



Unit 4

Energy Supply Contracts

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Table of Contents

Document History

Revision History

Reviewed by

Approvals

Unit 4

Section 1

Types of Energy contracts

Nature of Premises

How the supply commences

Duration of the contract

Miscellaneous contracts

Summary

Section 2

Energy contract terms

Types of contract terms

Common law remedies for breach of express terms

Implied terms in energy contracts

Remedies for breach of implied terms

Express terms in energy contracts

Factors which affect the terms

Summary

Section 3

Contract performance

Supplier's obligations

Distributor / transporter obligations

Information requirements

Customer obligations

Summary

Section 4

Escaping from energy supply contracts

Cancellation rights

Contractual rights

Quick reference guide: Escaping from contracts

Switching supplier

Summary

Section 5

Enforcement of energy contracts

Remedies and redress

Contacting the provider

Seeking independent advice

Referral to Ofgem

Summary

Document History

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Introduction

Now that we have explained the basic rules which apply to contracts (unit 2 'Contract law') and examined some of the marketing strategies used by suppliers to persuade potential consumers to enter in to them, as well as how these activities are regulated (unit 3 'Marketing energy'), we can consider the more practical elements involved in actually having an energy supply contract and when it may be possible to escape from one.

All contracts have terms, and we will discuss those terms which are likely to be found in an energy contract, either because sometimes, the law says that they have to be there, or because the energy companies put them there.

We will also consider the performance of the contract, in terms of what the consumer can expect from the supplier and also what obligations are placed on them. In particular there are many instances when the supplier is required to provide specific information to consumers at certain times, either before entering into a contract or during its lifetime, and these have been listed together in an information table at the end of this unit (Information for Consumers), and is referred to throughout the remaining units.

Finally, we will examine the various ways in which the parties can enforce the contract, moving from the starting point of negotiation between themselves, to the last resort of taking the matter to court, exploring briefly the possible stages in between.

The stages of the consumer's journey addressed in this unit are as indicated below:



The headings to be addressed in this unit are:

- Section 1: Types of energy contracts
- Section 2: Energy contract terms
- Section 3: Contract performance
- Section 4: Escaping from energy supply contracts
- Section 5: Enforcement of energy contracts

Section 1

Types of Energy contracts

Contracts are formed, based on principles in the common law, as discussed in unit 2 'Contract law', but there are different types of contract which, to some extent, the law treats differently.

Energy supply contracts, are in general law terms, service contracts since the supply of gas or electricity is essentially a service, rather than goods. They can also be off-premises or distance contracts depending on how and where the contract was concluded. The energy industry itself has further classifications to take account of various factors, including:

- ✓ the nature of the premises to be supplied
- ✓ how the supply commences
- ✓ the duration of the contract

Nature of Premises

(a) Domestic supply contract (DSC)

The nature of the premises supplied is very relevant here and a domestic supply contract can be equated to a contract between an energy supplier and a consumer, where gas and or electricity are supplied to a domestic house.

(b) Non-domestic supply contract (NDSC)

Contracts to supply non-domestic premises are, in effect, contracts to supply businesses. Small businesses receive more protection than large ones if they meet the definition of a micro business consumer explained in Unit 11.

How the supply commences

(a) Express contracts

Most contracts will be standard express contracts arranged with the supplier and can be for either gas or electricity or both, the latter being known as a dual fuel contract. This is obviously more convenient from the consumer's point of view and there may well be discounts available for having a dual supply. It will be necessary to check the terms of the contract to see whether there are in fact any advantages to this type of contract, price or otherwise.

(b) Deemed contracts

A deemed contract is one where, despite the absence of the five essential elements of a contract, there is nevertheless a contract in place. Such contracts are necessary in the energy industry to cover the situation when someone moves into a property and uses the gas and electricity which are already connected up without actually contacting the suppliers and agreeing to do so. In such circumstances a deemed contract exists and until the consumer decides to change supplier they will have a deemed contract and will have to pay for the energy used under it.

A deemed contract can also arise in other circumstances and the list below indicates possible examples. There may be a deemed contract where there is:

- ✓ a change in owner / occupier (see above)
- ✓ an erroneous transfer
- ✓ a last resort supply direction (LRSD)
- ✓ a supply in between a supplier ceasing to trade and a LRSD being issued by Ofgem
- ✓ an error so no supplier is registered for the premises, when there was one previously
- ✓ an unauthorised supply, for example, following meter tampering
- ✓ a supply to former tariff consumers who have never switched supplier or entered into express contracts with the public supplier successor

We will return to deemed contracts and in particular who may be liable to pay under one, in unit 6 'Paying for fuel'.

Duration of the contract

(a) Fixed term contracts

A fixed term contract is one which is due to last for a specified period of time, whether it is weeks, months or years. People sometimes enter into such contracts because they are offered reduced prices to do so, but a disadvantage may be that there could be a fee to pay if the contract is terminated before it is due to end. Sometimes the whole of a contract may not be for a fixed term only part of it may be for a fixed period, at a certain price for example.

(b) Rolling contracts

A contract which does not end after a set period but continues in force indefinitely is known as a rolling or evergreen contract. There will probably be a term in the contract which states that a period of notice has to be given to terminate the contract. Most consumer contracts fall into this category.

Miscellaneous contracts

(a) Feed-in tariff contracts

Feed-in tariffs were introduced in 2010 to encourage consumers to install technology which can generate electricity from renewable sources, such as solar electricity panels and wind turbines. Energy suppliers make payments to householders who produce their own electricity (microgeneration), known as FIT generators and for this reason they are sometimes known as 'clean energy cashback schemes'.

(b) Wayleave agreements

A wayleave agreement is like a licence which allows the energy companies to erect, maintain and have access to, underground cables or pipes, pylons, overhead lines and other necessary structures and equipment on private property, in return for either an annual payment or a one off capital sum (a permanent easement). Payment rates are agreed and reviewed periodically with various organisations, including for example the National Farmers' Union, however, there are specialist companies which exist to assist people who wish to claim compensation or require advice about whether to sign a wayleave agreement or how to terminate one (possible in theory but sometimes quite difficult in practice). Electricity wayleaves are protected to some extent by provisions in the EA. This is a complex area of law and anyone requiring advice should be signposted to someone who can give appropriate legal guidance (see unit 7 'Connections, quality of supply and safety').

Summary

- Energy supply contracts, are service contracts since the supply of gas or electricity is essentially a service but they can also be off-premises or distance contracts depending on how and where the contract was concluded, and the energy industry itself has further classifications to take account of various factors, including the nature of the premises to be supplied, how the supply commences, the duration of the contract.
- Premises supplied will be either domestic or non-domestic, classifications which basically equate to a consumers home or business premises.
- If the consumer actually enters into a specific contract then this is an express contract, which can be for single or dual fuel, however, even if they don't there can be a deemed contract which exists regardless of what the consumer has arranged.
- Deemed contracts can arise in a number of situations, including when people move house and use the supplies already connected, if there is an erroneous transfer, where Ofgem issues a LRSD or before they do but after the supplier ceases to trade, where there is an error in the registration process, when there is an unauthorised supply as in meter tampering cases and where former public supplier agreements continue.
- How long a contract can last is a fundamental consideration for a consumer contract and most will be rolling or evergreen contracts which continue indefinitely usually with a period of notice required to end them, however, it is possible for part of a contract or even the whole contract to be for a fixed period, whereby fees will be incurred if they are terminated early.
- There are some miscellaneous energy contracts too, including feed-in tariff contracts, or clean energy cashback schemes, which allow consumers to be paid for energy they generate from renewable sources (microgeneration), and wayleave agreements which allow for payments to be made to owners of land on which are situated gas or electric structures, equipment or apparatus.

Section 2

Energy contract terms

You will recall that in unit 2 we considered how a contract is formed and we mentioned that a contract is made up of terms. We will now consider this in more detail.

Generally speaking, the parties to a contract can have whatever terms they wish in their contract. In theory the parties could sit down round a table and discuss what terms they would like to include. In reality, however, this rarely happens, particularly with consumer contracts. It is far more likely that consumers will be presented with a supplier's standard contract which already contains their terms, often referred to as 'Terms and Conditions' (T&C).

We know that the energy suppliers are subject to licence conditions, and, to some extent these dictate some of the terms which have to be in the supply contracts with their consumers. In addition, those who subscribe to the various voluntary codes of practice may find that there are certain terms which have to be included.

Finally, there are some general legal provisions which may have a bearing on the terms in an energy supply contract too, for example, terms are implied into a service contract by the Consumer Rights Act 2015 (CRA) and there are rules about the use of exclusion clauses and also the fairness of standard terms in consumer contracts. In contracts covered by the CCRs, certain information has to be presented to consumers, and any information required by the Regulations that a trader gives a consumer, is treated as a term of the contract. These matters will all be addressed in this section.

Types of contract terms

A contract is made up of two different types of terms, express and implied terms.

(a) Express terms

Express terms are those which form part of the contract because the parties have stated them verbally or they may have been written down in the contract or other document. They do not necessarily need to have been negotiated and consumers are often presented with a standard set of written terms when entering certain contracts, for example, car hire, holidays, gas and electricity supplies.

As long as proper steps have been taken to bring the express terms to the attention of the other party before the contract is made they will be considered to be 'incorporated' into the contract, and the parties will be bound by them, although later we will see that it may be possible to challenge some as being unfair, certainly in consumer contracts. The pre-contract information provided to consumers in accordance with the CCRs, before the conclusion of a contract, is treated as terms of the contract.

(b) Implied terms

The implied terms in a contract are the ones which form part of the contract because the law states that they will do so. For example, CRA implies various terms into consumer service contracts, stating that a service provided should be performed with reasonable care and skill and within a reasonable time and at a

reasonable price, although the second two are only implied if there are no express terms in the contract to cover them.

Implied terms will exist whether or not the parties specifically agree to them and whether or not they are even aware of them.

Common law remedies for breach of express terms

We have just seen that contracts are made up of both express and implied terms but not all the terms in a contract will have equal importance. For the time being we will concentrate on what a consumer can do if there has been a breach of an express term of the contract.

Once a contract has been formed both parties to the contract have legal obligations to carry out the promises that they have made to each other under the contract. If either party fails to keep to their part of the deal, it will be open to the other party to seek some form of redress. This is known as a 'remedy'.

The remedy that a party may seek depends, to some extent, on the type of breach that has occurred. The law provides a wider range of remedies if there has been a breach of a condition or major term (**material breach**) of the contract, than if there has been a breach of a warranty or less important term (**non-material breach**). It is however possible for remedies to be excluded or limited in certain circumstances using a contract term specifically for this purpose and this is explained later.

(a) Breach of condition

These are the most important terms of the contract, for example, in an energy contract where it was agreed that the consumer would be charged the social tariff (reduced rate) this is likely to be an express term for the price charged for the energy. This will be a major or important term of the contract as the consumer will expect to receive the energy for the price agreed.

If there is a major (**material**) breach this may give the innocent party the right to repudiate (**rescind**) the contract. This is a legal term that means that they can end the contract, in effect ask for their money back. This is subject to certain conditions which are beyond the scope of these notes. Compensation (damages) can be claimed alongside the repudiation, providing it is not too remote.

(b) Breach of warranty

These are the less important terms in a contract, for example. An energy example could be a term which states that the supplier will send a statement every month.

