

Supply Licence Review - Implications for Vulnerable Customers

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Overview:

As part of its major review of supply licences Ofgem is looking at the licence obligations which are aimed at protecting the interests of vulnerable customers - in particular those concerned with debt and disconnection, and the Priority Service Register. This consultation invites views on the extent to which particular obligations are still required in a competitive market and whether they are fit for purpose. We are also interested in views on the current administrative arrangements supporting the codes of practice, which we believe can be radically improved in line with better regulation principles.

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Deadline for Response: 28 April 2006

Target Audience: Suppliers & other licensees; consumer groups in particular those representing pensioners, the disabled, the chronically sick or people on low incomes.

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Context

This consultation forms part of our comprehensive review of supply licence conditions aimed at ensuring that they are fit for purpose and meet the principles of better regulation. This consultation focuses on those licence conditions which have particular implications for vulnerable customers.

Our statutory responsibilities include having regard to the interests of those people who are disabled or chronically sick, of pensionable age, or living on low incomes. In addition in carrying out our general functions we must have regard to the principles of best regulatory practice i.e. regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

Better regulation and helping to tackle fuel poverty are two of the high level themes included in our proposed Corporate Strategy and Plan 2006-2011.

Associated Documents

Gas and Electricity Supply Licence Review - Way Forward (August 2005)

<http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/supplylr>

Ofgem's Electronic Public Register (Gas Standard Licence Conditions - Part C)

<http://62.173.69.60/index.php?pk=folder131973>

Ofgem's Electronic Public Register (Electricity Standard Licence Conditions - Part C)

<http://62.173.69.60/index.php?pk=folder132207>

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Summary

Ofgem is currently carrying out a major review of supply licences to ensure that they remain fit for purpose in a competitive market, and meet the principles of better regulation. This consultation focuses on the licence conditions which provide protection for vulnerable customers, in particular those dealing with debt and disconnection, and with the special services provided as part of the Priority Service Register (PSR).

One principle¹ of the supply licence review is that notwithstanding any additional protection in general consumer protection law, given the essential nature of gas and electricity, there is likely to be a continuing need to protect vulnerable customers by licence conditions and /or self-regulation.

The current obligations have been discussed at a workgroup of suppliers and consumer bodies. We now wish to broaden the debate to include other stakeholders, in particular consumer groups representing vulnerable customers, and smaller suppliers.

On debt and disconnection Ofgem's initial view, supported by the workgroup, is that a number of core protections are still needed, given the essential nature of energy services. These core obligations include the provision of a pre-payment meter (PPM) as an alternative to disconnection; the requirement to take account of ability to pay in setting debt repayment levels; the requirement to accept Fuel Direct payments, and the winter moratorium on disconnection of pensioners. However, the licence also includes a number of procedural requirements such as a requirement to distinguish "can't pay" from "won't pay" customers which may be unnecessarily prescriptive. There are also questions as to how far it is necessary for the licence to set out the sort of information suppliers must provide to PPM customers.

On the Priority Service Register we note that the original aim was the provision of special services to support physically vulnerable customers. With growing concern about fuel poverty in the context of rising prices, suppliers have responded with a range of voluntary initiatives (social tariffs, trust funds). Ofgem's initial view is that it would be inappropriate to impose formal obligations to provide financial help to those on low incomes, but that there is a case for maintaining something similar to the current PSR obligation. The alternative, which some suppliers have advocated, would be for this to be incorporated as part of suppliers' corporate social responsibility activity.

Assuming that we retain a formal obligation to keep a PSR, there are questions as to the services that should be offered. Those services that are relatively inexpensive to provide, such as password schemes and third party billing, are likely to continue to be provided by suppliers but there may be benefits in maintaining the obligation to provide clarity to consumers on what they are entitled to. For the more expensive services, such as free gas safety checks and meter moves, there are more

¹ Gas and Electricity Supply Licence Review - Way Forward (August 2005), principle 2
<http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/supplylr>

fundamental questions about the value of these services and how far eligibility for these services should extend when many pensioners, for example, could afford to pay for them.

The consultation also highlights the potential overlap between the provisions of the Disability Discrimination Act 1995 (DDA) and some of these obligations, in particular those dealing with blind and deaf customers. However, given the more limited enforcement regime for the DDA there may well be a case for maintaining specific licence conditions in this area.

Other obligations covered in the consultation are those dealing with complaint handling, payment methods and security deposits.

Finally, we consider the different options in terms of regulatory structure. The current licence regime sets out in considerable detail a range of provisions which suppliers must include in seven different codes of practice, which must be approved by us and then complied with. There are a number of problems with the current regime. It is unnecessarily bureaucratic and may act as a barrier to entry for new suppliers. The current codes are not the best means of communicating with consumers and consumer advisors. There is also disincentive for suppliers to include a higher level of service in their codes as this could expose them to enforcement action for non-compliance with their code.

As alternatives, we consider the merits of a licence based regime, a mandatory code of practice or a more principles-based licence framework supported by more detailed guidance. We are interested in the merits of these different approaches in terms of enforceability, accessibility to consumers and costs to suppliers in ensuring compliance.

The deadline for responses to this consultation is 28 April 2006. Further seminars with consumer groups will be held at Ofgem's Glasgow office on 31 March 2006 and Ofgem's London office on 3 April 2006. Views from this consultation will be incorporated into the workgroup's final report to the Steering Group supporting the Supply Licence Review, which is due to be submitted in May 2006. A broader consultation covering all aspects of the Supply Licence Review is then expected in June 2006.

1. Introduction

Question box

There are no specific questions raised in this section

1.1. Ofgem is currently carrying out a major review of supply licences in line with the principles of better regulation. This consultation focuses on the standard licence conditions (SLCs) which provide protection for vulnerable customers, in particular those dealing with debt and disconnection, and with the special services provided for customers on the Priority Service Register (PSR).

1.2. The five principles of the Supply Licence Review are as follows:

- **Principle 1** - A licence condition or self-regulation (such as an industry wide Code of Practice) is only necessary where there is a clear need for additional protection for the particular circumstances of gas and/or electricity customers (or specific groups of them), over and above that provided by general consumer protection legislation.
- **Principle 2** - Notwithstanding principle 1, given the essential nature of gas and electricity, there is likely to be a continuing need to protect vulnerable customers by licence conditions and/or self-regulation.
- **Principle 3** - Licence conditions that relate to compliance with industry codes and agreements are only likely to be necessary if they do not themselves contain adequate sanctions for suppliers who breach them.
- **Principle 4** - Licence conditions that are considered necessary will be clearly drafted and will provide a flexible framework within which the maturing competitive market can evolve.
- **Principle 5** - Licence conditions should not restrict suppliers from differentiating themselves in the competitive market and be drafted in a way that will allow suppliers to implement any necessary changes at their own rate without having to move at the pace of the slowest. This means that suppliers who are able to comply quickly with the new SLCs may be able to gain a competitive advantage over those that remain subject to the current SLCs.

1.3. It should also be noted that our statutory duties (appendix 3) include having regard to the interests of those people who are disabled or chronically sick, of pensionable age, or living on low incomes.

1.4. As part of the supply licence review the Vulnerable Customer and Codes Workgroup (the workgroup) was set up in October 2005. This workgroup has been chaired by Ofgem, and has consisted of representatives from the major suppliers, energywatch, other consumer groups, and the Health and Safety Executive. This consultation reflects discussion at the monthly meetings of the workgroup in the following chapters:

- Chapter 2 (SLC35, 36, and 37A(Gas)) - debt and disconnection obligations and prepayment meters,
- Chapter 3 (SLCs37 and 38) - Priority Service Register obligations and arrangements for the blind and deaf,
- Chapters 4 and 5 (SLCs26 and 27) - structure of obligations, communication, compliance and reporting, and
- Chapter 5 (SLCs39, 43 and 45) - complaint handling, payment methods and security deposits.

