupert Steele
Director of Regulation

**OPEN LETTER CONSULTATION ON THE MODIFICATION OF RELEVANT LICENCE
CONDITIONS TO ENABLE THE DELIVERY OF THE GOVERNMENT ELECTRICITY
REBATE - SCOTTISHPOWER CONSULTATION RESPONSE**

1) Do you agree in principle with the proposal to introduce the new SLC, and what is your reasoning?

Yes, we agree.

We think that a Standard Licence Condition (SLC) is appropriate in order to ensure that there is a clear framework for administering the rebate and that all electricity suppliers apply the rebate equally. This will create a level playing field for delivering the rebate and provide additional reassurance to customers around how they will receive it.

We believe that a SLC is necessary to prevent suppliers inadvertently falling foul of the RMR Licence Conditions and in particular the rules around discounts. SLC 22B.4 expressly prohibits suppliers from using any cash discounts, other than those specifically permitted by the SLC. Those cash discounts which are permitted by SLC 22B are narrowly defined and we are unable to see any way in which the Government Electricity Rebate would fall within those definitions. The only alternative for suppliers will be to rely on the exemption in SLC 22B.29, which permits the use of cash discounts which are otherwise required by licence condition or legislation. This would not be possible if the rebate was arranged through a voluntary agreement.

2) Is the proposed approach to the rebate appropriate to minimise implementation costs and achieve the objective of reducing the burden of some environmental policy costs?

The proposed approach to the rebate will enable DECC to achieve its objective of reducing the burden of some policy costs.

Whether this approach will minimise implementation costs is not yet clear. We appreciate that this is the intention and that the Licence Condition has been designed with that in mind. From Ofgem's perspective therefore, we think that that is appropriate. However, we remain conscious that the Licence Condition must be read alongside the proposed direction. The implementation costs (and any associated burden) will not be fully understood until both documents are available.

Depending on the detail of the proposed direction, the rebate could become complex to administer. It will be important to understand the management of certain groups of customers (such as Prepayment meter customers). These issues could be especially important for smaller suppliers.

DECC needs to continue to ensure that the administrative and cost burden on suppliers is kept to a minimum. The content of the direction will be critical in that respect. We would also encourage Ofgem and the Secretary of State to work together in developing the necessary reporting, to minimise the reporting burden on suppliers (particularly to avoid the scenario of suppliers being asked to provide different reporting to each party on slightly different timescales).

3) Is requiring all licensed electricity suppliers to provide the rebate to all of their domestic customers (without a de minimis bill threshold) an appropriate way to provide for proportionality and not materially distort competition in the energy market?

Under Regulation 13 of the Warm Home Discount Regulations 2011, the liability for non-core spending is proportionate to a supplier's number of domestic customers and does not depend on the amount of energy sold. Furthermore, under RMR, suppliers are no longer allowed to offer to domestic customers two tier tariffs that have no explicit standing charge. Accordingly the vast majority of the customers will have standing charges that more than cover the rebate – and those standing charges are likely to include an allowance for Warm Home Discount (WHD) costs. We therefore agree with intention not to set a 'low consuming' threshold.

4) Are there any unintended consequences in the implementation of the rebate in this way?

The main issue in our view is achieving a sufficiently clear link between the obligation to make a payment in the licence condition and the Secretary of State's responsibility to pay back rebates to the supplier in question. Without this, a licence condition requiring suppliers to make rebates to customers at the direction of a Minister is a most unusual innovation which could be open to future misuse.

We think that the refund is an essential part of the arrangement and that the licence condition should mention this, especially as the second payment is after the next General Election. In particular, the condition should state that:

- (a) to be valid, the direction must recite the fact that the Secretary of State has undertaken to the licensee to repay to it all duly verified payments made in pursuance of the direction within [30 days] of the verification information being submitted; and
- (b) no subsequent direction can be made unless the payments made under the previous direction have been fully repaid.

Provided that our comments above are addressed, we are not aware of any further unintended consequences in the implementation of the rebate which would be caused by the proposed draft SLC. As we have noted however, much of the detail on implementation will arise from the content of DECC's direction, which is not currently available.

We think that the two documents will need to be finalised together which may require further consultation, or workshops etc to be held, so that the total package is coherent and practical before moving to the statutory consultation stage. Further, while we don't think it is likely given the constructive dialogue held with DECC and Ofgem's teams to date, there remains a risk that the content of the draft direction could change in such a way that suppliers may find themselves struggling to implement it in a reasonable way.

5) Is introducing a sunset clause and limitations to the SoS' direction an appropriate way to provide regulatory certainty?

Yes. Subject to some comments on the specifics set out below, we think that a sunset clause and limitations on the Secretary of State's (SoS) direction are both appropriate in this context.

Limitations on the Secretary of State's direction

We think that including limitations on the SoS' direction is sensible and appropriate. We agree with most of those proposed within the Licence Condition. We have one inclusion and one point of amendment to suggest.

