

To holders of gas and electricity supply licences, Citizens Advice, consumers and their representatives

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Dear Colleagues

Open letter on compliance monitoring – non-domestic suppliers

We place obligations on non-domestic suppliers to ensure business consumers are treated fairly. Monitoring suppliers' compliance with licence obligations is a high priority for us. This enables us to make a positive difference to consumers and ensure regulatory requirements are clear. We have recently assessed suppliers' compliance with licence obligations for information on micro-business bills.

On 28 June 2013 we published our decision to implement the Retail Market Review non-domestic proposals to require suppliers to include the contract end date and termination notice date on bills for micro-businesses with fixed term contracts. The relevant conditions¹ took effect on 31 March 2014. We introduced these reforms to make processes for micro-businesses clearer and simpler. The addition of the contract end date and termination notice information on bills is a key part of improving information to small businesses so they can make well informed choices about their energy supply.

In September 2014, we contacted suppliers to request copies of bills they had sent to micro-business customers on fixed-term contracts, to monitor compliance with these licence modifications.

Below we set out the findings of our review and highlight areas where suppliers asked for additional guidance.

What did we find?

The information required by SLC 7A.10A and 7A.10B is:

- i. The date on which the current fixed-term period is due to end.
- ii. The latest date the customer can give notice in order to terminate the contract at the end of the current contract period.
- iii. A statement to the effect that the consumer can send notice at any time before the date in (ii).

¹ Standard Licence Conditions (SLC) 7A.10A and 7A.10B. The full set of gas and electricity supply SLCs are on our website at <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

We found that 25 suppliers had included all of this information on their bills. However, seven suppliers had not included at least one of the required pieces of information. We have since engaged with these suppliers to ensure that they make the required changes.

We recognise that new licence conditions can involve substantial changes to business processes and suppliers should contact us if they have any difficulties with implementation. However, the implementation period² should have been sufficient to make those changes. We take non-compliance seriously and retain the right to take enforcement action in appropriate circumstances.³

Some suppliers asked for further guidance on the requirements to display the information in a prominent position and in plain and intelligible language. In keeping with the second of our compliance principles (*clarity of regulatory requirements*), we provide below some relevant considerations for suppliers in relation to these requirements.⁴ However, responsibility for compliance rests entirely with the companies we regulate. As we move towards a greater reliance on regulation through principles, it is important suppliers take ownership of understanding the needs of consumers.

Plain and intelligible language

In our June 2010 guidance on the application and interpretation of SLC 7A⁵ we confirmed that we would apply the plain and intelligible language requirements with reference to case law and guidance⁶ produced by the Office of Fair Trading (which has been adopted by its successor, the Competition and Markets Authority) on Regulation 7 of the Unfair Terms in Consumer Contracts Regulations 1999. This advice has not changed.

In all written communications to customers, suppliers should consider whether these customers are able to understand the language and its effect. We would also like to make clear that while the term 'Relevant Date' is used in SLC 7A.14 to describe a date at least 30 days before the end of any fixed term period, suppliers do not have to use the term "Relevant Date" on their bills or other communications.

Prominence

SLC 7A.10A states "the licensee must...display the information in a prominent position". This applies to both its position on the page and its position within the bill overall. Suppliers should consider whether a typical customer would be able to notice the information when reading their bill. On some suppliers' bills, it seemed unlikely that this test would be met.

Suppliers should also consider their obligations under the Standards of Conduct. SLC 7B.4 requires that information provided to consumers is "Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence)".

² The decision to modify the gas and electricity supply licences was published on 28 June 2013 for implementation on 31 March 2014. <https://www.ofgem.gov.uk/ofgem-publications/74749/implementationoftheretailmarketreviewnon-domesticproposals-decisiontomakelicensmodifications.pdf>

³ Our Enforcement Guidelines can be found at: <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines>

⁴ Open letter on regulatory compliance <https://www.ofgem.gov.uk/ofgem-publications/86894/openletteronregulatorycompliance28march2014.pdf>

⁵ SLC 7A guidance <https://www.ofgem.gov.uk/ofgem-publications/38475/guidance-application-and-interpretation-certain-aspects-slc-7a.pdf>

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/317667/UTCCR-explained-an-overview-in-an-easy-to-digest-format.PDF

Signposting to Citizens Advice Consumer Service and Ombudsman Services

It is not a licence obligation for suppliers to include contact details on non-domestic bills for the Citizens Advice Consumer Service or the Ombudsman Service. However, we believe it is important that customers are able to find information on how to contact or seek advice from these organisations.

We saw some good practice from suppliers where micro business bills included these details. However, less than half of the bills we saw had any information for consumers about how to contact the Ombudsman and only around a quarter had information on how to contact Citizens Advice Consumer Service.

We believe it would be beneficial if consumers were able to find this information easily, regardless of their supplier and encourage suppliers to adopt this good practice.⁷

Next steps

As a priority, we will continue to monitor non-domestic suppliers' compliance with their licence obligations. We intend to continue reporting on the outcomes of our compliance monitoring. We take all instances of non-compliance seriously and will address them on a case by case basis.

If you have questions about this letter please contact Meghna Tewari, Head of Non-domestic Retail Markets (Meghna.Tewari@ofgem.gov.uk, 0207 901 7374)

Yours faithfully,

Rob Church,
Partner, Retail Markets

⁷ Suppliers to micro-businesses must already comply with the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 and the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008.