1.5. Within each chapter a number of questions are raised which are replicated in appendix 1. A glossary of terms is included at appendix 3. Appendix 4 includes extracts from the Disability Discrimination Act 1995. Finally, appendix 5 groups together those licence obligations on which there is a degree of consensus that regulatory requirements should be retained, those where there are a number of potential options, and those which can probably be removed.

1.6. The purpose of this consultation is to broaden the debate to include other stakeholders, in particular consumer groups representing vulnerable customers, and smaller suppliers. The deadline for responses to this consultation is 28 April 2006.

2. Debt and disconnection obligations

Chapter summary

This chapter focuses on the obligations relating to debt and disconnection, including arrangements for pre-payment meters (PPMs), as set out in SLCs 35, 36 and gas SLC 37A.

At the workgroup meetings there has been a degree of consensus that limitations on disconnections, and the requirement to take into account ability to pay in setting debt repayment levels, should remain as core licence obligations. There is some scope for the removal of certain process requirements e.g. distinguishing between "can't pay" and "won't pay".

There have been differing views with respect to the information that should be provided to PPM customers.

Question box

Question 1: Are the current licence requirements effective in ensuring that suppliers exercise their right to disconnect for non-payment only as a last resort?

Question 2: Could the licence obligation to have procedures to distinguish between "can't pay" and "won't pay" and to identify failures in repayment arrangements be removed?

Question 3: Should suppliers continue to be required to accept payment by Fuel Direct?

Question 4: On ability to repay debt, should the licence condition include a more prescriptive formulation, e.g. not exceeding the weekly Fuel Direct rate for those on benefits unless they agree to pay more?

Question 5: Should the moratorium on disconnecting certain categories of customers in the winter be extended to cover any customers who would be particularly vulnerable to the consequences of loss of supply?

Question 6: Currently the licence requires provision of information on PPM's including their operation, their advantages and disadvantages, recalibration and removal - is this information seen as effective? (In particular we would welcome evidence on any problems caused by delays in recalibrating or removing PPMs, and views on whether there should be a licence requirement referring to "timely recalibration").

Question 7: For PPM's should re-charging arrangements (and in particular distance to the nearest outlet for re-charging) be covered in the licence?

SLC35: Code of practice on payment of bills and guidance for dealing with customers in difficulty

Background

2.1. The licence currently contains a number of obligations including restrictions on disconnections and a requirement to take into account ability to pay.

2.2. At a high level the overall objective in this area is to ensure that customers who are having difficulties paying their bills are treated sympathetically and fairly. In particular, the aim is to ensure, so far as possible that:

- early steps are taken to avoid customers building up debts;
- where a customer is in debt the amounts they are required to repay are reasonable;
- customers are not given pre-payment meters if they would have difficulty in using them; and
- no customer is disconnected because of an inability to repay debt.

2.3. We welcome the voluntary steps taken by the industry, in particular the Energy Retail Association (ERA)'s safety net on disconnections, but as gas and electricity are essential services, and taking into account our statutory duties, it is our initial view that there is likely to be a continuing need for some form of protection in this area through the licence.

2.4. We start by discussing in broad terms a number of the issues relating to debt and disconnection and then go on to consider each of the existing licence obligations in turn.

Discussion

2.5. There are commercial incentives on suppliers to avoid the build up of customer debt given the high costs associated with pursuing the debt or with writing it off. This is an area where suppliers have improved significantly over recent years. Ofgem and energywatch have produced best practice guidance² in this area and carried out a review last year to evaluate suppliers' performance.³

2.6. Similarly certain issues relating to the build up of debt as a result of billing problems were raised as part of energywatch's supercomplaint⁴ and have been considered carefully by us. We found no widespread failure of industry billing arrangements although we did find that a relatively small number of customers suffered real harm when companies made billing mistakes. In such cases billing mistakes can have a disproportionate effect on vulnerable customers. At this stage

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<http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/socialactionplan#>

³ This highlighted that substantial effort and progress has been made, although this varied between suppliers. For example, some suppliers were further ahead with improvements to billing systems.

⁴ 6 April 2005 - http://www.energywatch.org.uk/uploads/Super_Complaint.pdf

we are looking to the industry to take these issues forward on a self-regulatory basis, although we retain the option of introducing licence obligations if progress is not made. The ERA has announced its intention to launch a billing code of practice during the first half of this year. This will cover all aspects of the customer's relationship with their energy supplier, including the transfer process, and will include specific sections covering compliance and monitoring. In addition a dispute resolution (Ombudsman) scheme will be launched, providing for arbitration which will be binding on the supplier.

2.7. Once a debt has built up however the supplier will have strong incentives to take all the necessary steps to recover the monies involved. These will be tempered to some extent by the adverse publicity that can result from insensitive handling of particular cases including, in particular, disconnection of vulnerable customers. The unfortunate death of two pensioners following disconnection in August 2003 (the Bates case), together with the threat of political action to bar disconnection, led to the industry putting in place the voluntary safety net to prevent disconnection of vulnerable customers.

2.8. The safety net is described in the ERA's document, 'Protecting Vulnerable Customers from Disconnection', which was published in September 2004. The ERA applies the following definition: 'A customer is vulnerable if for reasons of age, health, disability or severe financial insecurity they are unable to safeguard their personal welfare or the personal welfare of other members of the household'.

2.9. A number of consumer groups are still calling for a total ban on disconnections. This was considered by Parliament during the passage of the Energy Bill but was not adopted. Our submission to the Trade and Industry Select Committee⁵ supported the right of suppliers to disconnect for debt as a last resort while wanting to see the level of disconnections kept to a minimum. The Trade and Industry Committee's subsequent report on debt and disconnection recommended that a ban be considered if suppliers failed to show that they could act responsibly.

2.10. While the voluntary safety net has proved successful to date the real consumer detriment that can arise in this area points to a need for continuing backstop protection through the licence. Keeping protection in the licence ensures that all suppliers are covered, not just those in the ERA, and provides clarity as to what is expected, which is consistent with better regulation.

2.11. In terms of ability to pay one supplier has said that the challenge is to evaluate what happens when a customer gets into debt and what is a fair solution for the recovery of money. Suppliers also commented that there should be a move away from the view that PPMs are an inferior service, as they are favoured by many customers. We acknowledge this point but note that PPMs are not appropriate for all customers.

2.12. There is potential for smart metering to help customers budget and avoid getting into debt. It is important that the licence conditions do not act as a barrier to smart metering but at this stage the licence should reflect the current technology.

⁵ Debt and Disconnection: Gas and electricity supply companies and their domestic customers. Fifth Report of Session 2004-05.

Specific licence obligations

Requirement for a code

2.13. SLC35(1) requires the licensee to submit to us for approval a code concerning the payment of bills by domestic customers, including those in difficulty. This requirement could be removed depending on the approach adopted for the structure of licence obligations and codes as discussed in chapter 4.

Distinguishing between "can't pays" and "won't pays"

2.14. SLC35 (2) requires suppliers to include in their code procedures for distinguishing between customers in difficulty and others in default. Suppliers have commented that it can be difficult to distinguish between these groups in practice. The normal practice is therefore to start with the assumption that all customers are "can't pays" and continue to supply them (if necessary on a PPM) if they get into difficulty.

2.15. Our initial view is that the requirement to distinguish customers as "can't pays" and "won't pays" is impractical and does not add anything to the overall obligations. Therefore this requirement could be removed. However, we would welcome any further views on this.

