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Future Retail Regulation Team
Consumers & Competition
Ofgem
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London
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Dear Katherine and Ruth,

Statutory Consultation: Domestic Supplier-Customer Communications Rulebook Reforms

Thank you for the opportunity to respond to this statutory consultation.

ScottishPower continues to support Ofgem's work to move to a principles-based regulatory framework for customer communications. We believe that this is an area where suppliers have an opportunity to deliver better outcomes for their customers through the use of flexible and engaging customer communications and, in particular, utilise technology to drive innovative solutions to meeting customer needs. The proposed changes to the supply licence are therefore a welcome step in delivering this opportunity.

We are in broad support of Ofgem's proposals and the consequential amendments to the supply licence and believe that, in the main, the draft licence conditions reflect Ofgem's policy intent as we understand it. Our response to the consultation questions is in Annex 1 attached and our suggested drafting amendments are summarised in Annex 2.

We welcome the clarification provided in the statutory consultation around the points of concern raised in our response to the policy consultation. In particular, we welcome assurances that the use of the term 'provide' does not mandate the physical provision of all required information at all points in time, and that it might be appropriate to signpost information to customers, provided that customers are made aware of such signposting and are able to easily access the information.

We note the interaction between this proposed package of rules and Ofgem's market-wide derogation on the Statement of Renewal Terms. Although it is not discussed in the statutory consultation, we assume Ofgem would intend to revoke the derogation upon making its decision on this package of reforms, since the substantive rules covered by the derogation will be removed or amended.

This package of rules, working in conjunction with the Standards of Conduct and the Informed Choices principles, demonstrates the benefits that principles-based regulation (PBR) can bring for consumers. We believe there are other areas in the supply licence which could benefit from a similar review. For example, we would suggest that Ofgem consider a similar review of supplier communications with micro-business customers.

Additionally, we have previously shared with Ofgem our research which supports Ofgem's own findings that customers find elements of the Cheapest Tariff Messaging confusing, and we think this could also be a key area for review.

Should you wish to discuss our response further or have any further questions on the points raised in this response, please contact me directly, using the details above, or Pamela Mowat (pamela.mowat@scottishpower.com).

Yours sincerely,



Richard Sweet
Head of Regulatory Policy

**STATUTORY CONSULTATION: DOMESTIC SUPPLIER-CUSTOMER COMMUNICATION
RULEBOOK REFORMS - SCOTTISHPOWER RESPONSE**

Chapter 2: Our final package of proposals

Question 1: Do you consider that a direction is required to enable suppliers to make changes to existing fixed-term contracts, so that those customers can benefit from our rule changes sooner? If yes, please:

- a) Provide examples of specific clauses in your T&Cs that would require such a derogation; and /or**
- b) Provide suggestions for how the scope of the direction should be drafted to achieve our policy intent.**

In terms of managing customer communications, we consider that there will be a number of cases where it will be more efficient for suppliers to change the approach to a particular communication or suite of communications as a single change, rather than operating a two-tier approach for fixed-term and evergreen tariff customers. We agree that suppliers should be allowed the opportunity to make amendments to suit Ofgem's policy changes as soon as possible, in order to realise those efficiencies.

We believe that, in the majority of cases, any changes to customers' terms and conditions would not be to the customer's disadvantage, as suppliers will still be required to achieve the customer outcomes set out in the new principles.

As such, we do not think that a direction will generally be necessary; however, it may be helpful for some suppliers to have a derogation that would allow them to make changes to their contract terms that may be considered disadvantageous to a specific customer or group of customers, solely for the purpose of implementing the new conditions.

In terms of the scope of the direction, we think it should be drafted to enable suppliers to change or remove any term in an existing fixed term contract which would no longer be needed in light of these rule changes. The direction should provide for an exception to the requirement to comply with SLC 22C.9(b) for any fixed term contracts entered into before the date that Ofgem's rule changes take effect, and for the sole purpose of changing or removing terms which were originally introduced to comply with licence conditions that have been removed, and where such terms are not needed to comply with the new principles in SLCs 31F to 31I. The direction should also specify that the customer must be offered the right to change to an alternative tariff or supplier.