If a minor (**non-material**) breach occurs, this only gives the innocent party the right to claim damages (a monetary sum like compensation).

A claim may be made for loss which arises directly and naturally from a breach of contract. For example, a claim may be made by a consumer for meals eaten in restaurants and the cost of coal and paraffin for heating, when their electricity supply was wrongly disconnected and not reconnected for several days. The consumer would be under a duty to mitigate their loss (take steps to reduce their loss, for example, 'shop around').

A supplier may suffer from a breach of contract and they may include 'loss of profit' in a claim for damages. A claim may be made when the consumer does not perform their part of the contract, for example, they

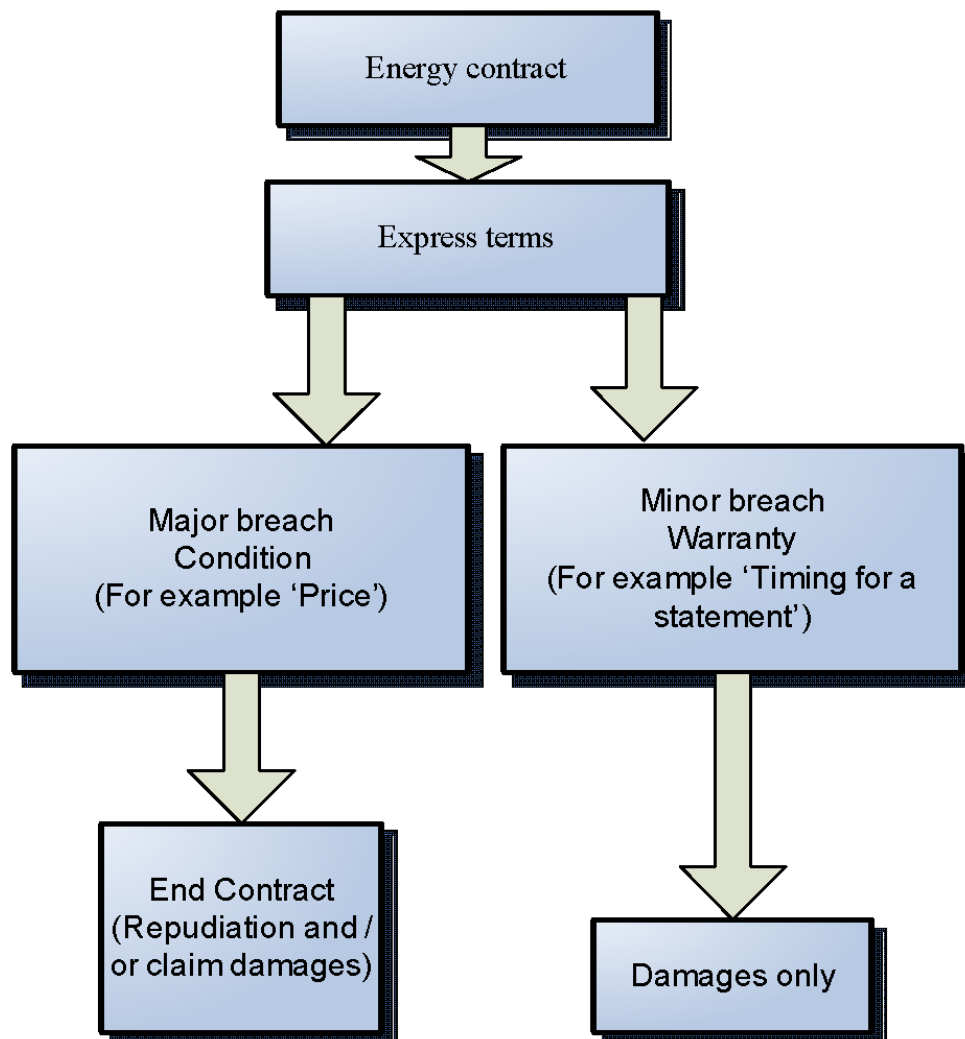
inform the trader that they no longer want the contract that they have just entered into. The supplier may claim for any losses that they have reasonably incurred, but they also have a duty to mitigate their loss.

Scottish law does not recognise the words conditions and warranties and uses the words 'material breach' and 'non-material breach' to describe breaches of important and minor terms. In addition, the Scottish word for repudiation is 'rescission'.

(c) **Creditor liability**

If payment for goods or services has been made using a linked creditor, either by credit card or a linked loan, then the creditor may be jointly and severally liable for any breach of contract or misrepresentation. This liability arises under s.75 of the Consumer Credit Act 1975 and gives rise to a like claim against the creditor. Having said that, the most practical remedy to claim from a creditor will be damages. Section 75 only applies if the cash price of the goods or services, was over £100 and under £30,000.

See the remedy diagram below



Implied terms in energy contracts

It was explained in unit 2 'Contract law' that an energy supply contract is also what the general law classifies as a service contract and would fall under CRA. This Act implies certain terms into pure service contracts, such as one to supply gas or electricity, or work and materials contracts, where both goods and a service are supplied, for example, the supply and installation of a central heating system.

Implied terms are those which the law places into a contract automatically and there is no need to write them into the contract or even mention them. The terms which would be implied (consumer rights) are:

That the service will be performed:

- ✓ using reasonable care and skill

- ✓ within a reasonable time (unless fixed under the contract)
- ✓ for a reasonable charge (unless fixed under the contract)

There are also implied terms relating to any goods supplied, however, this is outside the scope of these materials.

(a) Reasonable care and skill

The standard required is that of an ordinary competent person exercising ordinary skill in the particular profession in question and the supplier must be acting in the course of a business. If the person carrying out the service professes to have expertise which goes beyond this level, then they will be judged by that higher standard.

Even when there is no contractual relationship between the parties, there may still be a duty to use such care and skill, and this obligation arises under the common law principles of negligence and is also subject to CRA, considered below.

(b) Reasonable time

A supplier acting in the course of a business should carry out their service within a reasonable time, unless this has been agreed under the contract. So if the consumer agrees to pipes being laid to connect them to the gas main, taking six months, they cannot complain if they later discover that a reasonable period of time for such a task would have been four months.

If no timescale is agreed and the supplier is not someone they have had dealings with before, then the provision about reasonable time comes into play. What is a reasonable time is a question of fact and may vary in different parts of the country.

In the energy sector there are clear standards set out for carrying out specific types of work and compensation schemes for non-compliance, these will be discussed in future units, where relevant.

In a consumer contract it is presumed that a term in the contract about time is not an important term, so repudiation would not be an option if the term was breached. However, such a time can be made into an important term (a condition) if this is done very clearly. This is often referred to as 'making time of the essence', however, liability for any loss as a result of a breach of such a term, could be excluded (see below).

Example

Carlos and Edwina are building their own house and they contact Mac's Groundworks Ltd, a registered utility infrastructure provider, to arrange for a trench to be dug for the electricity cables. They agree that this work will only take half a day but Mac has a busy schedule at the moment and various members of staff off sick and on holiday and says he cannot do the work immediately. Carlos and Edwina are keen to continue with their building and explain to Mac how important it is to get the trench dug as they need an electricity supply as soon as possible. They make it clear to Mac that if the trench has not been completed by the end of the following week they will consider the contract breached and will look for another contractor. Mac agrees to this and they include a statement to this effect in the written contract.

Advice

Carlos and Edwina have made time of the essence for performance of the contract by clearly agreeing with Mac that if the work is not done by the agreed date, the breach can be treated as one of an important term allowing for repudiation. On a practical level, if Mac did not complete the work by the end of the following week as agreed, Carlos and Edwina would have to decide whether to wait for him to do the work when he can or whether it would take longer to get another contractor.

If a new contractor is more expensive or Carlos and Edwina incur additional costs as a result of the delay, they may be able to claim consequential losses. Cases should be handled in accordance with RAST protocols.

(c) Reasonable price

A supplier should also carry out their service at a reasonable cost and this is not limited to those acting in the course of a business. The same provisions concerning agreement and dealings apply as with time and again this will be a question of fact, which may vary on a regional basis. A consumer will have to pay an agreed price, however, unreasonable, unless he can show fraud, undue influence, duress or misrepresentation as discussed in unit 2 'Contract law' and unit 3 'Marketing energy'.

The price someone is to pay for their gas or electricity is likely to be the most important express term in their contract and so the issue of considering a reasonable price is not likely to arise in an energy contract.

Practical tip

If a consumer states that they are unable to avoid paying an unreasonable price, for example, where they have had connections work carried out to their property, the consumer should ensure that they make it very clear that they are '**paying under protest**' and record this fact so that they may reclaim payments at a later date.

There are certain procedures which can be followed relating to energy connections work and these are covered in unit 7 'Connections, quality and safety of supply'.

To avoid this situation arising it is advisable for consumers to get three written quotations from various traders before contracting for the work to be done.

Remedies for breach of implied terms

Remedies are available for breaches of the implied terms of the contract. Different legal principles apply when assessing the remedy that the consumer is entitled to which is outside the scope of energy advisers.

Practical tip

Remember you are able to offer advice to consumers about the express terms of their energy contracts. If the complaint is about the quality of any goods or standard of any workmanship, the call should be handled in accordance with RAST protocols.

Express terms in energy contracts

You may remember that the express terms in a contract are those which the parties agree to include and they can be written or verbal, negotiated or standard. In reality, energy consumers will be presented with a standard set of terms by their supplier. However, energy supply contracts, particularly domestic ones, are heavily regulated to ensure that consumers are aware of the most important aspects of their agreements with the supply companies.

There should not be too many surprises in the terms since, as we have already seen in unit 3 'Marketing energy', there are also extensive requirements for pre-contract information, particularly with regard to estimates of consumption and price comparisons in certain circumstances.

To a large extent what has to be included in the terms is governed by the SLC, but there are legal controls too, for example, the PCI requirements under the CCRs. Any information provided as part of the PCI requirement is treated as a term, regardless of whether the contract is made on-premises, off-premises or at a distance.

(a) Examples of express terms found in energy contracts

A contract (or a deemed contract) must be used to supply domestic premises with gas or electricity and the contract must be in writing and include all the terms and conditions (SLC(G&E)22). Anyone can request a copy of any form of the contract which the supplier offers and the supplier must send them one within a reasonable period of time. Those that have them, tend to include copies of the T & C on their websites.