Energy efficiency information

2.16. SLC35(2)(a) includes an obligation to provide general information on how customers with payment difficulties might reduce their bills through energy efficiency.

2.17. Suppliers have commented that energy efficiency advice is already covered by SLC25, and that a more open dialogue with the customer is preferable to prescriptive information requirements. Consumer groups have said that the licence condition should contain provisions relating to energy efficiency advice, and that when a customer gets into debt this is a good opportunity for such advice to be offered.

2.18. Our initial view is that energy efficiency advice is a broader issue that is best dealt with under SLC25, which is due to be discussed by the Duty to Supply, Contracts and Information Workgroup in March. Subject to this the additional requirement under SLC35(2)(a) could be removed.

Fuel Direct

2.19. SLC35(2)(b) covers the requirement to accept payment which is deducted at source from social security benefits. This relates to the Department of Work and Pension ("DWP")'s Fuel Direct scheme. To qualify for this scheme the customer must be in receipt of benefits and must have been threatened with disconnection. This form of payment is very helpful to customers who are in debt and who need help in budgeting for repayments. It is also helpful to suppliers who are guaranteed the debt will be repaid during the period that the customer is in receipt of benefit.

Currently⁶ some 21,000 electricity customers and 28,000 gas customers pay by Fuel Direct. There have been discussions with DWP about extending Fuel Direct to cover all customers on benefit (not just those who have been threatened with disconnection) but at present this looks unlikely.

2.20. The current maximum Fuel Direct payment towards debt is £2.85 per week for each fuel. One supplier has stated that Fuel Direct used to be the industry's most expensive form of payment collection, and while there have been some improvements to its operation, problems still exist.

2.21. We are aware of a previous case where one supplier was proposing not to accept Fuel Direct. Given the additional costs our initial view is that a regulatory obligation is appropriate in relation to Fuel Direct as it may be a payment method that the market would not otherwise necessarily deliver.

Detect failures by customers to maintain repayment arrangements

2.22. SLC35(2)(c) requires suppliers to detect failures by customers to maintain repayment arrangements. Read with the obligations under SLC35(2)(d), (e) and (f), the original intention behind this requirement was that there should be a step in the process to give customers the opportunity to clear a debt before a PPM was installed, although the current licence does not specifically require this step.

2.23. Some consumer groups have expressed concern that there could be a dramatic increase in the number of PPMs if these were offered as a first resort alternative to disconnection, rather than initially offering a repayment arrangement through instalments.

2.24. Our initial view is that a requirement to detect failures on repayment does not appear to add significantly to the overall requirements, as suppliers would presumably do this as part of credit management.

Ability to pay

2.25. SLC35(2)(d) and (e) require debt repayment arrangements to take into account the customer's ability to pay. Our guidance on the Codes of Practice makes it clear that for customers on benefits the amount to repay debt should not exceed the Fuel Direct rate i.e. £2.85 a week, unless the customer agrees to pay more. This formulation has been cited on a number of occasions by us where there have been concerns about inconsistent interpretation of the broader obligation by suppliers.

2.26. One supplier has commented that a maximum weekly debt repayment related to Fuel Direct is a crude interpretation of the ability to pay. Another supplier considered that the current £2.85 per week maximum was for guidance only, and that suppliers should be able to recover a different amount if they made a case that it was reasonable to do this.

⁶ As at December 2005

2.27. One supplier also raised the issue of the Office of Fair Trading's guidance on debt collection. We consider that this guidance, which as a backstop discourages unreasonably large instalments, would allow for a higher of repayments than was envisaged by the proactive obligation to take into account ability to pay.

2.28. Our initial view, supported by the workgroup, is that taking ability to pay into account in setting repayment levels should remain as a core licence obligation. However, we consider that it is preferable to leave flexibility within the licence for suppliers to interpret ability to pay on a case by case basis, taking account of a customer's full circumstances, not just the question of whether they are on benefits. The more precise formulation could still be included as guidance. We would welcome any further views on this point.

Provision of PPMs in preference to disconnection

2.29. SLC35(2)(f) requires the provision of a PPM in preference to disconnection (when read with SLC35(3)), subject to the caveat "where safe and practicable to do so". Our view is that this is a very important prior step that should be mandatory before disconnecting a customer. We also consider the caveat to be important in terms of making it clear that a PPM should not be installed where the consumer cannot cope with it.

Not to disconnect other than following compliance with preceding requirements

2.30. SLC35(3) (Gas) includes a requirement not to cut off the supply otherwise than following compliance with paragraph (2) (i.e. the procedural steps outlined above). In electricity, this is dealt with in SLC35(3)(a).

2.31. One supplier has stated that this obligation is potentially unlawful, as it narrows the suppliers' statutory right to disconnect. We note that suppliers have accepted this obligation and Parliament, during the passage of the Energy Bill, decided not to introduce a total ban on disconnections, on the basis of the existing safeguards in the licence conditions.

Not to disconnect in winter months

2.32. SLC35(3)(b) (Electricity) and C35(4)(b) (Gas) effectively require suppliers to avoid, so far as practicable, disconnecting in winter premises occupied by elderly, disabled or chronically ill customers who have payment difficulties.

2.33. SLC37A (Gas) places a stronger obligation in terms of not disconnecting during the winter months, but applies only to "all pensioner households"⁷ (rather than premises where the occupants include a pensioner or someone disabled or chronically sick) who are in default of their obligations to pay through misfortune or inability to budget.

⁷ SLC37A(1)(a) applies to a domestic customer who, to the knowledge and reasonable belief of the licensee "is of pensionable age and lives alone or with other persons all of whom are also of pensionable age or under 18 years of age".

2.34. There is an overlap with the ERA safety net on disconnections, which covers all months and has a wider definition of "vulnerable customers". Although the voluntary safety net seems to be working effectively, we consider that it is worth retaining the licence obligations to ensure all suppliers are covered and to provide clarity as to what is expected.

2.35. Some consumer groups have raised the question of whether the safety net should be incorporated formally into the licence. However, another consumer group has commented that if voluntary schemes are subsequently turned into licence obligations, this removes the incentive for the industry to pursue voluntary social initiatives.

SLC36: Code of practice on the use of prepayment meters ("PPMs")

Specific licence obligations

Requirement for a code

2.36. SLC36(1) requires the supplier to submit to Ofgem for approval a code concerning the use of PPMs, including appropriate guidance for the assistance of its PPM customers who wish to take supply on other terms. This requirement could be removed depending on the approach adopted for the structure of licence obligations and codes as discussed in chapter 4.

Provision of information on PPMs

2.37. SLC36(2)(a) covers the provision of information on the operation, advantages and disadvantages of PPMs, including details of token outlets or charging facilities, actions where the PPM malfunctions, and standards of performance.

2.38. Previously the Public Accounts Committee has asked about the information provided to customers regarding the disadvantages of having to pay more expensive tariffs for the use of PPMs. In addition there is research showing that many customers do not know that they are paying more with a PPM⁸.

2.39. Our view is that the current codes may not be the most useful way of providing information to customers on how to use their PPMs. Our understanding is that currently some suppliers provide more accessible information for their PPM customers aside from the formal code. It would be helpful to understand what information suppliers currently provide and how this is perceived by consumer groups.

2.40. There is also a question as to how top-up arrangements should be handled. Our current guidance says that customers should have to travel a maximum of 1 mile to purchase top-ups for their PPM unless this is considered to be unreasonable. There is a question whether this should be covered explicitly in a licence condition.

⁸ MORI research conducted for Ofgem in 1999 found that 43 per cent of prepayment meter customers knew they were paying more, but 33 per cent did not and 25 per cent actually thought it was cheaper.

