
STATUTORY INSTRUMENTS

2019 No. 218

ELECTRICITY

GAS

**The Electricity and Gas (Standards of Performance) (Suppliers)
(Amendment) Regulations 2019**

Made - - - - *11th February 2019*

Coming into force - - *1st May 2019*

The Gas and Electricity Markets Authority(a) (the “Authority”) makes the following Regulations in exercise of the powers conferred by sections 33A and 47 of the Gas Act 1986(b) (the “Gas Act”) and sections 39 and 60 of the Electricity Act 1989(c) (the “Electricity Act”).

In accordance with section 33BAA(1)(a)(d) of the Gas Act and section 40B(1)(a)(e) of the Electricity Act, the Authority has considered the results of research to discover the views of a representative sample of persons likely to be affected by these Regulations.

In accordance with section 33BAA(1)(b), (2) and (3) of the Gas Act and section 40B(1)(b), (2) and (3) of the Electricity Act, the Authority has published a notice of its proposals and considered the representations made in respect of those proposals.

In accordance with section 33BAA(1)(c) and (4) of the Gas Act and section 40B(1)(c) and (4) of the Electricity Act, the Authority has consulted Citizens Advice and Citizens Advice Scotland, gas suppliers, electricity suppliers, and persons and bodies appearing to be representative of persons likely to be affected by these Regulations.

The Secretary of State has consented to the making of these Regulations in accordance with sections 33A(2) of the Gas Act and sections 39(1) of the Electricity Act.

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- (a) The Gas and Electricity Markets Authority was established by section 1(1) of the Utilities Act 2000 (c.27).
(b) 1986 c.44; section 33A was inserted by section 11 of the Competition and Service (Utilities) Act 1992 (c.43) and amended by paragraph 34 of Schedule 3 and Schedule 6 to the Gas Act 1995 (c.45), and by section 90(1) of, and paragraph 13 of Schedule 6 and Schedule 8 to, the Utilities Act 2000; and section 47 was amended by Schedule 2 to the Offshore Safety Act 1992 (c.15), paragraph 9 of Schedule 1 to the Competition and Service (Utilities) Act 1992, paragraph 53 of Schedule 3 to the Gas Act 1995 and sections 3(2) and 100 of the Utilities Act 2000.
(c) 1989 c.29; section 39 was amended by sections 3(2) and 54(1) of, and paragraph 32 of Schedule 6 and Schedule 8 to, the Utilities Act 2000; and section 60 was amended by section 3(2) of the Utilities Act 2000.
(d) Section 33BAA was inserted by section 92 of the Utilities Act 2000 and amended by paragraph 4 of Schedule 1 to S.I. 2014/631.
(e) Section 40B was inserted by section 56 of the Utilities Act 2000 and amended by paragraph 5 of Schedule 1 to S.I. 2014/631.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Electricity and Gas (Standards of Performance) (Suppliers) (Amendment) Regulations 2019 and come into force on 1st May 2019.

(2) In these Regulations, “the Principal Regulations” means the Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015(a).

Amendment of the Principal Regulations

2. In regulation 2(1) (General interpretation) of the Principal Regulations—

(1) for the definition of “individual standard of performance” substitute—

““individual standard of performance” means one of the standards of performance a supplier is required to meet under regulations 3 to 6D;”;

(2) after the definition of “micro-business customer” insert—

““new supplier” means a supplier who has responsibility for the supply of electricity or gas to the customer after the transfer of the customer from the old supplier to the new supplier;

“old supplier” means a supplier who had responsibility for the supply of electricity or gas to the customer prior to the transfer of the customer to the new supplier;”;

(3) after the definition of “supplier” insert—

““last resort supply direction” means a direction given by the Authority to a supplier to take over responsibility for the supply of electricity or gas to customers of a failed supplier(b);

“valid contract” means a contract for the supply of electricity or gas by the supplier to the customer—

(a) that has been entered into by the customer;

(b) that relates to the premises for which the transfer has been made; and

(c) for which the notice of cancellation of that contract has not been received by the new supplier in accordance with any relevant contractual term or applicable statutory provision;”.

3. After regulation 6 (Reconnection) of the Principal Regulations insert—

“Identification of erroneous transfers

6A.—(1) This regulation applies where a customer notifies their old supplier or their new supplier that the customer believes that they have been transferred without a valid contract with the new supplier.

(2) This regulation does not apply where a customer is transferred to a supplier appointed by the Authority following a last resort supply direction being given within 20 working days of notification described in paragraph (1).

(3) Where this regulation applies, the old supplier and the new supplier must within 20 working days of the customer notification, agree whether the customer has been transferred without a valid contract.

(4) For the purposes of paragraph (1)—

(a) where—

(a) S.I. 2015/1544.

(b) Section 7(3)(a) of the Electricity Act 1989 and section 7B(5)(a)(i) of the Gas Act 1986 enables the Gas and Electricity Markets, through a licence condition, to require a licence holder to comply with any direction given as to such matters as are specified in the licence or are of a description so specified.