The areas which are likely to be covered in an energy supply contract are those listed below. They will be covered in more detail in subsequent units as indicated:

Contract term	Why needed	Relevant unit
Price or charges	The consumer needs to know what he is being charged, per unit, for the energy consumed	5 Charges for fuel
Ending the contract	When the contract ends and/or how it can be brought to an end is particularly useful if the consumer wishes to change supplier for example	4 Energy supply contracts
Changes to the contract	Sometimes the supplier makes changes to the T&C and if these are significant the consumer should be told so that they can consider whether they wish to continue with the contract	4 Energy supply contracts
Right to switch supplier	Suppliers must include a term which explains that any supply transfer will usually be completed within 21 days	4 Energy supply contracts
Rights of entry	Operators require access to consumers homes to inspect meters and make safety checks	7 Connections, quality and safety
Payment methods	Various payment methods must be made available for consumers so these need to be explained and how they affect the contract	6 Paying for fuel
Meter readings	Operators have a duty to inspect and read the meter at least every two years and are legally entitled to have access to do so	6 Paying for fuel
Statements and billing	The SLC impose minimum requirements on suppliers with regard to sending out bills and statements	5 Charges for fuel 7

		Paying for fuel
What happens on non-payment	In certain circumstances the supplier may disconnect for non-payment and this needs to be explained to the consumer	8 Debt and disconnection
Moving house	It is useful if consumers take meter readings when they move in and out of properties to facilitate final bills and starting positions for new contracts	6 Paying for fuel
Security and emergency arrangements	In the event of an emergency the supplier needs to be sure that consumers act appropriately and in accordance with instructions	7 Connections, quality and safety

Gas safety

The supplier must include a term in a gas supply contract to the effect that if a gas transporter or shipper asks the supplier to discontinue the supply of gas, the supplier is entitled to do so and the consumer must take all steps to avoid using gas immediately and for the duration of any pipeline system emergency (for example if the safety of the pipeline or the safe conveyance of gas through it, is significantly at risk, or the pressure / quality of the gas conveyed constitutes a danger to life or property) SLC(G)16.4.

Principal terms

The supplier must take all reasonable steps to bring the principal terms of the contract, to the attention of the consumer, before entering into it SLC(G&E)23.

The principal terms are defined in SLC(G&E)1 as those which relate to the following:

- ✓ supply charges *
- ✓ charges through a PPM
- ✓ requirements for a security deposit
- ✓ duration of the contract (or deemed contract) *
- ✓ rights to end the contract (including any termination fee or circumstances in which a deemed contract will end) *
- ✓ any other term which significantly affects the consumer's evaluation of the supply contract *

* these four are sometime referred to as the Relevant Principal Terms and are relevant for SLC(G&E)31A which concerns giving information on consumption patterns

(b) Deemed contracts

A deemed contract will exist, for example, where a consumer moves into a new property **and** starts to consume gas and or electricity without agreeing a contract with a supplier. SLC(G&E)7 lays down some requirements in relation to the terms in a deemed contract, namely that:

- ✓ the terms must not be unduly onerous, for example, the supplier's income from charges under a deemed contract, must not significantly exceed the cost of supplying the fuel

- ✓ the supplier must take all reasonable steps to provide the consumer with the principal terms (see above) of that contract (this could be verbal)
- ✓ the supplier must take all reasonable steps to provide a written notice that states that contracts with different terms may be available and information about how such contracts may be obtained
- ✓ a copy of the deemed contract should be provided on request (within a reasonable period of time)

It would appear that if there is no consumption of energy then a deemed contract does not exist. Such an issue would be a matter for the courts if someone was to take the matter that far. If no energy is consumed than this means that a standing charge cannot be made, however, switching on a single light bulb or using a security or fire alarm will consume some energy. Properties can be de-energised but there may be a charge for this as well as one for re-energising at a later date.

(c) Off-premises, on-premises and distance contracts - Pre-contract information

As we saw in unit 3 'Marketing energy', the CCRs are mainly concerned with the consumer's right to cancel certain contracts concluded away from business premises (off-premises contracts) and at a distance and the details about this right to cancel which have to be given to consumers informing them of it and how to exercise it. There are also provisions in the Regulations which are concerned with supplying other pre-contract information concerning whatever the consumer has agreed to buy whilst in their home or online for example, in our case gas or electricity. It is not in the supplier's interests to delay supplying the appropriate PCI when consumers conclude their contracts online or over the phone, as this may have the effect of extending the cooling off period for the consumer.

The details given as part of this pre-contract information process are then treated as terms of the contract.

In addition, premises concluded on-premises are also subject to some of the PCI requirements, although this is less extensive than that for off-premises and distance contracts. Such contracts do not however, require contract confirmation or cancellation rights. Any information provided to the consumer in compliance with the on-premises PCI requirements will also be treated as a term of the contract.

(d) Off-premises and distance contracts - contract confirmation

The supplier must also provide contract confirmation to the consumer before they begin supplying any gas or electricity in the case of distance and off-premises contracts, but not in relation to on-premises contracts. This enables the consumer to check the terms of the contract against the PCI for any discrepancies.

- For off-premises contracts, this can be in the form of a copy of the signed contract and can be on paper or another durable medium if the consumer agrees.
- For distance contracts, it must be on a durable medium

Contract confirmation must contain all the PCI unless this has already been supplied on a durable medium before the contract was concluded.

The burden of proof is on the supplier to show that the PCI and contract confirmation requirements were complied with.

(e) Feed-in tariff agreements

Feed-in tariffs (FIT) were explained earlier and SLC(E)33 requires suppliers to take all reasonable steps to agree in writing a statement of FIT terms with a FIT generator within 10 working days of the installation being entered on to the FIT register, which is maintained by Ofgem.

This Statement of FIT Terms must incorporate at least, the Principal Generator Terms and the Principal FIT Licensee Terms, as detailed in SLC(E)33. In addition there is a code of practice covering the activities of installers in the microgeneration industry, referred to as the REAL Assurance Code (Renewable Energy Assurance Ltd).

Practical tip

Consumers wanting further information on FIT should be signposted to the Energy Savings Trust (see unit 9 'Complaint resolution and consumer organisations')

Factors which affect the terms

There are various factors which affect not only what the terms in an energy supply contract can relate to, but also how the detail is presented and where and sometimes how things are calculated. Here, we will briefly consider the effects of some of the SLC and also various codes of practice and general legislation which may apply.

(a) Codes of practice

Of particular relevance here are the codes of practice which the Big 6 suppliers have, since these supplement their contracts. They often produce various codes explaining the different aspects of their obligations, for example, how they will deal with vulnerable consumers and when they need access to the consumer's premises. The codes are available on the suppliers' own websites.

(b) Unfair terms - The Consumer Rights Act

This Act also deals with the use of exclusion clauses, such as '...we accept no responsibility for damage caused by our workmen'.

In some cases the use of such clauses is prohibited altogether, for example it is not possible to exclude liability for negligence which causes someone personal injury or death, this would apply to the gas and electricity companies too. Negligence includes the use of reasonable care and skill required under CRA.

In other instances CRA uses a 'reasonableness' test to assess whether or not the exclusion clause can be relied upon, for example for property damage caused by negligence. It may be possible to refer some queries about what would be a reasonable exclusion or limitation of liability in accordance with RAST protocols.

The CRA also aims to ensure that the 'small print' in a contract is fair. So, for example, a clause in the small print of a contract which states that the trader can get out of the contract at any time but that the consumer has no right to do so, may be deemed to be unfair.

CRA will not apply to parts of the contract that have been specifically negotiated between the parties, such as the price.

It is also a legal requirement that contracts should be written in plain, intelligible language. Terms which are unfair can be ignored in the contract, so that the contract carries on without that term. If a term is not in plain, intelligible language, then the interpretation most favourable to the consumer prevails.

Since the SLC impose similar requirements, as discussed earlier, it is unlikely that it will be necessary to use the CRA.

Practical tip

Remember that Ofgem monitors the Citizens Advice data and will therefore pick up any complaints about the clarity or unfairness of energy supply contract terms.

(e) The Consumer Protection from Unfair Trading Regulations 2008

These Regulations have been discussed several times already but just to remind you, they seek to prohibit the use of commercial practices against consumers, which could be unfair. Unlike (d) above they are not restricted to contracts, but they could apply to contracts and in particular if important information is false or misleading or omitted from a contract this could form the basis of an unfair commercial practice. Breaches should be handled in accordance with RAST protocols.

Summary

- Terms are implied in to service contracts by the CRA and the provider of a service should carry it out using reasonable care and skill and within a reasonable time and for a reasonable price if these two elements are not fixed under the contract.
- Consumers are likely to be presented with a standard set of express terms for their supply contract, which address such issues as billing, access to the premises, meter readings, how to end or terminate the contract, price increases and other changes, payment methods, moving house, security arrangements and what happens when a consumer can't pay the bill.
- Certain terms are classed as principal terms, namely, those relating to price, duration, termination, the requirement for any security deposit and any other term which significantly affects the consumer's evaluation of the supply contract, and the supplier must take all reasonable steps to bring them to the attention of the consumer before entering into the contract; feed-in tariff contracts have their own T&C in the SLC.
- Sometimes a deemed contract will exist, for example, where a consumer moves into a new property **and** starts to consume gas and or electricity without agreeing a contract with a supplier and in such circumstances SLC 7 lays down some requirements including ensuring that the principal terms are not unduly onerous and are notified to the consumer.
- Contracts covered by the CCRs require certain information to be provided before a contract is concluded (PCI) depending on whether the contract was made off-premises, on-premises or at a distance and this information is treated as terms of the contract.
- Those contracts concluded at a distance or off-premises also have to provide contract confirmation and this will include all the PCI details if they have not been supplied previously on a durable medium; they will then be terms of the contract.
- Suppliers often have their own codes of practice which run alongside their contract terms and there are some general legislative provisions such as the CRA and the CPRs which to some extent control the fairness of the terms which the suppliers use.

Section 3

Contract performance

The parties to a contract usually acquire both rights and obligations under it. Once the contract is in place and the T&C are agreed, performance of the contract can begin. Clearly the most important issue for the consumer will be getting a supply of the energy they actually contracted for, the gas and / or the electricity, and their most obvious obligation in return, is to pay for the energy they consume. However, there will be other obligations for both parties in the contract.

Although the contract will be with a supplier, the actual physical delivery of energy will be down to a distributor or transporter. There are often no contractual rights against such operators if things go wrong but sometimes the Performance Standards Regulations allow a compensation claim to be made against them for failure to meet a Guaranteed Standard (GS). Also the laws relating to product liability and negligence can give rise to claims against third parties.

In this section we will mention the areas which could become an issue during the performance of the contract and in most instances you will be referred to another unit where the matter will be addressed in more detail. Many of the obligations under an energy supply contract require consumers, to be supplied with lots of pieces of information at varying times and in certain formats, and these will be covered in this section too.

Supplier's obligations

The supplier will have to meet various obligations under the contract, including those it undertakes to do because it has written them into the contract and those which are imposed by SLC, legislation and codes of practice.

(a) Standard licence conditions

There is an obligation to take all reasonable steps to ensure that the consumer understands that they have actually entered into a contract and paragraphs 11 and 12 of SLC(G&E)25 require the supplier to provide certain information to the consumer when they enter into a contract.

(b) Guaranteed standards

The suppliers are expected to meet certain standards when they perform some of their activities and if they fail to reach the required level of service they will have to pay compensation to those consumers affected. It is necessary to look at Annex 1 before advising someone since they mention all the various criteria which may apply and explain all the exemptions, of which there are many! In addition there is an obligation for the suppliers to produce a Statement of Rights explaining the Guaranteed Standards to consumers.

(c) Other legal obligations

In addition to ensuring compliance with the SLCs and the GS, suppliers also have obligations in relation to the performance of the contract that stem from numerous legal sources and these will all be discussed in the following units, some examples include:

- | | |
|---|--------|
| ✓ calculation of charges | unit 5 |
| ✓ payment options | unit 6 |
| ✓ connection, quality and safety duties | unit 7 |
| ✓ options for those in debt | unit 8 |
| ✓ provision of a complaints handling system | unit 9 |

As part of their compliance with the PCI requirements under the CCRs, suppliers may have included details in their contracts which they will also have to meet, for example, compliance with any codes of conduct and after sales guarantees.