We are aware that this has been an issue for suppliers in negotiations with Post Office Counters Ltd and would value any further views on this point. One supplier's view was that flexibility was preferable and that guidance on this was the right approach. Our initial view is that there are benefits in allowing suppliers flexibility to consider the matter on a case by case basis but potentially backed up by guidance.

Calibration of PPMs to recover debt and price changes

2.41. SLC36(2)(b) covers the calibration of the PPM to recover any debt, taking into account the ability to pay. In line with our views on taking into account the ability to pay under SLC35(2)(d) and (e), (see paragraph 2.24 above), our initial view is that this requirement should remain but be subsumed into a single licence obligation on the ability to repay debt.

2.42. SLC36(2)(c) requires the supplier to arrange for the recalibration of a PPM at the conclusion of any repayment arrangement and generally following price changes.

2.43. There is concern that if recalibration is not done in a timely way this can lead to the build up of debt, particularly with the recent price increases. This is a particular concern with token meters which need manual calibration requiring a home visit. There is therefore a question whether this requirement should be redrafted to refer to "timely recalibration".

2.44. energywatch has said that it has cases where customers have suffered detriment from delays in recalibrating PPMs. Another consumer group has stated that it might be better if suppliers placed a cap on the recovery of sums if there is a delay with recalibration. One supplier has mentioned that delays can be caused by technical constraints and by practical access problems, particularly where traditional token meters are involved.

2.45. We would welcome further information which might be helpful to establish the degree of consumer detriment being caused by delays with recalibration.

Removing PPMs

2.46. SLC36(2)(d) requires the supplier to provide information on arrangements for removing PPMs, and setting out the timescale and conditions under which removal might take place.

2.47. One supplier has mentioned that the purpose of this obligation was to force consistency on suppliers, but regulation is not necessary as this would be done as part of normal customer service.

2.48. One consumer group has raised concerns that people moving into premises where a PPM is situated may have difficulties in getting the PPM removed. We are unaware of any particular problems, but we would welcome further information to establish whether any consumer detriment is being caused by delays in removing PPMs

3. Priority services register obligations and arrangements for the blind and deaf

Chapter summary

This chapter focuses on the obligations relating to the Priority Service Register ("PSR"), including the arrangements for people who are blind or deaf, as set out in SLCs 37 and 38.

At the workgroup meetings there have been differing views as to the overall purpose of the PSR, whether additional services and information to these vulnerable customers should be required in the licence, and the degree of overlap with the Disability Discrimination Act 1995 (DDA).

Question box

Question 1: Should the focus of requirements relating to the PSR remain on meeting the physical, safety, and communication needs of vulnerable customers or be extended to cover financial need?

Question 2: What are your views on the options for the categories of customers suppliers should identify in their PSR (see paragraph 3.13), and are there any other options that we should consider?

Question 3: What would be the practical issues and costs involved in requiring passing of PSR information on change of supplier?

Question 4: Is there evidence of problems that are not being addressed by the existing range of services?

Question 5: Are the eligibility criteria for the additional services adequately targeted at those who really need protection?

Question 6: Does the DDA provide an appropriate level of protection and is it an acceptable alternative to specific licence obligations (in particular those relating to blind and deaf customers)?

Question 7: What comments do you have on the options for reflecting the DDA in the licence (see paragraph 3.24)?

Question 8: Do each of the additional services currently required under the PSR need to be included as a specific licence requirement?

Question 9: How far can the market be expected to deliver each of these services?

Question 10: What burden do the existing obligations pose, and should smaller suppliers be exempt from providing any of the services?

Question 11: What comments do you have on the options for gas safety checks in paragraph 3.29, and are there any other options that we should consider?

Question 12: Should there be a specific requirement to provide information on the safe use of gas appliances?

Question 13: What different types of special controls and adaptors for appliances or meters are suppliers currently providing and is this an appropriate role for suppliers to fill?

Question 14: What further information is available on the cost of meter moves, and the circumstances in which they are provided?

Question 15: Are special quarterly reads and effective alternative to meter moves?

Question 16: What are your views on the marketing of special services for vulnerable customers (see paragraph 3.46)?

SLC37: Provision of services for persons who are of pensionable age or disabled or chronically sick

Background

3.1. Under their licences, domestic electricity and gas suppliers have an obligation to maintain a Priority Service Register ("PSR") of those customers who are of pensionable age, disabled (including customers who are blind or partially sighted, or deaf or hard of hearing) or chronically sick. In addition, suppliers must provide to eligible customers additional services free of charge (subject to these being reasonably practicable and appropriate). These services are as follows:

- quarterly meter readings where the customer is unable to read their meter;
- help in moving a meter if it is in an inconvenient position;
- advice on using gas and electricity;
- a personal password for gas and electricity staff to use every time they call at the person's home, to confirm they are genuine;
- special controls and adaptors if the customer has difficulty in using certain appliances;
- bills can be sent to a friend or family member on their behalf;
- provision of temporary heating and cooking facilities if they lose their gas supply (via National Grid Gas);
- for blind or partially sighted persons bills supplied in different formats, e.g. large print or Braille; and
- where everyone in the household is eligible for the PSR, and excluding households in rented accommodation when the landlord is responsible, a free gas appliance and installation safety check.

3.2. Electricity distributors also have to maintain a register of people who, because of special medical or communication needs, would be vulnerable in the event of supply disruption. Electricity suppliers have a corresponding requirement to give PSR customers information on interruptions, subject to using all reasonable endeavours to obtain such information from the relevant distributor.

3.3. There are currently some 660,000 customers in total on gas suppliers' PSRs, and around 670,000 on electricity PSRs. Given the increasing focus on fuel poverty, and concerns about the impact of rising fuel prices on the vulnerable, there is increasing interest in the PSR as a means of identifying vulnerable customers.

3.4. The key questions that need to be addressed are whether there is a need for a formal obligation on suppliers to maintain a PSR and offer certain services or whether this can be left to self-regulation. By being prescriptive about the services to be provided there may be less incentive on suppliers to be creative in the ways they meet the needs of particular customers. That said, many of the services offered under the PSR provide important help and protection for vulnerable customers and maintaining a formal obligation makes it clearer what customers can expect. Ofgem has a specific duty to have regard to the interests of individuals who are disabled or chronically sick, or of pensionable age, and this obligation is relevant to that duty.

3.5. Some suppliers have suggested that adequate protection is already provided through the Disability Discrimination Act 1995.

Discussion

Overall objective of the PSR

3.6. At a high level the overall objective in this area is to ensure that suppliers are aware of who their vulnerable customers are and offer them appropriate additional support. Assuming there is a continuing obligation to maintain a PSR, there are then questions as to whether the additional services currently specified in the licence are the most appropriate ones, and whether the eligibility criteria are correct. There is also a question as to whether any of the services that are particularly costly act as a barrier to entry to smaller suppliers or to suppliers promoting the PSR.

3.7. There are two distinct roles the PSR can play:

- The current services focus on the access, safety and communication needs of customers. They also focus on those who are elderly or disabled, particularly those who are most likely to be physically vulnerable and may have particular difficulties using energy supply services or require particular help. Although the licence requires that the PSR services are provided free of charge the original focus was not particularly on those on low incomes. Someone who is financially well off may still be physically frail and in need of particular support, for example in the case of loss of supply.
- More recently with the growing focus on fuel poverty there has been a desire to use the PSR to also identify those low income customers who might benefit from

additional help in terms of energy efficiency advice, benefits health checks, social tariffs and access to trust funds, as well as special payment arrangements.