Question 2: Are there any other consequential amendments to the licences that we haven't proposed in annexes 1-2 that you consider would be needed in light of our proposed changes?

We do not believe that there are any consequential amendments to the licences needed that Ofgem has not considered, other than some minor drafting changes which we have set out in response to the questions below and summarised in Annex 2.

Chapter 3: Encouraging and enabling engagement

Question 3: Do you agree that our proposals (summarised in boxes 1 and 2 on pages 29 and 31-32) reflect our policy intent relating to encouraging and enabling engagement?

Yes, broadly speaking we are comfortable that Ofgem's proposed licence drafting of SLC 31F reflects the policy intent relating to encouraging and enabling engagement, subject to some small drafting amendments as set out below.

SLC 31F.1

The proposed new SLC 31F.1 states that *"The licensee must comply with paragraphs 31F.2 to 31F.5 in a manner which is effective and designed to promote..."*. While we understand that the aim is to focus the supplier mindset on finding ways to deliver the customer outcomes, we are concerned that the current drafting risks creating an impossible standard. By requiring that compliance must be 'effective', Ofgem appears to be suggesting that there is no room for trial and error in supplier approaches. We do not think that this is Ofgem's intention and would instead suggest the drafting is amended as follows:

*"SLC 31F.1 The licensee must comply with paragraphs 31F.2 to 31F.5 in a manner which is ~~effective and~~ designed to **effectively** promote..."*

We think that this keeps the same intention – that suppliers should actively seek to design effective communications – while recognising that suppliers may trial different approaches, some of which may not always be successful.

Additionally, we note that the use of the verb 'promote' in the following phrase does not accord with normal English usage: *"designed to promote each Domestic Customer to engage positively with their [Gas/Electricity] Supply"*. It would be more natural to write *"designed to promote positive engagement by each Domestic Customer with their [Gas/Electricity] Supply"* or alternatively to replace 'promote' with 'prompt'.

Finally, we do not believe it is necessary to include the word 'positive' in this context and are concerned that it could lead to uncertainty as to the difference between 'engagement' and 'positive engagement'. We would suggest it is omitted.

Accordingly, we would suggest that paragraph 31F.1 is amended as follows:

*"SLC 31F.1 The licensee must comply with paragraphs 31F.2 to 31F.5 in a manner which is ~~effective and~~ designed to **effectively** promote **positive engagement by** each Domestic Customer ~~to engage positively with their [Gas/Electricity] Supply either (as appropriate to the circumstance):~~*

- (a) by considering switching Tariff or Gas/Electricity Supplier; or*
- (b) by understanding and managing the costs associated with their Tariff and the [gas/electricity] that Domestic Customer consumes."*

SLC 31F.9

We are concerned about the potential scope of the content requirements for the 'About Your Tariff' label in the proposed drafting, which we think risks setting a broader standard than set out in the policy document.

SLC 31F.9 states that the "About Your Tariff" label must include *"any information that Domestic Customer may require"* to compare tariffs across the market. The combination of

the words ‘any’ and ‘may’ in this sentence creates a very broad application suggesting that suppliers should include information that might only have a passing relevance to comparing tariffs, whether it would be reasonable or not to include it. This does not align with our understanding of the policy intent, which is to allow suppliers more flexibility in determining the content of the “About Your Tariff” label.

We would suggest the following drafting amendment as an alternative:

“SLC 31F.9 The licensee must prepare an “About Your Tariff” Label which must be provided to each Domestic Customer in accordance with paragraph 31F.5(b) and standard condition 31H.5(d) which:

- a) Contains any information that Domestic Customer may **reasonably** require...”*

Question 4: What are your views on our proposal (set out in paragraphs 3.35 – 3.36) to move the rules around engagement prompts into a direction separate from the supply licences?

