




martineau

T: 44(0)870 763 2000
F: 44(0)870 763 2001
E: lawyers@martineau-uk.com
www.martineau-uk.com
www.cc-forum.co.uk

NEW GUIDANCE FOR MICRO - BUSINESSES

As part of Ofgem's recent probe into Britain's energy supply market, guidance and new rules have been issued to give small businesses more protection when they seek to engage in the energy market. The guidance is a licence requirement and as such Ofgem can impose financial penalties for failure to comply. In this bulletin we talk you through these changes.

Who does this apply to?

The guidance below applies only to micro-businesses. A micro-business is defined in the guide as a company which:-

- consumes less than 200,000 kWh of gas per annum; or
- consumes less than 55,000 kWh of electricity per annum; or
- has fewer than 10 employees and an annual turnover or annual balance sheet total not exceeding €2m.

The Concerns

Ofgem's recent investigation into the energy supply market revealed that many micro-businesses do not receive sufficient information from their energy supplier, and in particular some of them do not receive copies of the terms and conditions of their contract in writing.

A particular concern was raised in relation to fixed term contracts which can be rolled over. These usually include a notification window of 3 to 6 months before the end of a fixed term contract, where the customer has an opportunity to

tell its supplier that it wishes to move to an alternative supplier. If the customer does not do this, a number of suppliers have terms allowing the contract to be rolled over into a new contract for a further fixed period. A number of micro-business customers have complained that they were unaware of the notification windows and that their contracts had been rolled over into new contracts without their knowledge. Consumer groups argued that these sort of contracts should be banned. However, suppliers argued that this form of contract was necessary to avoid customers being placed on unfavourable "out of contract" rates.

Ofgem's Response

Ofgem's response was not to ban roll over contracts but rather to introduce new rules governing them. The new rules include the following requirements:

- Before entering into a contract (either over the telephone or in person), a supplier must explain the key terms and conditions to the customer, and make it clear the contract is binding.
- Within 10 days of the contract being agreed, or an existing contract being extended, a customer should receive written copies in plain language of the full terms and conditions and a statement of renewal terms (if the contract is of a fixed length).

- Approximately 60 calendar days before the end of the fixed term period, suppliers must send customers a statement of renewal terms and details of the key terms and conditions which apply if the customer (a) takes no action, and the contract is rolled over, or (b) the customer prevents its contract from being rolled over.
- After receiving the statement of renewal terms the customer will have a notification window of approximately 30 calendar days to contact the supplier if it wishes to switch or negotiate a new deal. If a new offer is put forward by the supplier, at least one of those offers must be in writing and valid until the end of the notice period.
- Where the customer does not contact its supplier in writing during the notification window, its contract can be automatically rolled over but for no more than 12 months and only then provided that the supplier has already given the customer certain information, including a statement of renewal terms.
- A customer who wishes to terminate its contract after the end of the fixed term period must notify its supplier in writing at any point from when it agrees the contract until the end of the notification window.

Applicability

The new rules apply to all new contracts for micro-business customers entered into on or after 18 January 2010 and will not apply retrospectively. For customers on existing contracts, the new rules will only begin to apply once the contract is extended on or after 18 January 2010.

It is expected that micro-business customers will still be classed as such even if, during the term of the contract, they exceed the limits referred to earlier. This could easily happen if a micro-business expands or merges. It is not anticipated that such an event would affect the contract.

Effect of the rules

- Suppliers will clearly need to review their terms and conditions for micro-business customers to ensure that they are in compliance with this guidance. It is likely that suppliers will have their own micro-business customer contracts.
- Suppliers will need to make sure they have the relevant processes in place to ensure compliance with the new rules, including the automatic sending out of an explanation of the key terms and conditions before entering into a contract, ensuring the full terms and conditions are sent out within 10 days of the contract being agreed and automatically sending out the relevant information before the end of the fixed
- If a supplier sends a new offer to a customer the requirement for at least one of those offers to be in writing and valid until the end of the notice period should not be overlooked. This was

included as a number of small businesses had complained about feeling pressured into entering into contracts with tight deadlines. Often offers are only available for acceptance for a very short period of time due to the volatility of the wholesale price of energy. Arguably, requiring suppliers to keep offers open for up to 30 days will result in rates being quoted at higher rates and therefore being less competitive and not in the best interests of the micro-business customers. The effect of this is likely to be that suppliers may put forward one offer in writing, valid until the end of the notice period as required, and at the same time put forward other offers that are more competitive and are available for acceptance in a shorter period, or alternatively, suggest that the customer contacts the supplier to discuss “more competitive offers”. This would ensure compliance with this new requirement and allow suppliers to remain competitive.

This bulletin summarises complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems and we will be happy to assist.

**Andrew Adams, Partner
Head of Commercial Dispute Management
T: 44 (0)870 763 1342
M: 07747 772835
E: andrew.adams@martineau-uk.com**

**Tim Speed, Senior Associate
Commercial Dispute Management
T: 44 (0)870 763 1334
E: tim.speed@martineau-uk.com**