3.8. The evidence from suppliers is that the overlap between these two groups is limited. As stated above there are actually around 660,000 customers on the gas suppliers' PSRs and 670,000 on the electricity PSRs. There are 2.5 – 3.0 million households in fuel poverty of which around 50% are pensioner households.

3.9. It is Ofgem's initial view that the focus of the licence requirement relating to the PSR should remain on the access, safety and communication needs of vulnerable customers with measures to address fuel poverty remaining a part of the suppliers' corporate social responsibility work. We would welcome views on what the appropriate focus should be.

Identifying vulnerable customers

3.10. One of the major challenges facing suppliers in dealing appropriately with vulnerable customers is to identify them as such. In an ideal world, suppliers would have an in-depth knowledge of each of their customers enabling them to tailor services accordingly. In practice, a simple PSR flag is probably an effective way of alerting customer service staff to the fact that a customer may need additional help and ensuring that this is considered in each case.

3.11. Recently, several suppliers have used a PSR as a 'proxy' for identifying vulnerable customers in order to offer additional help in the form of rebates on bills. One of the objectives of the suppliers' new Home Heat Helpline is to register customers on the PSR. The PSR has also been helpful to suppliers in identifying customers who may need protection from disconnection under the ERA's safety net (where the definition of vulnerable customers is wider than under the licence).

3.12. Therefore, there would appear to be value in making the requirement to identify customers to be included on the PSR relatively broad so that it can capture everyone who needs some form of help, while being clear that not everyone on the PSR would need or, perhaps be entitled to, all the help available.

3.13. In terms of a formal obligation to maintain a list of vulnerable customers there are a number of options for the potential scope:

- to limit it to those customers with extreme physical dependence where the duty to inform the transporter/distributor applies;
- to focus it as now on those who are physically vulnerable but noting that the current definition which extends to all pensioners is not well targeted;
- to broaden it to include those on low incomes;
- to express it loosely in terms of vulnerability, allowing suppliers to exercise discretion as to whether it is appropriate for a particular customer. As noted above, it may be helpful to think about the need for suppliers to identify and maintain a list of vulnerable customers separately from the provision of special services to some or all of those customers.

3.14. We would welcome views on these different options. To inform our thinking, we would also be interested in understanding better how suppliers use the PSR flags

within their systems at present and whether they have alternative methods for readily identifying vulnerable customers.

Appropriateness of services and eligibility

3.15. As noted above the services stipulated in the licence generally intended to address the physical needs of the vulnerable customer. At present the licence obligation requires all the services to be provided free of charge to all those eligible, which is a very broadly defined group. This is an issue in relation to the more costly services (seen as free gas safety checks) where the cost of providing such services may act as a disincentive to suppliers promoting the PSR. There are also questions about potential cross-subsidy if more costly services are being provided free of charge to customers who could afford to pay, with these costs being borne by customers as a whole.

3.16. There may therefore be an argument for more effective targeting of these services or allowing suppliers to raise a charge, subject to the customer's ability to pay. However there is a concern that if there were to be an element of means testing to these services this could discourage take-up.

energywatch research

3.17. Several research studies have been undertaken in recent years into the PSR. energywatch has recently published a report on the PSR following a series of focus groups with consumers⁹. This identified scope for improvement on a range of issues including low awareness of the PSR, even for people on the register, problems accessing services even when registered on the PSR, and a potential mismatch between customers in need and current eligibility criteria. This research showed that the most useful services identified by customers were:

- quarterly meter reading,
- free gas safety checks,
- advance notice of interruption to supply, and
- password protection for visits to the home.

3.18. The energywatch research suggests that suppliers should possibly consider looking at a wider group of customers as eligible for the PSR, and not just the over 60's. e.g. lone parents with young children could be classified as vulnerable customers.

3.19. We note that our statutory duties do not extend to having regard to the needs of lone parents with young children, unless they are also on low income, disabled or chronically sick.

⁹ "Consumer engagement in the energy market: The role of the Priority Service Register", which can be found on our website at:

<http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/supplyr/slr05>

Disability Discrimination Act 1995

3.20. Some suppliers have argued that for a number of the PSR services adequate protection is afforded by the Disability Discrimination Act 1995 (DDA). This protects disabled people against broad categories of discrimination which includes failing to provide a service, providing a worse service, or failing to make "reasonable adjustments" to ensure that a disabled person has equal access to a service.

3.21. In contrast, the supply licence provides a clear statement of specific actions required. It is unlikely that the DDA would cover the pro-active requirement to maintain a PSR and password schemes, and it is unlikely that in most cases third party billing and special quarterly meter reading would be covered as an "ancillary services" (i.e. those to enable equal access to the service) .

3.22. The licence does apply to a broad category of vulnerable customers, including those of pensionable age who are not disabled. That said, under the DDA "disability" is defined more broadly than just those who are registered disabled to include any "physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities" (see appendix 4). Therefore, it would appear that most conditions that would affect the long-term frailty of pensioners would be covered under the DDA.

3.23. A fundamental difference is with the enforcement provisions. For licence breaches we have powers to impose financial penalties and / or issue enforcement orders. In comparison under the DDA Ofgem has no enforcement remit. If there is a breach it is for individual consumers to seek redress, ultimately through potentially expensive court action.

3.24. One discussion paper¹⁰ submitted by a supplier advocates a licence obligation "to meet the requirements of the Disability Discrimination Act 1995", rather than making specific reference to the current PSR services. Our initial legal view is that it would be inappropriate to include a direct link to the DDA in the licence, because Ofgem is unable to take enforcement action for breach of its provisions. Another paper submitted by a supplier recommends a licence requirement for an "annual report on the licensee's operation of the PSR insofar as relevant to its obligations under the DDA". We are also aware that the Disability Rights Commission has published a code of practice¹¹ on the application of the DDA which includes specific reference to utility companies (see further discussion in paragraph 3.52). A further suggestion by one supplier is an obligation to comply with this guidance.

¹⁰ The papers submitted by the suppliers to the Vulnerable Customer and Codes Workgroup can be found in the Supply Licence Review section of Ofgem's website <http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/supplylr/slr05>

¹¹ Code of Practice for the Disability Discrimination Act 1995: Rights of Access: Goods, Facilities, Services and Premises. http://www.drc-gb.org/uploaded_files/documents/2008_223_drc_cop_rights_of_Access.doc

3.25. We will give consideration to the DDA when reviewing each of the additional services under SLCs 37 and 38 in light of our statutory duty to have regard to a broader range of vulnerable customers as well as disabled customers. However, we would welcome further views on the appropriateness of the DDA and its acceptability as an alternative to specific obligations as well as on the specific options identified above.

Specific licence obligations

Requirement for a code

3.26. SLC37(1) and (4) requires suppliers to prepare a code detailing the services to be made available to customers who are of pensionable age or disabled or chronically sick. This requirement could be removed depending on the approaches adopted for the structure of licence obligations and codes discussed in chapter 4.

Free gas safety checks

3.27. SLC37(2)(a) (Gas) requires free gas safety checks to be carried out on request and at intervals of not less than 12 months, for elderly or disabled people living alone (or with others who qualify for the PSR) where a landlord inspection is not required under Health and Safety Legislation.

3.28. One supplier has stated that its costs are in the region of £40 to £50 per check. In 2005 around 44,000 gas safety checks were carried out which suggests overall costs to the industry of around £2m per annum. There are two key issues concerning the effectiveness of the current arrangements:

- at present eligibility for the free gas safety check is very broad and includes many consumers who could afford to pay for them; and
- following a gas safety check, there is no protection for customers if appliances are condemned as unsafe.