We appreciate that this is an early proposal and Ofgem intends to consult more fully on this in due course. At this stage, it is difficult to understand what this would look like in practice, and the underlying intent of Ofgem’s proposals. However, given that the proposal relates to customer engagement proposals which were a relatively contentious area of the CMA’s Market Review remedies, we have concerns around the potential implications of such a move. Policy changes with such a significant impact should be subject to a full consultation and, if necessary, appeal process. We do not consider that using a Direction would offer sufficient opportunity for licensees to influence or object to changes.

Moving the rules around such engagement prompts into a direction outside the supply licence risks:

- a) Being inconsistent with the general approach to the regulatory framework, in which overarching requirements are contained in the supply licence, with Ofgem reserving the right to issue directions in respect of particular (and often time-limited) conditions. We think that there is a continuing role for utilising Directions for work that is limited in some way, either for changes which are time-limited or limited in its application to the volume of customers or number of suppliers affected. However, beyond this we would not consider a Direction to be an appropriate tool for driving forward such policy change.
- b) Creating a real potential for increased complexity. The supply licence itself can be complex for some parties, such as new entrants, to negotiate given its scope. Taking enduring rules out of the licence could make the rules less accessible, thereby making it more difficult for them to satisfy themselves of their compliance.

Chapter 4: Assistance and advice information

Question 5: Do you agree that our proposals (summarised in boxes 3 and 4 on pages 39 and 41) reflect our policy intent relating to assistance and advice information?

Yes, we agree that Ofgem’s proposed drafting of SLC 31G reflects its policy intent relating to assistance and advice information.

Chapter 5: Relevant Billing Information, Bills and statements of account

Question 6: Do you agree that our proposals (summarised in boxes 5 and 6 on pages 47 and 49) reflect our policy intent relating to Relevant Billing Information, Bills and statements of account?

Yes we agree that Ofgem's proposed drafting of SLC 31H reflects its policy intent relating to Relevant Billing Information, Bills and statements of account. While there will be certain other areas of prescription (such as QR Codes and matters covered by EU legislation) which we would ultimately prefer to see removed, we agree with Ofgem that they need to be retained at this time. However, we would encourage Ofgem to keep this under review as part of its forward work on principles-based regulation, should circumstances change.

We think that the explanation in the statutory consultation is helpful in clarifying the intention behind the use of 'provide' in relation to Relevant Billing Information, Bills and statements of account and addressing concerns previously raised by suppliers. For consistency, we would suggest that SLC 31H.4 should refer to Bills and statements of account *provided* to Domestic Customers, rather than *sent*. While we appreciate that this is a straight copy from the existing licence condition, in the context of the new rules we think that the use of the word 'sent' is no longer appropriate. Specifically, 'sent' in this context implies the act of dispatching (either physically or electronically) a Bill or statement of account, as opposed to 'providing' one, which still requires proactive action but has a broader application. We do not think it is Ofgem's intention that the information contained in SLC 31H.4 is only included on Bills and statements of account that are physically dispatched and therefore we would suggest that the word 'provided' is used instead, as follows:

"SLC 31H.4 The licensee must provide the following information in Writing on every Bill or statement of account ~~sent~~ provided to a Domestic Customer..."

We believe that there is an incorrect cross-reference in SLC 31H.4(e) of the electricity supply licence, which refers to the provision of information about dispute settlement on Bills and statements of account. We think that this should instead read as follows:

"SLC 31H.4(e) information about dispute settlement in line with requirements in 31G.87"

Chapter 6: Contract changes information (price increases and fixed-term contracts contract coming to an end)

Question 7: Do you agree that our proposals (summarised in boxes 7 and 8 on pages 55-56 and 57-58) reflect our policy intent relating to contract changes?

Yes, we agree that Ofgem's proposed drafting of SLC 31I reflects Ofgem's policy intent relating to contract changes.