Distributor / transporter obligations

Although the contract(s) for energy supply will be with a supplier, the actual physical delivery of the gas and or electricity will be down to a DNO or GT. There are often no contractual rights against such operators if things go wrong but sometimes the Performance Standards Regulations allow a compensation claim to be made against them for failure to meet a GS. Also the laws relating to product liability and negligence can give rise to claims against third parties.

(a) Standard licence conditions

SLC for DNO and GT mainly relate to arrangements between these operators and suppliers and do not affect consumers. However, there are some which affect consumers, and they will be referred to where necessary throughout the materials.

(b) Guaranteed standards

Annexes 2, 3 & 4 should be checked before advising consumers about specific amounts available as compensation as there are a number of conditions and exemptions which apply in certain instances. The three annexes refer to the following standards:

- ✓ electricity guaranteed standards
- ✓ electricity connection and alteration work standards
- ✓ gas guaranteed standards

Distributors and transporters are under an obligation to prepare a statement of rights which explains to consumers their rights under the guaranteed standards and make it available in the same way as the suppliers.

(c) Other legal obligations

Product liability

Civil liability for certain damage and personal injury caused by unsafe products arises under Part I of the Consumer Protection Act 1987 and the definition of 'product' includes electricity and substances which are extracted, for example, gas. This liability can fall on a number of people in the supply chain, depending on the circumstances, including producers, own-branders, European importers and suppliers. Someone who is injured by an unsafe product or has their private property damaged by it may be able to make a claim for damages (compensation) regardless of whether they are the contracting party for the supply. Liability under Part I cannot be excluded.

Practical tip

Any reports of unsafe 'products' need to be handled in accordance with office protocols for further action and advice.

Negligence

Similarly under the law of negligence, it is likely that a duty of care would be owed by everyone in the supply chain to users of electricity and gas, and injuries and damage caused by negligence could lead to an action in negligence for damages. Some of these issues may be referred to further in unit 7 'Connections, quality of supply and safety'.

Practical tip

Anyone suffering personal injuries as a result of gas or electricity possibly being unsafe needs to be referred to a lawyer who specialises in personal injury. Such information may be available from a Local Citizens Advice – see unit 9 'Complaint resolution and consumer organisations'.

Information requirements

It should now be apparent that a large part of proper performance of the contract is concerned with the provision of information. There are many instances when suppliers, and sometimes DNO and GT, have to give consumers certain information. This is not always required to actually be in the contract, nor does it always have to be given at the marketing stage. The information table at the end of unit 3 provides a summary of the type of information required, when and how it has to be given, the authority for such a requirement and which unit may assist further. This includes a Statement of Rights which all three providers

have to produce explaining consumer rights in relation to the Guaranteed Standards. Unless otherwise stated, the provisions apply equally to the supply of both gas and electricity.

Contract confirmation is required under the CCRs for off-premises and distance contracts and this requires detailed information in accordance with the PCI requirements if this was not provided to the consumer in a durable format before the contract was made.

(a) Contractual information

Not all the information requirements relate to the actual contract as some are pre-contract / marketing requirements and some are general details which have to be made available to anyone requesting them. Those which relate to actually entering into the contract are:

- SLC(G&E)25.11, which requires the supplier to provide a consumer who enters into a contract, with all the information which the supplier reasonably considers the consumer would need to ensure that any marketing activity is complete, accurate, appropriate, fair, capable of being easily understood and is not misleading. This is also compatible with CPR which require all commercial practices to be fair.
- SLC(G&E)25.12, goes on to provide a list of information which should be included, for this obligation to be met, but states that it is not an exhaustive list. It includes:
 - ✓ a copy of the contract (consistent with the offered contract)
 - ✓ an explanation of what happens next
 - ✓ a reminder to check the appropriateness of the product signed up to
 - ✓ a reminder of the details of where to find impartial advice and information
 - ✓ information about what to do if there are concerns
 - ✓ details of how to contact Citizens Advice

Some of this detail is repeated in the EnergySure Code, but of course the SLC applies to any contract, not just ones concluded in the consumer's home. SLC(G)20 suggests that the information on suspected gas leaks could also be included in the contract.

(b) Deemed contracts

Information which consumers should be provided with in relation to deemed contracts, was discussed in section 1, and from the point of view of termination will be covered in section 3. It includes the following, all of which appear in the information table:

- ✓ a written notice that states that contracts with different terms may be available and information about how such contracts may be obtained
- ✓ the principal terms (supplier only needs to take all reasonable steps to provide these and they don't have to be in writing, although see the next point)

- ✓ a copy of the deemed contract (but only on request and the supplier must take all reasonable steps to ensure that the terms are not onerous)
- ✓ a term which states that it will continue until another contract takes over (no fee can be imposed)
- ✓ a term which covers ending the contract when ownership / occupancy ends (in accordance with SLC(G&E)24 – see section 3)
- ✓ a term which ends the contract when a Last Resort Supply Direction is issued by Ofgem

Customer obligations

It should not be forgotten that the consumer also acquires obligations under the contract. The most important is probably paying for the energy consumed but there are other miscellaneous ones too, often based around what they must not do. Some will be express terms in the contract and others may be imposed by the law.

(a) Payment

Who has to pay can be an issue sometimes, especially when there are several adults living in a property or when there is a deemed contract. This is addressed in unit 6 'Paying for fuel'. Certain payment options have to be made available, particularly when the consumer faces difficulty paying or is in debt, and these issues are addressed in unit 6 and unit 8 'Debt and disconnection'.

(b) Off-premises and distance contracts

As we saw in unit 3 'Marketing energy', the CCRs are mainly concerned with the consumer's right to cancel certain contracts concluded at a distance, for example, online or during a telesales and also off premises, for example, in their homes or anywhere else that is not a usual business premise. The Regulations are also concerned with the PCI details, which have to be given to consumers informing them of this right, the prescribed cancellation form and the contract confirmation requirements.

Of particular relevance here is the fact that a consumer can ask for performance of the contract to begin during the cancellation period. Having done this, if the consumer does then choose to cancel, there will be a duty to pay a reasonable amount for what has already been supplied, providing that the supplier has met the legal requirements relating to this. From a practical point of view it is unlikely that a transfer in supply will happen within 14 days, since it would usually take up to 21 days. So even if a consumer wants this to happen, it will simply mean that if they cancel they will have to pay for the energy supplied in the meantime, providing:

- ✓ they specifically asked for the supply to start during the cancellation period
- ✓ such a request was on a durable medium, in the case of an off-premises contract
- ✓ the trader informed the consumer that they would have to pay this and supplied the appropriate cancellation details, namely, the conditions, time limits and procedures for cancelling

(c) Miscellaneous obligations

Other obligations which the consumer will have to meet include:

- ✓ not tampering with meters (this is a criminal offence)
- ✓ not damaging meters or associated pipework, plant, lines or other equipment or apparatus
- ✓ allowing access to read the meter
- ✓ allowing access to deal with safety matters
- ✓ reporting gas leaks
- ✓ preventing further gas leakage

Summary

- The parties to a contract usually acquire both rights and obligations under it and the most important issue for the consumer will be getting a supply of the energy they actually contracted for, and their most obvious obligation in return, is to pay for the energy they consume, however, there will be other obligations for both parties in the contract.
- The supplier will have to meet various obligations under the contract, including those it undertakes to do because it has written them into the contract and those which are imposed by the SLCs, legislation and codes of practice.
- Contractual obligations under the SLC include ensuring that the consumer understands that they have entered into a contract and provisions relating to meter inspections and services, certain safety checks, site access, facilitating transfers, and offering Feed-in Tariffs if they have at least 50,000 electricity consumers.
- Suppliers are also expected to meet certain guaranteed standards when they perform their activities under the contract and failure to do so means they will have to pay compensation amounts to those consumers affected; DNO and GT have to meet guaranteed standards too, even though the consumers' contract is not with them.
- The main guaranteed standards for suppliers are concerned with meter disputes, repair or replacement of PPMs, offering and keeping appointments.
- Although the contract will be with a supplier, the actual physical delivery of energy will be down to a DNO or GT and there is usually no contractual rights against such operators if things go wrong but sometimes the Performance Standards Regulations allow a compensation claim to be made against them for failure to meet a Guaranteed Standard and also the laws relating to product liability and negligence can give rise to claims against such third parties.
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Section 4

Escaping from energy supply contracts

Someone with an energy supply contract may be able to escape from it at a later date. This may be because there is a legal right to do so through cancellation, termination, repudiation or rescission. We will discuss these options and give examples of when they might apply. In particular we will discuss the obligations of both parties in a contract when the consumer chooses to switch supplier, since this is a very common activity and the subject of many complaints when the process does not run smoothly.

There is a quick reference guide at the end of this section summarising the main points concerning the different ways of escaping from a contract.

Cancellation rights

The law gives consumers the right to cancel certain contracts in certain circumstances and sometimes the contract itself may give the right to cancel. Cancellation rights usually only last for a short period of time after the contract has been formed. We will consider the possibility of cancelling in the following circumstances:

- ✓ express term in the contract
- ✓ off-premises and distance contracts

(a) Cancellation right in contract terms

There is no general right to cancel a contract and the law only gives that right in certain circumstances, such as off-premises and distance sales, discussed below. However, sometimes the contract itself will provide for such a right in one of its express terms. It will be important for consumers to check to see if this right is given without penalty or whether there is a cancellation fee to pay. From a practical point of view the consumer will need read the T&C and follow any instructions given in order to action the cancellation.

If there is a legal right to cancel, for example, in a off premises or distance contract as explained below, then the more generous cooling off period will take precedence, which in some contracts may be the legal requirement and in others may be the contract term stipulation.

Practical tip

If a consumer has changed their mind about entering into a supply contract and does not have a right to cancel in law, they should be advised to check their terms and conditions to find out if the contract gives them a right to cancel.

If the contract does not include a right to cancel and the consumer decides not to proceed, they may be liable to the supplier for their loss of profit, since they will themselves be in breach of contract. You should advise the consumer to make enquiries about how much they would be liable to pay to the supplier in these circumstances. It may be the case that it is financially worthwhile to the consumer to

breach the contract. If this is the case the supplier should be asked to confirm the amount that they would request in writing.

(b) Off-premises and distance contracts

We have already considered the TSS legislation which covers off-premises and distance sales (see unit 3 'Marketing energy'). Here, we will just briefly remind ourselves of the provisions which explain how to cancel.

You may remember that a consumer will have from entering into the contract until the end of 14 days starting the day after this, to cancel the contract. The consumer should receive PCI, including details about their right to cancel and a prescribed cancellation form. These were all covered in detail in unit 3 'Marketing energy'. Provisions dealing with when a consumer might have to pay, even after cancelling, were also covered.

How to cancel

The consumer must inform the supplier, or whoever is specified in the details given to them, of their intention to cancel. The notice will be effective from the date that it is sent. The consumer can use the cancellation form provided by the supplier but does not have to, or can make any other clear statement setting out the decision to cancel.

Some suppliers may offer their websites to facilitate the submission of cancellation forms or other statements; the consumer does not have to use this method but if he or she does, then the supplier must send an acknowledgment of receipt without delay using a durable medium.