3.29. There are a number of options for how this obligation could be taken forward, including:

- The status quo;
- Allowing suppliers to raise a charge for the safety checks, subject to the customers' ability to pay;
- Narrowing the eligibility criteria but requiring suppliers then also to provide assistance in maintaining heating and cooking facilities if necessary;
- Requiring (instead or as well as checks) suppliers to provide carbon monoxide alarms or to offer advice to consumers on the safety issues associated with gas;
- Moving the obligation onto another party. For example some suppliers have suggested that safety matters fit better with the responsibilities of gas transporters. Ofgem's initial view is that this would be complicated to effect as among other things, it would involve re-opening price controls.

3.30. We would welcome views on these options.

3.31. Ofgem has a duty to consult the Health and Safety Executive ("HSE") on safety matters, and to take into account any advice given by the HSE about any gas safety issue. The HSE has said it would only recommend changes in the current provision if there was a suitable alternative.

3.32. Given that one of our statutory duties relates to the safety of customers, it would be useful to establish whether there are any further reports or statistics on the effectiveness of gas safety checks and the associated risks before making a decision on what is a proportionate regulatory response. Ofgem will also need to discuss this area further with the HSE.

Services provided on request and free of charge where reasonably practicable and appropriate

3.33. SLC37(2)(b)(i) (Gas) and SLC37(2) (Electricity) requires certain services to be provided on request and free of charge where reasonably practicable and appropriate. The table below shows the total number of customers receiving these services in 2005 (* as at 31 December 2005). In the following paragraphs, where not otherwise indicated, we would welcome any further views on these services and whether they need to be included as a specific licence requirement.

| | Electricity | Gas |
|---|-------------|---------|
| Special controls/adapters provided free of charge | 22,558 | 10,562 |
| Meters repositioned/replaced free of charge | 1,588 | 1,389 |
| Password Schemes* | 113,447 | 153,983 |
| Third Party billing/bill re-direction * | 18,114 | 13,036 |
| Quarterly reads * | 234,465 | 369,991 |

Special controls and adaptors for appliances and meters (including PPMs)

3.34. This obligation may now be outdated given that suppliers no longer run their own showrooms selling appliances. One supplier has commented that special adaptors for meters have included adaptors provided for coin PPMs which have generally been phased out. We consider that the DDA may provide appropriate backstop protection in this case (although noting the difference in the enforcement mechanisms). However, we would welcome any further views on this issue and evidence of any problems. We note that 33,000 controls/adaptors were provided in 2005 and would find it helpful to understand what these covered.

Repositioning of meters

3.35. This can be costly for the supplier, but is an example of when we would expect the caveat “reasonably practicable and appropriate” to be applied. As shown above, in total there were around 3,000 meter moves in 2005. One supplier has mentioned that moving the electricity meter more than six feet from its original position would involve altering the position of the service cable (supply point) which is the responsibility of the distributor. Moving a meter to a different room would be a major job involving substantial cost. Ofgem would welcome further information on the costs involved in meter moves.

3.36. The Gas Act 1986 schedule 2B paragraph 6, and the Electricity Act 1989 schedule 6 paragraph 1, also prevent a supplier charging a disabled customer for a meter alteration or replacement where this has been carried out. Under section 23 of the Electricity Act, Ofgem has the power to determine a small number of defined disputes, but there is no equivalent power under the Gas Act.

3.37. Given the costs involved it is helpful to consider the merits of the different scenarios in which a meter move could be requested. Difficulties with reading a meter could reasonably be dealt with by the supplier providing more frequent special meter reads (see below). However, there is also the issue of the ability of a disabled or frail customer to access their PPM to recharge it, which would not be resolved by special reads. In this case the DDA, and the Gas and Electricity Act provisions referred to above, may provide appropriate backstop protection (although noting the difference in the enforcement mechanisms). However, we would welcome any further views and evidence of any problems.

Password scheme

3.38. This is a special means of identifying persons acting on behalf of the licensee, when they visit a vulnerable customer’s home. Passwords are particularly popular with the elderly and are presumably low cost for suppliers to provide. We note that this scheme is also a requirement under the code on rights of entry (SLC24) and would wish to avoid duplication. While suppliers might be expected to continue to offer this service there are potential advantages in maintaining an obligation to provide visibility of the availability of the service.

Advice on the use of gas and electricity, and gas appliances and fittings

3.39. This obligation requires suppliers to give advice on the use of electricity, and on the use of gas, gas appliances and other gas fittings. One specific aspect is energy efficiency advice, which is covered elsewhere in the licence (SLC25), and where there does not appear to be any additional benefit linking it to the PSR. Issues have been raised about the safe use of gas appliances (i.e. carbon monoxide poisoning), and one option may be to include a more specific requirement in this regard. We would welcome any further views on this.

Sending bills to a third party

3.40. This is a valuable service as it allows bills to be redirected to a relative or carer who can ensure they are paid. Suppliers have commented that they would be willing

to do this even in the absence of a formal obligation, to increase the chances that a bill is paid. Nevertheless it may still be helpful to retain an obligation to ensure visibility of the availability of this service for vulnerable customers, whilst allowing suppliers to be creative in their marketing of it.

Special quarterly meter reads

3.41. This requires suppliers to provide quarterly meter readings where neither the customer nor anyone living with them can read the meter, and to inform the customer of the reading. One supplier has estimated the cost of these special reads as £11 per read (i.e. £44 per year). Nonetheless this is potentially a better alternative than a much more expensive meter move where this is needed. There may be some implications for suppliers who do not read meters quarterly, but again as for all these services it is only required on request and subject to the caveat where reasonably practicable and appropriate. Given the concerns raised by consumer bodies about the importance of accurate billing there are arguments for retaining this obligation. One option for customers paying their bills in fixed amounts by direct debit is to restrict the special read to every six months. This would be in line with suppliers' normal review pattern for this payment method.

Obligation to maintain a PSR and notify customers annually

3.42. SLC37(3)(a) requires the supplier to establish a list of domestic customers who are elderly, disabled or chronically sick and who require any of the PSR services (or have special communication needs or depend on electricity for medical reasons and require advance notice of planned interruptions of electricity). This is in effect the requirement to maintain a PSR. As noted above there are questions about how suppliers can distinguish the broader group of vulnerable customers who need assistance, from those that need to be notified to the distributor.

3.43. energywatch has suggested that registration on the PSR should be transferable when customers switch supplier. One supplier considered that priority should be given to information that suppliers forward to distributors/transporters in respect of the PSR, which could be passed to the new supplier when customers transfer. We would be interested in views on the practical issues and cost of requiring this information to be transferred.

3.44. SLC37(3)(b) requires the supplier to notify its customers at least once a year of the existence of the PSR and how to be included on it. SLC37(3)(c) requires the supplier to maintain the PSR and provide customers on the PSR with information about the services available.

3.45. Our initial view is that there should continue to be an obligation to establish a list of those who are vulnerable, although as indicated above there are options as to how that category should be defined. Most suppliers inform customers about the existence of the PSR by including information on, or with, their bills. This approach embraces the whole customer base, but it may not be the best way of ensuring those who need help receive it. There may be other more targeted ways of promoting the PSR.

3.46. It therefore may not be necessary to be prescriptive in the licence as to the means of informing customers of the existence of the PSR, and there may be room to encourage suppliers to be more creative. It has been suggested that it would be easier for customers if all the PSR schemes were marketed under a similar name, and that suppliers should provide a more standardised package. One supplier stated that higher importance should be placed on how a product was marketed by suppliers rather than on the trading name provided to these services. Our initial view is that there are advantages in allowing branding of products to help incentivise suppliers to market social initiatives over and above the minimum required. We would welcome views on these issues.