As a minor point of correction, we would note that SLC 31I.5(c) in both the electricity and gas supply licences incorrectly references 'Principal Terms' as 'Principles Terms.' We would suggest that this is an opportunity for Ofgem to correct this.

STATUTORY CONSULTATION: DOMESTIC SUPPLIER-CUSTOMER COMMUNICATION RULEBOOK REFORMS: DRAFT LICENCE CONDITIONS - SCOTTISHPOWER COMMENTS

Reference	Suggested amendment	Rationale
SLC 31F.1	<p>Amend paragraph 1 as follows:</p> <p><i>SLC 31F.1 The licensee must comply with paragraphs 31F.2 to 31F.5 in a manner which is effective and designed to effectively promote positive engagement by each Domestic Customer to engage positively with their [Gas/Electricity] Supply either (as appropriate to the circumstance):</i></p> <p><i>(a) by considering switching Tariff or Gas/Electricity Supplier; or</i></p> <p><i>(b) by understanding and managing the costs associated with their Tariff and the [gas/electricity] that Domestic Customer consumes.”</i></p>	<p>While we understand that the aim is to focus suppliers on finding ways to deliver the customer outcomes, we are concerned that the current drafting risks creating an impossible standard. By requiring that compliance must be ‘effective’, Ofgem appears to be suggesting that there is no room for trial and error in supplier approaches. Our suggested amendment preserves the intent – that suppliers should actively seek to design effective communications – while recognising that suppliers may trial different approaches, some of which may not always be successful.</p> <p>The proposed use of the verb ‘promote’ does not accord with normal English usage, and we have suggested an amendment to address this.</p> <p>Finally, we do not believe it is necessary to include the word ‘positive’ in this context and are concerned that it could lead to uncertainty as to the difference between ‘engagement’ and ‘positive engagement’. We therefore suggest it is omitted.</p>
SLC 31F.9	<p>Insert ‘reasonably’ between ‘the Domestic Customer may’ and ‘require’, as follows:</p> <p>The licensee must prepare an “About Your Tariff” Label which must be provided to each Domestic Customer in accordance with paragraph 31F.5(b) and standard condition 31H.5(d) which:</p> <p>a) Contains any information that Domestic Customer may reasonably require...”</p>	<p>The combination of the words ‘any’ and ‘may’ in this paragraph creates a very broad standard suggesting that suppliers should include information that might only have a passing relevance to comparing tariffs, whether it would be reasonable or not to include it. This does not align to our understanding of the policy intent, which is to allow suppliers more flexibility in determining the content of the “About Your Tariff” label.</p>

Reference	Suggested amendment	Rationale
SLC 31H.4	<p>Replace the word 'sent' with the word 'provided' as follows:</p> <p><i>The licensee must provide the following information in Writing on every Bill or statement of account sent provided to a Domestic Customer...</i>"</p>	<p>For consistency, we would suggest that SLC 31H.4 should refer to Bills and statements of account <i>provided</i> to Domestic Customers, rather than <i>sent</i>. While we appreciate that this is a straight copy from the existing licence condition, in the context of the new rules we think that the use of the word 'sent' is no longer appropriate. Specifically, 'sent' in this context implies the act of dispatching (either physically or electronically) a Bill or statement of account, as opposed to 'providing' one, which still requires proactive action but has a broader application. We do not think it is Ofgem's intention that the information contained in SLC 31H.4 is only included on Bills and statements of account that are physically dispatched and therefore we would suggest that the word 'provided' is used instead.</p>
SLC 31H.4(e)	<p>Amend the sub-paragraph as follows</p> <p><i>...information about dispute settlement in line with requirements in 31G.87"</i></p>	<p>We believe that there is an incorrect cross-reference in SLC 31H.4(e) of the electricity supply licence, which refers to the provision of information about dispute settlement on Bills and statements of account.</p>
SLC 31I.5(c)	<p>Change 'Principles Terms' to ' Principal Terms'</p>	<p>Error correction</p>

ScottishPower
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