The details of the procedures for cancelling should have been provided on a durable medium in the pre-contract information or contract confirmation, so consumers should be able to follow what they have been asked to do in terms of who to contact and where.

There appears to be no specification as to what methods of communication are acceptable and the wording in the CCRs suggests that a verbal cancellation would satisfy the requirements if it is clear, however, it would clearly be easier to prove that a consumer cancelled a contract if there is a copy of the document or email available and the onus is on them to prove this if the need arises.

Example

Mr and Mrs Baker were visited in their home by an energy supplier representative three days ago. They were persuaded to switch suppliers and ask to sign documentation to that effect. After speaking to one of their neighbours about the new company they realise that the new supplier does not have a very good reputation for customer service and they would like to stay with their original supplier.

Advice

Mr and Mrs Baker should have been given a prescribed cancellation form at the time of the visit, and some PCI which included details of their right to cancel. This may have been contained in model instructions for cancellation. As the visit was only three days ago they should still be able to cancel and should be advised to do so in writing by email or post. They should be advised to make it clear that they are cancelling, keep a copy of the letter and either send it recorded delivery or obtain proof of posting (write RD/COP & KC). If they cancel by email they should retain a copy of it.

3.2.1 Contractual rights

The CCRs allow the consumer to cancel certain contracts in specified circumstances, as explained above, and even the contract itself may give an express right to cancel. However, in the absence of such a right to cancel, there are other situations when one or other, or both parties, to a contract may be permitted to escape from it. The areas we will examine here will concentrate on the consumer's rights to escape from the contract and we will examine when they can do the following in relation to the contract:

- ✓ terminate
- ✓ repudiate
- ✓ rescind
- ✓ treat it as void.

(a) Termination rights

Even when there is no right to cancel or when that cancellation period has passed, there may still be a right to terminate the contract. This is particularly relevant for continuous or open ended contracts, which last for an indefinite, rather than a fixed, period of time. In addition all contracts, whatever type they are, must end if a Last Resort Supply Direction is issued by Ofgem, which would occur if a supplier ceased to be licensed. This would allow for a consumer's supply to continue. A fee for terminating a contract can be charged unless:

- ✓ the contract is of indefinite length
- ✓ the contract consists of a fixed term period and a period of indefinite length and is brought to an end during the latter period

and the supplier has given a prescribed variation notice and the consumer has ended the contract in writing, having complied with all the provisions in SLC(G&E)23.

- **Distance contracts**

For distance contracts concluded using electronic means, the consumer must make an explicit acknowledgement when it gets to the point of having to pay and if this requires activation of a button or similar, it must be labelled "order with obligation to pay" or some other unambiguous wording, otherwise the consumer will not be bound by the contract or order. This is a requirement of the CCRs.

- **Evergreen contracts**

Open ended contracts in the energy industry are often referred to as evergreen or rolling contracts and will usually contain a contract term which explains how the contract can be ended by either party. Often there will be a stated period of notice which will have to be given to bring the contract to an end. These are very common with consumers and a termination fee cannot be charged SLC(G&E)24.3 in a contract for an indefinite period or a deemed contract SLC(G&E)7.6. Since the most likely scenario with regard to

terminating contracts will be when someone wishes to switch energy supplier, the practicalities of this and what legal obligations are placed on the parties, are all discussed in more detail in section 4.

- **Fixed term contracts**

If a contract is due to end, for example if it is a fixed term contract the supplier has to send the C certain information. The C should receive this information 42 - 49 days before their contract ends. The notice should contain information about the rates they will move onto if they remain with the supplier and do not agree a new contract. The supplier must also inform the client that they are now able to switch supplier without the risk of having to pay termination fees.

Suppliers who do not send the appropriate notification (42 – 49 days prior to the end of their fixed term contract) are in breach of their licence conditions.

- **Deemed contracts**

A deemed contract will continue until another contract comes into being and consumers cannot be charged a termination fee for ending a deemed contract (SLC(G&E)7). In addition there must be a term which covers how and when the deemed contract would end with a change of ownership or occupation.

- **End of ownership / occupation**

The supplier must include a term in the contract (including deemed contracts) which explains how and when the contract ends when ownership / occupation of a premises changes, and also when a termination fee can be charged (SLC(G&E)24). The details are included in the information table at the end of unit 3 and discussed further in unit 6 'Paying for fuel'.

- **Last Resort Supply Direction**

SLC(G&E)7 states that contracts, including deemed ones, must provide for the contract to end when a Last Resort Supply Direction is given, by Ofgem, to another supplier in relation to the premises concerned. This is only likely to happen if an operator ceases to be a licensed supplier, to ensure that consumers are not left without an energy supply.

- **Contract variations**

Consumers may end their contracts if a price increase or other term variation would significantly disadvantage them, and they must be told of this right in a Notice of Variation (VN) which must be given at least 30 days before the variation has effect or. It must also comply with SLC(G&E)23.4 (see the information table at the end of unit 3). The supplier must respect the consumer's notification of their intention to change supplier providing that they have also received notification from a new supplier within 15 working days (WD) of the consumer's notification.

The consumer's situation becomes slightly more complicated if they have outstanding charges and this is discussed in more detail in:

- Section 4 below
- Unit 8 'Debt and disconnection'

(b) Repudiation

If there has been a major breach of contract, then the common law remedy available may be repudiation, which allows the victim to end the contract. An award for damages can also be made, alongside repudiation (Under the Scottish common law this way of ending a contract is called rescission), as discussed in section 2.

(c) Rescission

Rescission (In Scotland, reduction) is a similar remedy to repudiation however, since it is not based in the common law, but in something called the Law of Equity, it is not available as of right, but at the discretion of a court. It may be available, subject to practical and legal limitations called bars, in the following circumstances:

- for a misrepresentation, which is an incorrect factual statement which induces someone to enter into a contract (see unit 3 'Marketing energy'), for example, if a new supplier tells a prospective consumer that their supplier has gone bust and they will be taking over the supply, when this is not the case. The difficulty with such statements is often that they are verbal and therefore difficult to prove.
- under E-Commerce Regulations (discussed in unit 3 'Marketing energy') if the service provider does not make available, the means of allowing the identification and correction of input errors by someone entering into a contract covered by the Regulations, for example, on line.

(d) Contracts which are void

Some contracts are void (treated as if they were never made) from the outset, or are voidable (can be avoided if the victim wishes and follows any required criteria). Factors which may cause contracts to fall into this category may include unilateral mistake, duress, undue influence, frustration and illegality (see unit 1 'Understanding the energy industry'). It is unlikely that you will encounter these issues but if you do it is likely that the victim will need specialist legal advice and will need referring to an appropriate body.

Quick reference guide: Escaping from contracts

Action	Explanation	Examples
Cancellation	Available for a number of days after a contract has been made	Off-premises Sales Distance Sales Contractual right (express term)
Termination	Ending a rolling contract	Switching supplier

		Moving House Last Resort Supply Direction
Repudiation (Scotland – rescission)	Ending the contract for a major (material) breach of contract (a common law remedy)	Breach of an express term relating to time for performance when such a term has been made into a condition ('making time of the essence')
Rescission (Scotland – reduction)	Ending the contract for a major breach (a discretionary, equitable remedy)	Misrepresentation Not making available the means for identifying and correcting input errors when contracting online
Void / voidable contracts	Contracts which are treated as if they have never occurred (void) Contracts which can be treated as if they had never occurred (voidable)	Void Frustration, Unilateral Mistake, Illegality (Scotland, mistake = error, illegality = pacta illicita) Voidable Undue Influence, Duress (Scotland, abuse of good faith, extortion or force & fear)

Switching supplier

According to the Fuel Rights Handbook (14th edition, 2008), 50 per cent of us changed our energy supplier at least once between 2002 and 2008 and the Big 6 suppliers supply approximately 99 per cent of consumers. It is, therefore, important to consider the issue of what happens when consumers change their supplier, what protections are available and what industry practices affect this activity.

We have already considered marketing activities in unit 3 which examined the practices that the suppliers get up to, to persuade us to switch. Here we will concentrate on the process of ending one contract and entering into another, rather than the advertisements and selling methods which encourage us to do so. The industry refers to this process as a transfer. We will consider the following in this section:

- (a) When a transfer of supply switching must be completed
- (b) Switching from a licence exempt gas or electricity distribution network
- (c) When can a current supplier prevent a consumer from switching supplier?
- (d) Switching because of price increases
- (e) Switching in practice
- (f) How to deal with erroneous transfers

(a) When a transfer of supply must be completed

A new licence condition SLC14A came into effect on 11 November 2011, which sets a time period to when a transfer of supply 'switching' must be completed.

Obligations

In order to comply with the Electricity and Gas (Internal Markets) Regulations 2011, SLC14A states that any

Unit 4. Energy Supply Contracts, V5.0

supplier transfer completed in accordance with the contract, must be completed within 21 days of the relevant date, unless certain conditions apply.

This condition applies to any contract made on or after 11 November 2011.

Suppliers are required to take all reasonable steps to improve the systems and processes governing supplier transfers in order to achieve the objective of completing all supplier transfers within 21 days of the Relevant Date.

The **Relevant Date** is:

- the day after the day on which a customer enters into a contract with a new supplier; or
- if there is a cooling off period, the earlier of:
 - i. the day after the day on which that period ends; or
 - ii. 14 days after the day on which the customer entered into the contract

There will therefore be a term in each contract saying customers can switch supplier within 21 days plus (if there is a cooling off period) a maximum of 14 days.

Situations when condition does not apply

- if an objection to the transfer is raised
- if the customer fails to provide the necessary information needed to complete the transfer, such as the correct address details or meter point number (MPAN/MPRN).

(b) Switching from a licence exempt gas or electricity distribution network

Some customers are connected to electricity and gas networks that are exempt from the need to hold a licence to distribute and supply power. In the past such networks did not have to provide third party access to their networks. This has meant that customers connected to these networks have not generally been able to choose who supplies their energy and gas.

New requirements allowing certain customers connected to these networks to choose their supplier came into effect on 10 November 2011.

Exempt networks typically cover ports, airports, caravan parks, district energy schemes, industrial production sites and trading estates. The new arrangements allowing third party supply are known as third party access (TPA).

Customers on exempt networks who wish to change supplier must provide evidence that a third party supplier is willing to supply them with gas or electricity.

Charging methodology - owners of licence exempt networks have to have in place a charging methodology approved by Ofgem if the customer requests the right to choose an alternative supplier. The charging methodology does not set out network charges but the basis on which charges are calculated and set.

Recovery of connection costs – licence exempt networks are able to recover the costs of a new or modified connection to their network where this is required to allow consumers to choose their energy supplier.

Determination - disputes about connection charges can be referred to Ofgem for determination.

(c) When can a current supplier prevent a consumer from switching suppliers?

The whole point of encouraging competition is to allow consumers to switch suppliers easily and so a supplier can only ask for a proposed supplier transfer (PST) to be prevented in accordance with SLC(G&E)14.4.

A request to prevent a transfer can be made in the following circumstances, in other words a consumer can be stopped from switching suppliers for one of the reasons indicated below, relating to certain outstanding charges, errors, consumer requests (when they indicate that they did not enter into a new contract) and where there are multi metering points (electricity only).

