

ENERGY ACT 2010

EXPLANATORY NOTES

PART 3: REGULATION OF GAS AND ELECTRICITY MARKETS

Time limit for the imposition of financial penalties by the Gas and Electricity Markets Authority

Summary and Background

116. Ofgem has powers under the Gas Act 1986 and the Electricity Act 1989 to grant licences for gas and electricity distribution and supply, and to set the conditions of those licences. Ofgem also has the power (s30A-30C of the Gas Act 1986 and s27A-27C of the Electricity Act 1989) to impose financial penalties for the breach of licence conditions. Any such financial penalty cannot be more than 10% of a licence holder's applicable turnover (in its business year preceding the issue of the penalty notice) and the penalty must be imposed within twelve months of the breach of the relevant licence condition occurring.
117. There are a number of circumstances where the twelve month time period can restrict Ofgem's use of its enforcement powers. For example, if a potential breach relates to a requirement to notify consumers of a price change, a consumer will not be aware of the change until they receive their bill. The consumer is then likely to take the issue up with their supplier before approaching Ofgem or the relevant consumer body (Consumer Focus). It may, therefore, take time to identify a pattern of consumer complaints. This lengthy process can mean that although Ofgem have been able to investigate and establish a breach of a licence condition, they may be unable to impose a financial penalty that reflects the full extent of any licence breach.
118. This section extends the time limit within which a financial penalty can be imposed to five years from the breach of the licence condition. The aim is to allow Ofgem to protect the consumer interest by ensuring there is sufficient time for them to make effective use of their existing powers.

Commentary on Sections

Section 24: Time limit for the imposition of financial penalties

119. Subsections (1) and (2) amend section 30C(1) of the Gas Act 1986 and section 27C(1) of the Electricity Act 1989, respectively. In both cases, the time limit for Ofgem to impose a penalty for contravention of a licence condition/requirement or failure to achieve a performance standard is increased from twelve months to five years. Subsection (3) ensures that these amendments do not apply to breaches of licence conditions occurring before this section comes into force.