Interruptions of electricity supply

3.47. SLCC37(3)(c)(ii) (electricity) requires the supplier to provide PSR customers with information on interruptions to supply, subject to using all reasonable endeavours to obtain such information from the relevant distributor. The particular purpose of the obligation is to protect those customers who are electricity dependant e.g. those customers on dialysis machines. However, it should be noted that there are obligations on distributors to provide notice of supply interruption to all customers under Regulation 29 of the Electricity Safety, Quality and Continuity Regulations 2002. Therefore, there may be scope to remove this obligation on suppliers.

Obligation to provide the distributor with information on the PSR

3.48. SLC37(3)(d) requires the supplier to provide the distributor with information in the PSR relating to those needing special adaptors, passwords and advance notification of supply interruptions on electricity (or more generally in gas) in an appropriate form and at appropriate intervals. Given suppliers have access to the relevant customer information on their database, and given the need for distributors to comply with parallel obligations, our initial view is that this should be retained as a licence obligation.

SLC38: Provision of services for persons who are blind or deaf

3.49. SLC38(1) requires each supplier to prepare a code of practice detailing the services it will make available to persons who are blind or deaf.

3.50. SLC38(2) requires the provision, on request and free of charge:

- for blind and partially sighted customers, billing information by telephone or other appropriate means, and
- for these customers and deaf and hearing impaired customers, a facility for enquiring or complaining in respect of bills or any service provided by the licensee.

3.51. In 2005 (* as at 31/12/05) the total number of customers receiving relevant services under this condition were:

| | Electricity | Gas |
|-------------------------------|-------------|--------|
| Braille / large print Bills * | 22,445 | 20,257 |
| Talking bills * | 853 | 1,288 |
| Minicom / textphone calls | 1,707 | 2,916 |

3.52. This is the area where the overlap with the DDA provisions is most marked. The Code of Practice¹² produced by the Disability Rights Commission giving best practice guidance on the DDA, specifically refers to: "A utility company supplying gas and electricity to domestic customers sends out quarterly bills. On request, the company is willing to provide the bills in alternative formats such as Braille or large print for customers with visual impairments. This is likely to be a reasonable step for the utility company to have to take." The DDA is discussed above at paragraphs 3.20 - 3.25, including a range of options for dealing with overlaps. We would welcome further views on whether a specific obligation is still required in this case, particularly from groups representing deaf and/or blind persons.

¹² Code of Practice for the Disability Discrimination Act 1995: Rights of Access: Goods, Facilities, Services and Premises, paragraph 5.26.

http://www.drc-gb.org/uploaded_files/documents/2008_223_drc_cop_rights_of_Access.doc

4. Structure of obligations, communication, compliance and reporting

Chapter summary

This chapter focuses on the current arrangements for approval, communication, and compliance with the various codes of practice as set out in SLC27.

The current regime requiring approval of codes is bureaucratic, and such codes may not be the best means of giving information to customers and incentivising suppliers to go beyond the minimum required.

At the workgroup meetings there has been agreement that certain requirements should be retained as core obligations (e.g. limitations on disconnection and taking into account ability to pay). This chapter considers the best way to structure such obligations, whether in licence or in codes of practice. It also considers different approaches to self or co-regulation which may be appropriate for dealing with certain of the existing obligations.

This chapter also covers the reporting and information gathering powers under SLC26.

Question box

Question 1: What comments do you have on the following options where it is concluded that there is a need for an enforceable regulatory requirement?

Option 1 - Licence based obligations

Option 2 - A mandatory code of practice

Question 2: What comments do you have on the following options as alternatives to prescriptive regulation?

Option 3 - Principles based licence obligations supported by more detailed guidance

Option 4 - Requirements delivered through self regulation

Option 5 - Requirements delivered voluntarily

Question 3: Are there other options which we should consider?

Question 4: What are your views on the following proposal in paragraph 4.26 for communication of a code or policy statement?

Question 5: Given our proposal to retain the information gathering powers under SLC26(3), what are your views on removing licence obligations requiring suppliers to keep a record of their performance and provide an annual report?

SLC27: The preparation, review of and compliance with codes

Background

4.1. At present the licence sets out in considerable detail a range of provisions which suppliers must include in codes (of which there are 7 in total), which must be approved by us and subsequently complied with. In addition Ofgem has published detailed guidance on how suppliers should draft their codes to gain approval. The problems with this approach are that:

- there is no incentive on suppliers to go beyond the minimum that has to be in the codes as they could be exposed to enforcement action if they failed to comply with any voluntary actions they included in their codes;
- new entrants have to prepare codes and obtain our agreement which is a significant administrative burden;
- the codes are ineffective as a means of communicating with individual consumers as they contain a mix of policy and consumer information and have to be in a prescribed format to meet our approval; and
- the framework is hard for consumer bodies to engage with as the obligations appear in licence, in our guidance and in individual codes.

4.2. At the workgroup meetings there has been consensus that the current regime can be radically improved to benefit all parties. As indicated above (in the chapter summary) there are a number of areas where there has been agreement within the working group that a formally enforceable regulatory requirement remains appropriate. In this case there are options as to how this could be achieved - by including obligations on the face of the licence or by including them in a code of practice with which suppliers are obliged to comply. These options are considered further below.

4.3. In other areas (such as the provision of PSR services and information for vulnerable customers) there has been more debate as to whether formal obligations are required. In these areas alternatives to conventional regulation may be appropriate. Options would include a principles based licence backed up by guidance; a formal self- or co-regulatory structure - or simply relying on voluntary action by suppliers. These options are considered further below.

4.4. Appendix 5 groups together those licence obligations where there is consensus to retain them as formal obligations, those where there are a number of potential options, and those which could be removed.

Suppliers' proposals

4.5. Two suppliers have submitted papers to the workgroup which include options to restructure the current requirements. These papers can be found on our website¹³.

¹³<http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/supplylr/slr05>

4.6. One supplier's paper advocates that there should be a minimum set of licence obligations which would include; repayment offers to take into account ability to pay, suppliers to offer fuel direct or PPM and to only disconnect as a last resort, and not to disconnect elderly or disabled gas customers in winter. It also proposes a licence obligation "to meet requirements of the DDA". For other "highly desirable" services for vulnerable customers it is argued that these are matters that would be provided in any case by a reputable non-niche supplier. It is mentioned that transparency around these voluntary measures could be achieved by a mixture of ERA publications and where appropriate reviews commissioned by Ofgem and energywatch.

4.7. Another supplier's paper proposes a Consumer Protection Code in the form of a single licence condition applying to all domestic gas and electricity suppliers. This would include in a licence requirement a broader range of obligations than above, including; no disconnections for any customers who (by reason of age, disability, or otherwise) would be particularly vulnerable to loss of supply, and a number of the current PSR services (the password scheme, special quarterly reads, and third party billing). On the DDA, the paper proposes an annual reporting requirement "on the licensee's operation of the PSR insofar as relevant to its obligations under the DDA". The proposed Code also includes a number of other obligations which are currently being considered by the Duty to Supply and Contracts Workgroup. There is also mention of governance arrangements for such a Code with a public forum chaired by Ofgem with interested stakeholders, to review its operation and consider any modifications.

Possible options for delivering the requirements

4.8. The following are potential options for certain of the current requirements. Overall, the final structure for a new regime could include a combination of these options, or there may be other options that we should consider.

Option 1 - Licence based obligations

4.9. The advantages of placing obligations on the face of the licence are legal certainty and clarity, and direct enforceability. There is also public transparency as to what is included in the licence, consistency across all suppliers and there is also a prescribed process for making changes to licence conditions.

4.10. However, licence requirements can lack the flexibility to allow suppliers to be creative in developing and marketing corporate social initiatives, and can act as a barrier to entry to new suppliers. In addition precise legal wording may not be the best means to communicate information to vulnerable consumers and consumer advisers.