Outstanding charges

If there are outstanding charges due, the original supplier can ask for the transfer to be blocked (known as debt blocking), unless:

- the consumer has a PPM and the amount is £500 or less for each fuel
- the whole amount is a disputed amount and or a supplier error amount
- the consumer has a PPM and the new supplier agrees to the assignment of the charges – this applies to debt of any amount
- the consumer has a PPM and the original supplier did not take all reasonable steps to reset the PPM within a reasonable time after a price increase – this applies to a debt of any amount

The issue of debt blocking will be referred to again in unit 8 when we examine debt and disconnections and the relevance of the Debt Assignment Protocol to switching supplier.

Errors

The supplier initiating the PST may agree that the transfer was done in error and this is then referred to as an erroneous transfer and should be dealt with as indicated below.

No new contract

If the consumer informs the supplier that they have not entered into a contract with the proposed new supplier AND asks for the PST to be prevented, then the transfer should be prevented.

Multi metering points (applies to electricity meters only)

If the PST relates to a related metering point (RMP) and the proposed new supplier has not applied to transfer all the RMPs on the same day for the same supply start date then the transfer can be prevented.

(d) Switching because of price increase

If the consumer wishes to switch supplier because their supplier has increased prices or wishes to impose other variations to the contract terms which would significantly disadvantage the consumer, then the provisions of SLC(G&E)23 must be observed as well as those in SLC(G&E)14. Ofgem, following consultation with stakeholders, made amendments to SLC(G&E)23 to require domestic suppliers to notify their customers of a unilateral variation to their contractual terms which increase prices or which are to their 'significant disadvantage' at least 30 days in advance. Previously suppliers could notify customers up to 65 days after the change.

The notice period of 30 days came into effect on 28 April 2011. During the course of the consultations Ofgem received requests from a number of stakeholders to provide clarity on what constitutes a price increase, and what is meant by a contract variation which is to the 'significant disadvantage' of the customer. It is the view of Ofgem that a supplier should notify their customer 30 days in advance of an increase in any of the following charges:

- standing charges
- unit charges
- late payment charges
- termination fees
- administrative charges for paying
- supply charges by credit cards
- charges made by a supplier in respect of disconnections and re-connections
- charges for paper billing/copies of bills
- charges made by a supplier for testing, moving or replacing a meter
- charges made by a supplier for hiring/ renting a meter
- changes to a discount scheme, such as a reduction in the prompt pay discount in respect of prepayment meter customers, charges for replacing a prepayment meter card for
- call out charges made by a supplier for metering related issues.

Examples:

Illustrative and non-exhaustive categories	Illustrative and non-exhaustive examples
Changes to the services provided or the quality of service level	Changes which reduce the availability of payment methods and paper billing. Changes to reward or voucher schemes linked to the contract
Changes to the duration of the contract and any conditions for renewal of the contract	Inserting or changing terms which allow a supplier to renew the contract for a further fixed term period. An increase in the fixed term period. Changing terms which apply to any process for opting out of contract renewals.
Changes to conditions for termination of the contract	Any increase in the notice period for termination. Any decrease in a time period in which a customer must respond to the supplier. Putting in place additional requirements which must be satisfied by a customer.
Changes to charges for early termination of the contract	Changes which extend the circumstances where cancellation/ early termination fees will be payable.
Changes to compensation and refund arrangements which apply if any service quality levels specified in the contract are not met, including any arrangements which apply in the event of inaccurate or delayed billing	Any changes which seek to reduce or exclude the supplier's liability.

(e) Switching in practice

In order to ensure that switching suppliers is as hassle free as possible the ERA (of which the Big 6 are members) have compiled a Guidance Leaflet 'Energy Made Clear – Making it Simple to Switch'. Note this leaflet has not been up-dated since first publication.

Remember that the whole process should take no more than 21 days to complete and the guidance leaflet goes through the steps which the consumer needs to complete as well as some frequently asked questions and the provisions in the Erroneous Transfer Customer Charter (ETCC) detailed below.

If the consumer has a fixed term contract which has not yet come to an end there may be a termination fee to pay before switching can take place.

(f) How to deal with erroneous transfers

The ETCC sets out the principles which should be adopted by suppliers to ensure that the consumer knows what will happen if they are mistakenly transferred to a new supplier (called an 'erroneous transfer' (ET)). The principle is that they should be transferred back to their original supplier as quickly as possible and with a minimum amount of fuss. The wording of this charter is quite short and is summarised below:

Erroneous Transfer Customer Charter

Consumers who believe that they have been transferred to a new supplier by mistake, can contact either the old or the new supplier to have matters put right.

The two suppliers should liaise with each other to sort the situation out.

The consumer should be contacted by someone who is trained appropriately and who should explain the following to them:

- the action that will be taken
- when they can reasonably expect to be transferred back to their old supplier
- that they will only pay once for the energy consumed
- how their billing arrangements will be treated (if possible)
- how they will be kept informed of progress towards resolution
- how complaints will be sorted out and if appropriate, how compensation claims will be dealt with (if requested)

From the date of the consumer's contact, the time periods for the contacted supplier to act are:

- **five working days** – to send written confirmation of the above details, including if possible, an explanation of why the erroneous transfer took place
- **20 working days** – to provide confirmation to the consumer that they will be returned to their old supplier



You are likely to receive various complaints and enquiries concerning switching suppliers and transfers, the most common ones are discussed in unit 10 'Common complaints and enquiries'.

Summary

- Consumers can cancel certain contracts in specified circumstances, although the right to cancel will usually only last for a short period of time after the contract has been formed and may exist because the contract was concluded as a result of either a off premises or distance sale or because there is an express term in the contract affording the right to cancel it.
- The process for cancelling should be carried out in accordance with the relevant legislation, for off-premises or distance sales and in accordance with the contract if an express right to cancel is given.
- It may also be possible for a consumer to terminate a contract and suppliers cannot charge for termination if the contract is a deemed one or an evergreen or rolling one, and where the appropriate notice has been given.
- If distance contracts are concluded electronically, the consumer must explicitly acknowledge the obligation to pay, otherwise they will not be bound by the contract
- Suppliers must include a term in their contracts, including deemed contracts, which explains how contracts end when there is a change of ownership or occupation in relation to a premise.
- A price increase, or other variation of a contract term which would significantly disadvantage the consumer, gives the consumer the right to terminate a contract and both the supplier and the consumer must comply with the requirements about notice in SLC(G&E)23.
- Repudiation (**rescission**) or rescission (**reduction**) may be available as legal remedies for certain breaches of contract or under the law of misrepresentation, and both allow the consumer to escape from the contract.
- In addition some contracts may be void from the outset or voidable by an innocent party, for example, in the event of a unilateral mistake, duress, undue influence, frustration or illegality.
- Competition is positively encouraged in the energy industry and so suppliers can only request for a PST to be prevented in certain circumstances relating to certain outstanding debts, specific errors, where the consumer states that they did not enter into a new contract or if there are several metering points which are not all covered by the request.
- A new licence condition SLC14A came into affect on 11 November 2011, which sets a time period to when a transfer of supply 'switching' must be completed. Supplier transfer, in accordance with the contract, will be completed within 21 days of the relevant date, unless certain conditions apply.
- New requirements came into affect 10 November 2011, in relation to third party access charges for licence exempt gas and electricity distribution networks, which now enables certain customers connected to those types of networks, able to choose their supplier.
- Ofgem made amendments to SLC(G&E)23 to require domestic suppliers to notify their customers of a unilateral variation to their contractual terms which increase prices or which are to their 'significant disadvantage' at least 30 days in advance.
- The Big 6 suppliers are all members of ERA which has produced a Guidance Leaflet on switching suppliers, which goes through the various stages.



- If a consumer is mistakenly transferred to a new supplier, the processes in the Erroneous Transfer Customer Charter will be followed so that they are returned to their original suppliers as quickly as possible and with a minimum amount of fuss.

Section 5

Enforcement of energy contracts

The first port of call, in the event of a possible problem with a supply contract, should always be the relevant provider, which will usually be the supplier. However, it could be, as pointed out in earlier sections, that certain claims can be made against non-contractual parties, particularly a DNO or GT.

If the matter is not resolved by contacting the provider, there are a number of organisations which consumers may contact for advice and guidance, including yourselves! Certain issues may be investigated or require a referral to a regulatory body, such as Ofgem, TSS or even the police. As a final resort some consumers may wish to pursue their complaint through the courts. This section will briefly introduce these options but they will be considered in more detail in unit 9 'Complaint resolution and consumer organisations'.

Remedies and redress

Before considering any of the options it would be appropriate to briefly remind ourselves of the remedies or redress which may be available to consumers. Sometimes it is appropriate for consumers to escape from a contract and this may be possible if, as discussed earlier:

- ✓ there are cancellation rights (by law or under the contract)
- ✓ the consumer can terminate
- ✓ there are grounds to repudiate
- ✓ it is possible to rescind

However, alternative remedies are often available and it may be appropriate to discuss these with consumers and explain how to go about achieving them. The main alternative remedy to ending a contract is compensation, or as the general law refers to it, damages. These could be available in the following circumstances if relevant criteria are met:

- ✓ failure to meet guaranteed standards
- ✓ non-compliance, in certain respects, with SLC(G&E)25 (Marketing)
- ✓ lack of reasonable care and skill under the CRA
- ✓ misrepresentation
- ✓ non-compliance with the requirements under the CCRs

Other remedies may be available too and it should also be noted that of course suppliers may be pursuing consumers for breach of contract, in particular for non-payment of bills.

Contacting the provider

What happens when the consumer contacts the supplier, may well depend on why the consumer is contacting them – sometimes, of course the consumer is not looking for any of the legal remedies above, they may be simply requiring a very practical solution to a problem or making an enquiry or requesting information. If the consumer is contacting the supplier with a post contract query and the supplier provides a helpline for this purpose, then the CCRs require such a helpline to cost no more than the basic rate. This will include the provision of a telephone number for consumers to ring to exercise their cancellation rights.

(a) Cancelling

If the consumer wishes to cancel an off-premises or distance contract they need to make sure that they have done so in accordance with the legal provisions (see section 3 above). This will have to be done using the prescribed cancellation form or by making any other clear statement setting out the decision to cancel. Remember to advise keeping copies and sending any letters by recorded delivery or obtaining certificates of posting (KC/RD/COP).

(b) Claiming compensation

Sometimes compensation payments should be paid out automatically, for example, breaches of some of the guaranteed standards or connection standards (see the Quick Reference Guide) whereas on other occasions consumers will have to actually make a claim.

In relation to gas, if a shipper or transporter has passed a compensation amount to a supplier for the consumer, SLC(G)19 requires the supplier to pass it on to the consumer, ASARP, although, the supplier can offset the sum against any charges due if the failure was of the transporter's obligation to convey gas to the premises or secondary premises. Also, some of the claims for breaches of the GS and connection standards are backed up by the possibility of further claims of compensation for a failure to make the first payment within a prescribed timescale!

Remember that exclusions or limitations on liability will be subject to the CRA (see section 1)'.

Practical tip

If a consumer has paid using a credit card they may be able to make a claim against their credit card company as well as the supplier, providing the cash price was over £100. The consumer should be advised to write a letter KC/RD/COP to the supplier and send a copy to the credit card company holding them liable as well. The consumer is entitled to receive payment in full from the credit card company regardless of how much was paid on their credit card.

