These notes refer to the Energy Act 2010 (c.27) which received Royal Assent on 8 April 2010

ENERGY ACT 2010

EXPLANATORY NOTES

PART 3: REGULATION OF GAS AND ELECTRICITY MARKETS

Notice of unilateral changes to domestic supply contracts

Summary and Background

120. Responses to Ofgem's 2008 probe[1] into the energy supply markets highlighted a number of problems arising from the length of time given to notify price increases:

- consumers are denied the opportunity to budget for the extra costs or to decide to decrease their usage in light of the increased costs;
- if a consumer is already in debt to a supplier, switching to an alternative provider to avoid the increase is unlikely to be an option – delayed notification of the price increase is therefore even more detrimental as they have no choice but to accept the change; and
- a delay in notification of a price increase or change in tariff structure denies the consumer the opportunity to take and provide meter readings around the date when the rise becomes effective and thus satisfy themselves that any change has been correctly applied by the supplier.

121. Ofgem published an open letter[2] in 2009 soliciting views on this issue. Subsequently their consultation on proposed retail market remedies[3] made it clear that best practice is for energy suppliers to inform their customers about price rises as soon as possible and preferably in advance, and that 65 working days should be regarded as a backstop.

122. Ofgem is currently considering whether to change this notification period through its powers under section 11A of the Electricity Act 1989 and section 23 of the Gas Act 1986 to propose modifications to the standard conditions of electricity and gas licences.

123. This section introduces a power to allow the Secretary of State to address the situation should Ofgem not be able to take action within an appropriate timeframe. This power will expire three years after coming into force which is considered sufficiently long to permit the issue to be addressed.

Commentary on Sections

Section 25: Modifications of supply licences: notice of unilateral changes to domestic supply contracts

124. This section provides that the Secretary of State may modify the conditions of supply licences issued under the Gas Act 1986 or the Electricity Act 1989 (subsection (1)). Subsection (2) requires that such modifications may only be made for the purpose of ensuring that domestic consumers are notified within a period determined by the

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1 *"Energy Supply Probe – Initial Findings Report"*, Ofgem 140/08, 6 October 2008
2 *"65 day notice period for unilateral contract variations open letter"*, Ofgem, 20 February 2009
3 *"Energy Supply Probe - Proposed Retail Market Remedies"*, Ofgem 99/09, 7 August 2009

modifications about unilateral changes, by their gas or electricity supplier, of the terms of their contracts or the price charged for their gas or electricity.

125. Subsection (3) will allow modifications to licences to include provisions relating to whether notification of contract or price changes is to be before or after the changes are made, the means of communicating the changes and what happens if a company fails to give the required notice. They may also require the notice to be accompanied by additional information.

126. Subsection (4) provides that this power expires three years after coming into force. Subsection (5) requires the Secretary of State to consult with the holder of any licence being modified, Ofgem and any other persons the Secretary of State considers appropriate. Subsections (6), (7) and (8) contain definitions for the purposes of this section.