

To: All holders of an electricity supply licence who are relevant licence holders for the purpose of section 11A(10) of the Electricity Act 1989

NOTICE OF STATUTORY CONSULTATION ON A PROPOSED MODIFICATION PURSUANT TO SECTION 11A OF THE ELECTRICITY ACT 1989 OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 6(1)(d) OF THE ELECTRICITY ACT 1989

WHEREAS:

1. Each of the companies to whom this notice is addressed holds an electricity supply licence granted, or treated as granted, pursuant to section 6(1)(d) of the Electricity Act 1989 (the "Act").
2. In accordance with section 11A(2), (3) and (4) of the Act, the Gas and Electricity Markets Authority (the "Authority") gives notice ("Notice") that it proposes to modify the standard conditions of the electricity supply licence by introducing standard condition 21BA.
3. The reasons why the Authority proposes to make this licence modification have been published by the Authority in the following documents:
 - a) Protecting consumers who receive backbills: statutory consultation 16 November 2017; and
 - b) Open letter – notifying of our intention to launch a project to protect consumers from back billing, 3 April 2017¹.

In summary, the Authority's monitoring activities have revealed instances of suppliers issuing backbills to consumers for unbilled gas and electricity consumed over 12 months ago, when the consumer is not at fault. Since the Authority outlined a backbilling principle in 2007, the market has changed considerably and voluntary arrangements either do not cover or are not being applied consistently by all suppliers, resulting in poor outcomes for consumers.

4. The effects of this proposed modification are described in the documents referred to in paragraph 3 of this Notice. In summary, the effects of this proposed modification include prohibiting suppliers from recovering charges from domestic and microbusiness consumers in respect of electricity reasonably considered to have been consumed over 12 months ago, regardless of payment type. The prohibition would not apply in certain circumstances, including where a charge recovery action cannot be taken due to the consumer's obstructive or manifestly unreasonable behaviour. In addition, we propose to require that terms and conditions of relevant contracts comply with and reflect the effect of the proposed condition, and that licensees do not enforce or take advantage of any incompatible term.
5. The envisaged text for the proposed modification to introduce standard condition 21BA is set out in schedule 1 to this Notice, with an explanatory annotated version at Appendix 3 to the statutory consultation.
6. A copy of the proposed modification and other documents referred to in this Notice have been published on our website (www.ofgem.gov.uk). Alternatively, they are available from our Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003).

¹ Open letter - notifying of our intention to launch a project to protect consumers from back billing, 3 April 2017, https://www.ofgem.gov.uk/system/files/docs/2017/04/open_letter_backbilling_new_project.pdf

7. Any representations with respect to the proposed licence modification must be made on or before 9am on 18 December 2017 to: Dennis Berg, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to ConsumerPolicy@ofgem.gov.uk.
8. We normally publish all responses on our website. However, if you do not wish your response to be made public then, please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
9. Subject to responses to the statutory consultation, in the event that the Authority decides to proceed with the proposed modification, it is intended that the modification will take effect on a date which is not less than 56 days after the date on which the Authority's decision is published.

Anthony Pygram

Partner

Consumers and Competition

**Duly authorised on behalf of the
Gas and Electricity Markets Authority**

16 November 2017

Schedule 1 – proposed introduction of standard condition 21BA.

The text below constitutes the envisaged modification to introduce standard condition 21BA. into the electricity supply licence:

Part A: application to Domestic Customers

Prohibition

21BA.1 Subject to paragraph 21BA.2, where the licensee or any Representative issues a Bill to a Domestic Customer or otherwise seeks to recover (including via a Prepayment Meter) Charges for the Supply of Electricity from that customer (hereafter a "charge recovery action"), they must only do so in respect of:

(a) units of electricity which could reasonably be considered to have been consumed within the 12 months preceding the date the charge recovery action was taken; and

(b) where applicable, amounts in respect of a Standing Charge or any other type of supply charge accrued within the 12 months preceding the date the charge recovery action was taken.

Exceptions to prohibition

21BA.2 Paragraph 21BA.1 does not apply in the following circumstances:

(a) where any charge recovery action was taken prior to the date this condition took effect;

(b) the licensee or any Representative, has taken a charge recovery action following the date this condition took effect in a manner which complied with paragraph 21BA.1 and, due to non-payment are continuing to take steps to obtain payment for the same units of electricity and, where applicable, the same amounts in respect of a Standing Charge or other type of supply charge;

(c) the licensee has been unable to take a charge recovery action for the correct amount of electricity consumed due to obstructive or manifestly unreasonable behaviour of the Domestic Customer;

(d) any other circumstances, which following consultation, the Authority may specify by publishing a statement in writing.

Terms of contracts

21BA.3 The licensee must ensure that the terms and conditions of each Relevant Contract comply with the provisions of this condition.

21BA.4 The licensee must ensure that each Relevant Contract contains terms and conditions which reflect the effect of the provisions of this condition.

21BA.5 The licensee must not enforce or take advantage of any term of a Relevant Contract if:

(a) the inclusion of that term is incompatible with this condition; or

(b) the enforcement or taking advantage of that term would be so incompatible.

Definitions for Part A

21BA.6 In this condition **Relevant Contract** means any Domestic Supply Contract and Deemed Contract.

Part B: application to Micro Business Consumers

21BA.7 In respect of a Micro Business Consumer, the licensee must comply with Part A of this condition on the basis that:

- (a) any reference to Domestic Customer is to be read as a reference to Micro Business Consumer; and
- (b) any reference to a Relevant Contract is to be read as a reference to Micro Business Consumer Contract.

21BA.8 In this condition **Micro Business Consumer** and **Micro Business Consumer Contract** have the meanings given in standard condition 7A.