(c) Escaping from the contract

Actually ending a contract, assuming there are grounds for doing so (see section 3) must be communicated appropriately to the other party. This will inevitably mean that it will need to be done in writing and in the case of termination, in accordance with any express terms in the contract, particularly with regard to complying with periods of notice.

(d) Complaint handling

The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (CHS Regs), require regulated providers (suppliers, electricity distributors and gas transporters), to have appropriate procedures in place to deal with consumer complaints and places a duty on them to comply with each complaint they receive. A sample complaint procedure can be found at the end of this unit.

Complaints must be dealt with in an 'efficient and timely manner', and to ensure that this happens, adequate resources must be allocated and maintained for the receipt, handling and processing of complaints. Other requirements for the scheme include:

- ✓ compensation where appropriate for failure to comply with SLC(G&E)25 (Marketing)
- ✓ additional steps as are necessary or appropriate to assist vulnerable consumers so that their complaint is resolved promptly and appropriately
- ✓ a written recording of certain details about the complaint and every contact that made in relation to it
- ✓ an obligation to provide a written notice informing consumers of their right to refer their complaint to a qualified redress scheme (QRS) either the day after the provider becomes aware that they cannot resolve the matter, or the day the specified time period (eight weeks for large suppliers, 12 for smaller ones) ends (whichever is earlier)
- ✓ specific information about the Complaint Handling Procedure (CHP) must be provided at certain times (all providers) and an annual complaints report must be published by suppliers, with both appearing on the provider's website in a clear and prominent position
- ✓ where complaints are unresolved after two days consumers must be directed to the CHP on the website and offered a free copy of it

In addition, the CCRs state that any helplines provided for post-contract queries must not charge the consumer more than the basic rate, otherwise any such charge should be reimbursed.

Practical tip

All regulated providers (suppliers, distributors and transporters) must be members of a QRS in relation to consumer complaints. All QRS have to be approved by Ofgem and currently the only scheme is the Energy Ombudsman Scheme.

More details about this scheme can be found in unit 9 'Complaint resolution and consumer organisations'.

Practical tip

It is always a good idea to advise consumers to do the following when complaining, cancelling, terminating or seeking a legal remedy (or to back up a telephone conversation doing any of these):

- ✓ do so in writing following CHP where relevant (which could include an email)

- ✓ keep a copy (KC)
- ✓ if sending it by post, send it either recorded delivery (RD) or obtain a certificate of posting (COP)
- ✓ include all relevant details, such as appropriate dates, M numbers, relevant details, what is being requested, the basis for this and a reasonable timescale for a reply / action.

(e) Guaranteed standards

In addition to the CHS Regs, discussed above, remember that for certain complaints, the suppliers have to offer to do certain things within specified timescales otherwise they will find themselves having to pay out compensation to consumers under guaranteed standards (GS), for example, for certain problems they must offer a visit or send out substantive letters of explanation. Also for some of the compensation claims, amounts will be paid out automatically and others need to be specifically claimed, sometimes within quite short timescales, for example, within three months.

(f) The CCRs

Remember also, that any information supplied as part of the PCI or contract confirmation requirements under the CCRs, will amount to a term of the contract so if the trader does not then meet those statements there may be a breach of contract. In addition, the Regulations also state that contracts covered by the Regulations include a term that the trader has complied with most of the provisions relating to PCI and contract confirmation – the additional telesales requirements are not included in this. Therefore, if there is a breach, it may be that the consumer can claim a remedy, assuming that they can demonstrate some loss. Examples of potential breaches include:

- ✓ not providing PCI or contract confirmation
- ✓ providing PCI or contract confirmation in the incorrect format
- ✓ charging a cancellation fee
- ✓ charging for supplies during the cancellation period when the correct cancellation details have not been supplied to the consumer as part of the PCI
- ✓ stating that the minimum duration of the contract is one year when it is two years

In addition, the consumer may not have to pay certain amounts if the supplier does not provide certain information, for example:

- ✓ any additional costs, the costs per billing period or the total monthly costs if there is a fixed rate, if the consumer was not informed about them in the appropriate way as part of the PCI process (this applies to off-premises and distance contracts)
- ✓ for any supplies during the cooling off-period unless certain requirements have been complied with (the appropriate cancellation information has been supplied, there was an express request for performance during the cancellation period from the consumer and in the case of an off-premises contract, it was on a durable medium)

- ✓ for distance contracts concluded electronically, unless the consumer explicitly acknowledged the obligation to pay

Finally, if the trader does not provide the PCI about the conditions, time limit and procedures to exercise the right to cancel, this will extend the cancellation period. If the information is provided within 12 months, the consumer has 14 days after receiving it. If it is after 12 months or it is never provided, the cancellation period finishes at the end of 12 months after the day on which it would have ended, so the maximum cooling off period is 12 months and 14 days.

Seeking independent advice

Matters do not always get resolved after contacting the provider. There are a number of organisations which may be able to assist consumers with their complaint and this could depend on a number of factors, including for example, what the complaint is about and how long ago it first arose. Some of the bodies who may be able to assist, are listed below and further details and more organisations can be found in unit 9 'Complaint resolution and consumer organisations':

Citizen's Advice – SLC(G&E)31 requires suppliers to inform consumers of contact details for Citizens Advice. The information should be provided on or with each bill or statement of account, or annually if the supplier does not send out such a bill or statement.

The CHS Regs require regulated providers to have appropriate arrangements, including a process, to deal effectively with referrals from Citizens Advice.

Energy Ombudsman (EO)– if a matter has not been resolved within the specified time (eight weeks for the larger suppliers and 12 for the smaller suppliers) then it may be possible to refer it to the Ombudsman.

Referral to Ofgem

There are various sections in both the GA and the EA which provide for referrals to Ofgem, usually by either party. The time limit for such referrals is usually 12 months and reasons must be given for decisions made. A list of potential areas upon which Ofgem may make 'a determination', can be found in unit 9 'Complaint resolution and consumer organisations'. You are not required to make referrals directly since Ofgem will monitor the Citizens Advice complaints data and pick up breaches of licence conditions and other provisions which they may be interested in.

If there is a dispute over whether compensation should be paid out for a failure to meet a guaranteed standard, and the matter is not resolved by discussion with the provider concerned or after referral to an advice agency such as the Ombudsman, it may be possible for Ofgem to make a determination.

If a dispute cannot be resolved by negotiation, or an Ofgem determination is not available, court action may be the only option but it should be seen as a last resort. Consideration should be given to any other form of dispute resolution, and these procedures and the court option, will be considered in more detail in unit 9 'Complaint resolution and consumer organisations'. It may be the case too, that a supplier may take a consumer to court, for example, for non-payment of bills.

Summary

- In the event of possible problems, consumers should always be referred initially to the relevant provider to sort matters out and this will usually be their energy supplier, however, there are occasions when this could be a DNO or a GT.
- If suppliers provide a telephone helpline for consumers to contact them on to discuss post contract queries, including the exercise of cancellation rights, then the consumer must not be charged more than the basic rate.
- The remedies or redress which a consumer may be seeking, include cancellation, termination, repudiation, rescission and or compensation, including for breaches of the CCRs.
- Sometimes consumers may not require a legal remedy and may simply be seeking a very practical solution to a problem or making an enquiry or requesting information.
- Compensation amounts, payable as a result of a breach of a guaranteed standard, are sometimes payable automatically and for others will need to be claimed specifically.
- The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 require suppliers, DNO and GT to have appropriate procedures in place to deal with consumer complaints efficiently.
- These Regulations require certain information to be recorded about complaints and consumers to be informed about certain matters including their right to refer their complaint to a QRS, namely, the Energy Ombudsman Scheme.
- If matters are not resolved with the relevant provider, there are a number of organisations which may be able to assist consumers with their complaint in certain circumstances and these include, Citizen's Advice and the Energy Ombudsman.
- In some instances it may be possible for Ofgem to deal with a referral from the parties and it has powers to make a determination with regard to certain matters.
- As a last resort the parties may use the court system to settle a dispute and suppliers may take a consumer to court, for example, for non-payment of bills, as well as the other way round.

INFORMATION FOR CONSUMERS

What consumer information?	How and when?	Authority	Unit
Pre-contract marketing details Estimates of total annual charges Price Comparisons (if a lower price is claimed)	Pre-contract stage in any marketing situation in certain circumstances (written copy if enters into contract, then or ASARP)	SLC 25.6 – 25.10	3
Contract details - Everything necessary to ensure customers have a complete, accurate, appropriate and fair picture of their contract which is capable of being easily understood and is not misleading (non-exhaustive list in 25.12 – see unit 4, section 2.3)	When the contract is entered into or ASARP thereafter	SLC 25.1, 25.11, 25.12	3 & 4
Domestic supply contracts Copy of any form of contract which the supplier offers	Send a copy to any person requesting one, within a reasonable period of time after receiving a request	SLC 22.7	4 & 7
Terms and conditions (T&C) All the T & C specifically ones which <ul style="list-style-type: none"> (i) identify the charges (ii) explain about termination in accordance with SLC 24 	In the contract Which must be in writing	SLC 22.4	
Principal terms The PTs of the contract	All reasonable steps to bring them to the attention of the DC before a contract is entered into	SLC 23.1	4
Principal terms of a deemed contract The PTs of the deemed contract which will apply after a DSC ends if no new DSC is entered into	About 30 WDs before the contract is due to end Must be in writing	SLC 23.2	4
Variations Notice of unilateral variation (VN) (increase in charges or other change which significantly disadvantages the DC) Must inform of <ul style="list-style-type: none"> (i) right to end the contract, (ii) where may obtain impartial advice about switching, (iii) that PST can be prevented if there are outstanding charges (iv) when supplier cannot impose the variation 	In advance or up to 65 WD after effect (but if less than 5 and DC pays outstanding charges and gives required notice along with the new supplier – variation no effect) - Notice must be in writing Information must be presented so as to be clear and easily understood, (i) and (ii) must be prominent Variation no effect if DC gives notice to end up to 20 WDs after receiving the VN and new supplier gives notice up to 15 WDs after the DC's notice	SLC 23.3 23.4, 23.5	4
Services for PSR consumers Services for customers who are of pensionable age, disabled, chronically sick,	Prepare a statement in PIL setting out obligations	SLC 26	5, 6, 7, 8

blind, partially sighted, deaf or hearing-impaired. Establish and maintain a Priority Services Register (PSR)	Publish on website, if has one, (readily accessible) Take all reasonable steps to inform customers at least once a year how to obtain it and give a free copy to any one requesting it		
Payment details - payment choices, security deposits, facilities for those in payment difficulty, when premises can be disconnected for unpaid charges	As SLC 26	SLC 27	8
What consumer information?	How and when?	Authority	Unit
Pre-Payment Meters (PPMs) – appropriate information about advantages and disadvantages, where to find information or assistance if not working properly, procedures supplier will follow when removing or resetting PPM (including timescale and any conditions)	As SLC 26	SLC 28	5
Safety Information (Gas only) concerning safe use of appliances and fittings, dangers of carbon monoxide (CO) poisoning, benefits of audible CO alarms & gas safety checks, where to seek advice if appliances condemned	All reasonable steps to provide free information to each customer at least once a year and when requested by a DC	SLC (Gas) 29.4, 29.5	7 & 8
Free gas safety check - when one must be given (relevant criteria concerning age, disability, chronic sickness, who lives with, when last tested, income) if requested. Details of what must be checked/by whom	As SLC 26	SLC (Gas) 29.1, 29.2, 29.3, 29.6	7 & 8
Citizen's Advice - role and contact details	On or with each bill or SA or annually if none sent	SLC 31.1	
Energy efficiency details - Information about the efficient use of gas/electricity and sources of additional detail and assistance (including government financial measures)	Free if requested Free Telephone Information Service Publish on website, if has one (readily accessible)	SLC 31.2, 31.3	
Calculation details - Explanation of the basis on which the amount charged is calculated and any temperature and pressure conversion factor (Gas only)	If bills or SAs express charges in terms of the amount of gas supplied, the basis for this must be explained in the bill or SA	SLC (Gas) 31.4	5
Consumption comparison - with the previous year consumption Exact tariff name	On every bill or SA, at least once every 3 months, within 65 WDs of a VN if customer does not receive a bill or SA and there is a charge increase (see below re clarity etc.)	SLC 31A.1, 31A.2	
Exact tariff name Quantity supplied during previous 12 months	Once in every 12 month period – 1 st before 31/12/10 if contract for 12 months before 1/4/10	SLC 31A.4 31A.5 31A.6	