A critical feature of the rebate is that, once the payments have all been made to domestic customers and verified, the Secretary of State will refund the total value of the rebates to the relevant supplier. While this is an obligation on the Secretary of State and not on the licensee (and therefore not suitable for the operative wording of the direction) it is of critical importance that it is acknowledged in the condition, We believe that the most appropriate way is for the condition to state that:

- (a) to be valid, the direction must recite the fact that the Secretary of State has undertaken to the licensee to repay to it all duly verified payments made in pursuance of the direction within [30 days] of the verification information being submitted; and
- (b) no subsequent direction can be made unless the payments made under the previous direction have been fully repaid.

We think that this is necessary for good regulatory order and to provide suppliers with sufficient reassurance and certainty around the process.

We do not agree that the SoS should be allowed to dictate the format of any information relating to a Government Electricity Rebate which must be displayed on or provided with a Bill or statement of account, though it would be reasonable for there to be a requirement on suppliers to identify the sum clearly as a Government funded rebate so that it is distinct from other discounts that consumers may receive.

Sunset Clause

The sunset clause provides certainty on the scope and reach of the SLC and ensure that the powers which it creates are used within a certain period of time. We agree with Ofgem's view that the Licence Condition is not the appropriate vehicle for administering such schemes on an enduring basis. Under the 1932 Concordat between HM Treasury and the Public Accounts Committee, enduring programmes are normally required to be funded in accordance with specific legislation, rather than taking authority solely from the annual Appropriation Act.

However, with a General Election scheduled for May 2015, we think that there may be a possibility that the scheme needs to run on for a little longer before it can be replaced with a statutory one. Accordingly, provided that appropriate provision is made concerning the repayment of the rebate by Government we would support a more relaxed sunset arrangement, in particular:

- (a) we would support lifting the limit of two payments; and
- (b) we suggest that the condition should lapse if no direction is issued within 18 months of the previous direction or (if no direction has been made) of the Condition coming into effect.

Please see suggested drafting to cover these points set out in Annex 2.

**CONSULTATION ON THE MODIFICATION OF RELEVANT LICENCE CONDITIONS TO
ENABLE THE DELIVERY OF THE GOVERNMENT ELECTRICITY REBATE**

SCOTTISHPOWER COMMENTS ON PROPOSED DRAFT LICENCE CONDITION

To reflect our response to the specific issues raised within the SLC, as set out in my letter and Annex 1 above, we would suggest that the draft licence condition amended as follows:

Condition 25D.5

This condition will cease to have effect ~~from and including the date five years after if no direction has been issued in accordance with paragraph 25D.1 within 18 months of the date of the previous such direction or (if there has been no such direction) of the date that this condition becomes effective.~~

Rationale for amended Condition 25D.5

We think that a sunset clause is sensible but it is unclear to us whether a future Government will want the arrangement to be continued and if so, when legislation might be brought forward. This alternative approach will allow limitations on the opportunities to use the Licence Condition but allow Government more flexibility to extend the rebate for a further period of time if appropriate. However this must be coupled with a new paragraph requiring that a supplier will only be required to comply with a further direction where all previous payments made by that supplier have been reimbursed (see new Condition 25D.6 below).

Insert new Condition 25D.6

~~The licensee is not required to comply with any direction issued in accordance with paragraph 25D.1 unless~~

- ~~(a) the Secretary of State has given an undertaking to the licensee that (after payment of the rebates have been appropriately verified) he will fully repay the licensee the cost of the rebates within [30] days and the giving of this undertaking is described in a recital to the direction; and~~
- ~~(b) in the case where the licensee has previously complied with such a direction, all payments that have been made by that licensee have been fully reimbursed to it.~~

Rationale for new Condition 25D.6

The essence of the scheme is that the Secretary of State will repay the rebates to the licensees concerned. This language is intended to record that fact and to ensure that payment of one cycle is complete before the second can be started,

Condition 25D.6

“Relevant Matters for Standard Condition 25D” means:

- a) A requirement to deliver a Government Electricity Rebate to a Domestic Customer;
- b) The time and manner in which a Government Electricity Rebate is to be delivered to a Domestic Customer;

- c) A requirement to display or provide information clearly labelling a Government Electricity Rebate on or with a Bill or statement of account immediately following the payment of the rebate ~~so that it is distinct from any other discount the Domestic Customer may receive—, including the manner in which that information should be displayed~~; and.
- d) ~~The format of any information relating to a Government Electricity Rebate which must be displayed on or provided with a Bill or statement of account.~~

“Government Electricity Rebate” means, in respect of any eligible Domestic Customer, ~~up to two annual~~ **one** rebate equal to twelve pounds sterling ~~in any per~~ calendar year which the Secretary of State may in accordance with this condition direct the licensee to deliver to a Domestic Customer.

Rationale for amended Condition 25D.7

The numbering has been changed to accommodate the proposed insertion of new SLC 25D.6.

We do not agree that the SoS should be allowed to dictate the format of any information relating to a Government Electricity Rebate which must be displayed on or provided with a Bill or statement of account, though it would be reasonable for there to be a requirement on suppliers to identify the sum clearly as a Government funded rebate so that it is distinct from other discounts that consumers may receive.

ScottishPower
May 2014