- (i) the supplier has advised a customer of a particular postal address that is appropriate for receipt of the notification described in paragraph (1); and
 - (ii) the customer notifies the supplier of that information by post alone, the information is to be treated as received by the supplier when it is received at that particular postal address; and
- (b) where notification is given to the supplier outside working hours, the period of time within which the individual standard of performance must be completed begins to run at the commencement of the next following period of working hours.

Investigation of erroneous transfers

6B.—(1) This regulation applies where a customer has notified the old supplier or new supplier that the customer believes the customer has been transferred without a valid contract.

(2) This regulation does not apply where a customer is transferred to a supplier appointed by the Authority following a last resort supply direction being given within 20 working days of notification described in paragraph (1).

(3) Where paragraph (1) applies, the supplier who initially receives the notification from the customer within 20 working days of that customer notification must take either of the steps set out in subparagraphs (a) or (b)—

- (a) where the old supplier and new supplier have agreed that the customer has been transferred without a valid contract, provide written confirmation that the customer will be returned to their old supplier; or
- (b) provide the customer with a written statement confirming the outcome of the investigations carried out by the old supplier and new supplier.

Resolution of erroneous transfers

6C.—(1) This regulation applies where—

- (a) a customer has notified the old supplier or new supplier that the customer believes the customer has been transferred without a valid contract; and
- (b) the old supplier and new supplier have agreed that the customer has been transferred without a valid contract.

(2) This regulation does not apply where a customer is transferred to a supplier appointed by the Authority following a last resort supply direction being given within 21 working days of the agreement described in paragraph (1)(b).

(3) Where paragraph (1) applies, the old supplier must within 21 working days of the agreement referred to in paragraph (1)(b), re-register the customer with the old supplier.

Credit balances

6D.—(1) This regulation applies where—

- (a) a supplier no longer has responsibility for the supply of electricity or gas to the customer where—
 - (i) a customer transfers to another supplier under a valid contract; or
 - (ii) a supplier's responsibility for the supply of electricity or gas to the customer has otherwise terminated.

(2) This regulation does not apply where responsibility for a supply of electricity or gas to a customer transfers (from one supplier to another) without a valid contract.

(3) Where paragraph (1) applies, a supplier must within 10 working days of issuing a customer's final bill, or if applicable, corrected final bill, refund any outstanding credit balance to the customer.

(4) For the purposes of paragraph (3), where a supplier is to issue the refund by cheque, a supplier must dispatch the cheque in good time such that the customer will receive the refund within 10 working days of the issue of the customer's final bill, or if applicable, corrected final bill.

(5) In this regulation—

“corrected final bill” means any final bill issued that makes corrections to the previously issued final bill.”

4. In regulation 8 (Suppliers' payment obligations) of the Principal Regulations for paragraph (1) substitute—

“(1) A supplier must meet each individual standard of performance set out in regulations 3 to 6D.”

5.—(1) In regulation 9 (Exemptions and limitations to supplier payment obligations) of the Principal Regulations for paragraph (3)(c)(i) substitute—

“(i) the notification given by the customer to the supplier under regulation 4(1), 5(1) or 6A(1); or”;

(2) after paragraph (7) insert—

“(7A) A supplier is not obliged to make a standard payment following failure to meet the individual standard of performance under regulation (6B)(3)(a) or (6B)(3)(b), where the supplier can demonstrate that the written confirmation or written statement was sent within a reasonable time to meet the individual standard of performance but—

- (a) the customer provided the supplier with an inaccurate or incomplete postal address, where the written confirmation or written statement is to be sent by post; or
- (b) the customer provided the supplier with incomplete or inaccurate details for receipt where the written confirmation or written statement is to be sent by electronic communication.

(7B) A supplier is not obliged to make a standard payment following failure to meet any individual standard of performance set out in regulation 6D as applicable if—

- (a) there is a formal dispute between the supplier and the customer, and that process is still ongoing, as to—
 - (i) the amount of the credit balance due, or
 - (ii) the method for refunding the credit balance;
- (b) where the credit balance is to be refunded by cheque—
 - (i) the supplier can demonstrate that the cheque was dispatched within a reasonable time to meet the individual standard of performance but the customer provided the supplier with inaccurate or incomplete postal address;
- (c) there is otherwise a delay in refunding the credit balance due to events outside of the supplier's control.”

The seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of

30th January 2019

I consent

11th February 2019

Dermot Nolan
A member of the Authority

Claire Perry
Minister of State

Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015 (S.I. 2015/1544) (the Principal Regulations).

Regulation 3 inserts new performance standards that must be met by gas and electricity suppliers, as regulations 6A to 6D, into the Principal Regulations. The new performance standards are in relation to the identification of erroneous transfers (as regulation 6A), investigation of erroneous transfers (as regulation 6B), resolution of erroneous transfers (as regulation 6C) and credit balances (as regulation 6D).

Regulation 4 amends regulation 8(1) of the Principal Regulations to extend the provisions, regarding payment obligations for failure to meet the performance standards, to the new performance standards.

Regulation 5 inserts provisions into regulation 9 of the Principal Regulations, in respect of exemptions and limitations to supplier payment obligations for failure to meet the new performance standards.