<p>Illustrative projection of the cost (£) for next 12 months</p> <p>Details of any DD discount compared with standard tariff</p> <p>Relevant Principal Terms (supply charges, contract duration, rights to end contract, other significant terms)</p> <p>Reminder that can change supplier and where to obtain impartial advice</p>	<p>Information must be clear, easy to understand, not misleading, fair</p> <p>Details of time of use tariffs to be included</p> <p>Make it clear whether any estimates used</p> <p>Set out charges used for projection/comparison</p>		
<p>Deemed contracts – copy if requested, principal terms, a notice stating how to obtain a different contract</p>	<p>A requested copy of a deemed contract should be provided within a reasonable time</p>	SLC 7	4
<p>Visiting consumers - Ensure representatives visiting customer premises are appropriately skilled fit and proper persons, can be readily identified, use agreed passwords, can give help, advice and contact information</p>	<p>Prepare a statement in PIL setting out arrangements for complying with obligations</p> <p>Publish on website, if has one, (readily accessible)</p> <p>Give a free copy to any one requesting it</p>	SLC 13	3
What consumer information?	How and when?	Authority	Unit
<p>Prevention of transfers</p> <p>Inform customer that a request to prevent a PST has been made, the grounds, how it may be disputed/resolved</p> <p>Offer advice (or where advice may be obtained) on energy efficiency, debt management and alternative contracts offered by them</p> <p>That has 30 WDs to pay outstanding charges (if customer has notified intention to end the contract in accordance with SLC 23 and had less than 5WDs notice of VN, e.g. price increase)</p>	<p>Must give a written notice to a customer when a request to prevent a PST has been made, ASARP after the request</p> <p>The notice must include all the relevant information/advice in column 1</p>	SLC 14.9	4
<p>Consolidated segmental statement (CSS) in conjunction with any affiliates in the supply chain, which contains information relating to revenues, costs and profits, how it defines these, how they can be reconciled with statutory accounts, an explanation of the transfer pricing methodology – all information made public must be consistent with this and have a clear and full explanation</p>	<p>Prepare and publish it on its website</p> <p>No later than 6 months after the end of the supplier's financial year</p>	SLC 19A	4
<p>Safety and administrative information</p> <p>That gas leaks or suspected gas leaks to be reported immediately</p> <p>Telephone number for such a purpose</p> <p>Electricity – current postal address and telephone number of the licensed distributor's enquiry service (ECOES)</p>	<p>Must keep customers informed by:</p> <p>Providing it in the contract/deemed contract</p> <p>Providing it in each bill or SA or annually if no bill/SA, and</p> <p>Publishing it so as to secure adequate publicity</p>	SLC 20.1	7

Gas leak Telephone number and current address and telephone number of the gas transporter's enquiry service	When a customer requests it	SLC Gas 20.3	7
Meter Point Reference Number Gas - MPRN Electricity - Supply Number (MPAS)	Must inform customers of their MPRN/Supply number on each bill/SA or annually if no bill/SA	SLC Gas 20.5, SLC Elec 20.4	
Fuel mix disclosure arrangements Percentage contribution of each energy source to the total amount of electricity purchased for supply by the supplier, AND Environmental impact of generating each in grams of carbon dioxide emitted and radioactive waste produced per kWh of electricity	Duty to publish, if been the suppliers for a disclosure period (1/4 – 31/3), during 12 month period beginning 1/10 after it Provide the required data to each customer on at least one bill/SA during the 12 month period AND include it in promotional materials issued in then	SLC Elec 21	5
What consumer information?	How and when?	Authority	Unit
Safety supply restriction instructions Inform customers that the supplier may discontinue or restrict their gas supply if they themselves have been given a formal direction to do so. Must also inform the customer that he must restrict use or not use gas at all, if told to do so by the supplier	Must include a term in the contract which gives effect to such a direction	SLC Gas 16.3	7
Termination of consumer contracts (i) If ownership/occupation (O/O) of the premises ends, the contract must end, either, no later than the date O/O ceases, if DC gave at least two WDs notice of that date, OR if less or no notice given, either the end of the 2 nd WD after such notification is given OR the date someone else begins O/O and takes a supply (whichever happens first) (ii) that liability continues until the contract ends (iii) when a termination fee will be charged, and this can only be in 3 circumstances: (a) it is a rolling contract, (b) it is a combined fixed term and	Must include a term in the contract which explains how the contract may end Must include a term which states that liability continues until the contract ends even if no longer the O/O May include a term which requires a termination fee unless the circumstances mentioned prevail	SLC 24	

rolling contract and is ended during the latter part, (c) supplier issues a VN in accordance with SLC 23 and the provisions which would allow the customer to end the contract, have not occurred			
Feed- in tariff status Supplier's status as either a mandatory or a voluntary FIT supplier	FIT suppliers must publish their status so that this information is easily accessible to the public	SLC 33 Schedule A Parts I & II	4
Feed-in tariff terms Contract terms	Certain details must be included in the agreement between the FIT supplier and the FIT generator	SLC 33 Schedule A Part I, par 6	
Complaints handling procedure (CHP) Relevant details of the systems and procedures for handling complaints	Must appear in a prominent position on the website Must inform customers of the existence of the CHP and how to obtain a copy, at least once in every 12 month period Anyone requesting must be provided with a free copy	CHS Regs r.11	9
What consumer information?	How and when?	Authority	Unit
Annual consumer complaints report – number of consumer complaints not resolved after 2 days, the fact that the supplier has a complaints handling procedure, how a copy may be obtained, existence of the Regulations and how and where a copy (including a hard copy) of the Regulations may be obtained	Must publish annually in a prominent position on the website Provide a free copy to anyone requesting it	CHS Regs	9
Notice of rights - summary of customer rights under the Standards of Performance Regulations (guaranteed standards) Statement of overall standards and performance levels achieved under them	Form and content as reasonably expect be within the understanding of customers Dispatch to customers at least once in every 12 month period Dispatch to customers at least once in every 12 month period Make a copy available for inspection at public premises Dispatch a copy to anyone requesting one	Gas & Elec Standards of Performance Regs 2005 and 2010	

<p>Last resort supply direction (LRSD) notice – informing each consumer that their previous supplier has stopped supplying them from the given date, that this supplier is their new supplier from then, supply is under a deemed contract, the consumer may enter a new contract with another supplier, this supplier will charge for consumption under the LRSD</p>	<p>Send a notice to each premises specified in the LRSD to inform each consumer of the points in column 1</p> <p>The notice must be sent within a reasonable period of time after receiving the LRSD</p>	<p>SLC 8</p>	
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Sample Complaints Handling Procedure

At XYZ Energy we are committed to offering the very best in customer service. Our Domestic Customer Charter sets down what you can expect from us. However, in recognition of the fact that things do sometimes go wrong, our Complaints Handling Procedure explains what will happen if you have cause to complain to us.

How to contact us

The easiest and quickest way to resolve your complaint is to telephone us on one of the numbers listed below. Alternatively, if you are unable to phone or would prefer to write, you can contact us by email, via our online complaint form or by post using the address listed below.

XYZ Energy
Post – PO Box 1234, Anytown, AB1 2CD
Telephone – 01234 567 890

You can also contact us through our website at: www.xyz-energy.co.uk

Our process

All our telephone advisors are trained to offer you the best possible customer service and will do their utmost to help you. If they need to involve their Manager, they will do so to ensure the matter is resolved. We aim to reply to written correspondence within 48 hours, however, more complex issues may take longer. We may have to contact other agencies or suppliers to help resolve your complaint.

Step 1 – to resolve by 8pm the following working day after first contact

When you telephone us with a problem our advisor will attempt to resolve matters with you directly, however, if necessary your complaint will be escalated to a Manager or specialist team. We want to agree a solution by 8 pm the following working day. If you write to us with a problem, we aim to fully resolve matters by 8pm the following working day after we receive your letter. We may try to contact you by telephone to help with this resolution. If we cannot resolve your complaint fully or have not agreed a form of resolution by 8pm the following working day after your first contact, then you can proceed to the next step.

Step 2 – to resolve within 10 working days of escalation from Step 1. At this point, your complaint may be passed to a Senior Manager who will do everything possible to address your concern and make sure that you are happy with the resolution.

Step 3 – to resolve within 5 working days of escalation from Step 2 Following Step 2, if the complaint has not been resolved to your satisfaction, then you can raise the matter with our Head of Customer Service, who will aim to reach a resolution within 5 working days.

Sales and Marketing complaints

If you have a complaint in relation to our sales or marketing activities you may be entitled to compensation. Any sales representative that visits your property on our behalf is bound by the EnergySure Code to act appropriately whilst there. We must also contact you by telephone within 24 hours of the sales representative's visit to confirm that you agree to the terms of the contract and within 14 days to ensure that you were happy with the way in which the sales visit was conducted.

The Energy Ombudsman

If, after contacting the Head of Customer Service you remain unhappy, you can request that the complaint be deadlocked. Once you receive a deadlock letter you can contact the Energy Ombudsman.

Alternatively, you can contact the Ombudsman should you fail to have had a satisfactory response from the Head of Customer Service within 5 working days, or if 8 weeks have elapsed since registering your complaint. Please note that you may be referred back to us if you have not escalated your complaint via our formal complaints process outlined above.

The Ombudsman will carry out an independent investigation on your behalf. Any decision the Ombudsman makes will be binding on our Company, but not on you.

Additional Contact Details

Head of Customer Service



Email - headofcustomerservice@xyz-energy.co.uk
Phone - 0800 123 4567
Post – PO Box 1234, Anytown, AB1 2CD

The Energy Ombudsman
Telephone - 0845 055 0760 or 01925 530 263.
Textphone - 18001 0845 051 1513 or 18001 01925 430 886.
Email - enquiries@energy-ombudsman.org.uk
Website - www.energy-ombudsman.org.uk



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