4.11. To overcome these concerns there is potential to improve the drafting of licence provisions, and to remove prescriptive process requirements which do not add anything to overall desired outcomes and complicate the licence. Certain requirements could also be qualified with "except where the Authority otherwise consents" to allow, where appropriate, exemptions for smaller suppliers for example.

4.12. If the licence route were adopted for the generality of provisions then there would probably need to be some additional obligation on suppliers to produce a more accessible version of the licence requirements for consumers and consumer advisers.

Option 2 - A mandatory code of practice

4.13. Under this option suppliers would be required to have regard to (or to comply with) a standard Ofgem designated code or to equivalent provisions in a supplier's own code. Codes can have the advantage, over licence conditions, of being able to give in layman's terms advice and information on additional services available to vulnerable customers. However, they are more likely to be of use to consumer advisers than individual consumers. An important point in considering the different options is to ensure suppliers have the discretion to be creative in marketing and in developing corporate social responsibility initiatives. Under this option, small suppliers could rely on the Ofgem code and would not initially need to draft their own, reducing the administrative burden compared to the current approach.

4.14. Moreover, under this option, in due course the code could potentially evolve to be a self-regulatory code if the industry were to put in place an effective self-regulatory body (with appropriate transparency, compliance mechanisms, independence etc).

4.15. From a Better Regulation perspective codes are generally viewed positively (being more flexible than formal regulation) but there can be concern about "regulation through the back door" if they can be readily extended. If this approach were to be adopted, further thought would need to be given to how changes could be made to the code, balancing the need for some flexibility whilst ensuring there are adequate controls to overcome concerns about "regulation by the back door".

Option 3 - Principles based licence obligations supported by more detailed guidance

4.16. Under this option there would be broad principles based requirements in the licence backed with reference to guidance as to how these should be interpreted in practice.

4.17. Examples could include "the supplier shall take steps to identify vulnerable customers" and the "supplier shall provide appropriate additional services" with further detail on the sort of services included in the guidance.

4.18. Such a principles (or goals) based approach has been cited by the Better Regulation Task Force¹⁴ as generally preferable to a more prescriptive approach.

4.19. The advantage of this option is that subject to the guidance, suppliers would have more discretion in how they deliver the requirements and whether they go beyond the minimum required. Consumer groups would have greater confidence than with pure self-regulation that additional services and information will be provided as Ofgem would retain some enforcement role. Disadvantages are that there may be less clarity as to when a supplier is in breach for not providing certain

¹⁴ Now the Better Regulation Commission

types of services. Alternatively guidance may be viewed as further regulation "through the back door" if it can be readily changed and extended.

Option 4 - Requirements delivered through self regulation

4.20. Suppliers have already delivered a number of self-regulatory initiatives that have been developed outside the regulatory regime e.g. the ERA safety net and the proposed billing code.

4.21. Our view is that self-regulation can clearly benefit vulnerable customers, and the ERA safety net appears to be working well. Self-regulation can be more flexible than formal regulation, and can provide protection and additional services over and above the minimum required.

4.22. Nevertheless, there remain concerns as to whether the existing self-regulatory regimes provide adequate governance arrangements including; transparency, compliance mechanisms, independence etc.

4.23. An alternative approach is through the licence to require suppliers to sign up to and/or comply with a self-regulatory regime. Such an approach is often referred to as "co-regulation". This has the advantage of ensuring all suppliers are party to such a scheme, not just ERA members, and can provide Ofgem with a backstop enforcement mechanism. However, it should be noted that linking existing self-regulatory schemes to licence conditions could act as a disincentive for the industry to come forward with further schemes in the future.

Option 5 - Requirements delivered voluntarily

4.24. There are already a number of social initiatives that suppliers have developed individually (i.e. outside of the regulatory requirements or any self-regulatory regime). Such examples include social tariffs and trust funds. The benefits of these initiatives for vulnerable customers have been acknowledged by Ofgem on a number of occasions¹⁵. For many aspects of customer service one could expect a competitive market to drive suppliers to offer particular services.

Specific licence obligations

Requirement for codes, their approval and review

4.25. SLC27(1) includes a list of the current codes required. SLC27(2 and 3) require the licensee to consult us and energywatch in drawing up its code, and gives us 30 days to notify the licensee of any changes required to the code following its submission. SLC27(4,5,6 and 8) require the licensee to review its code when requested to do so by us, consult energywatch in that process, and to resubmit any revised code for approval. Depending on which of the above options is pursued these requirements could be removed, although it should be noted that the codes for

¹⁵ Review of Supplier's Corporate Social Initiatives (June 2005)

http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11774_15505b.pdf

site access (under SLC24) and energy efficiency (under SLC25) are still to be considered by other workgroups as part of the Supply Licence Review.

Communication of codes

4.26. SLC27(7) requires the licensee to provide copies of any code or revisions to us and energywatch. It further requires the licensee to draw customers' attention to the existence of the code at least once a year (this is generally done through the bill) and then to provide a copy free of charge to any person who requests it. As stated above we consider that a code or similar document is more likely to be of use to consumer advisers rather than individual consumers. But some obligation to communicate the content of any code or licence obligations to consumers would still seem appropriate in the interests of transparency. Depending on which option is adopted our current view is that a proportionate obligation would be the publication of a code or policy statement on the suppliers' website, drawing customers' attention to the document at least once a year via a message on or with bills, and the back-stop requirement to provide a copy free of charge to anyone who requests it. However, we would welcome comments on this particular aspect of communication.

Compliance with codes

4.27. SLC27(9) requires the licensee to comply with any arrangements set out in its codes. As mentioned above this acts as a disincentive on suppliers to include anything beyond the minimum requirements in a code. The aim should be to allow suppliers to go beyond the core service standards in what they offer customers. Depending on which option is chosen, this obligation will need amendment so that Ofgem will only be able to take enforcement action against breaches of the licence or minimum requirements in an Ofgem standard code.

SLC26: Record of and report on performance

Introduction

4.28. This condition requires the licensee to keep a record of its operation of the arrangements associated with the various codes of practice and statistical information on its performance. It must provide such information requested by Ofgem and provide an annual report to Ofgem and energywatch which must also be made available to anyone who requests this.

4.29. Over the last year we have been working with the industry and with energywatch to review the information that is required under this condition. The result of this review is that the volume of information required has been substantially reduced by around 50% overall. However, the review confirmed that there is value in Ofgem continuing to collect some information in this area to inform its understanding of issues affecting vulnerable customers and to help industry in benchmarking its performance. Much of the information collected is broad information about the areas covered by the codes (e.g. numbers of customers disconnected, average debt) rather than information on compliance with the codes per se.

4.30. The conclusion of this review was that there is an ongoing requirement for monitoring and for Ofgem to retain the power to request and publish information. However, it is our view that there is scope to review the current licence obligations in respect of supplier monitoring and annual reporting in order that these can be simplified.

Specific licence obligations

4.31. SLC26(1 and 2) require the licensee to keep records. These requirements do not appear to add anything over and above the requirement to provide information. In addition as drafted it is potentially burdensome if it requires companies to keep records over and above the information they provide to us. Therefore, we consider that this requirement could be removed.

4.32. SLCC26(3) requires the licensee to provide such information as we request and is the basis for the information currently collected and published by us. There is a question as to whether this obligation is needed as we have powers under Section 34 Gas Act 1986 and Section 47 of the Electricity Act 1989 to collect information to keep the markets under review. However, there is no enforcement mechanism if a supplier fails to comply with such an information request. In addition the information gathering power under SLC19(2) specifically excludes information that could be required under those sections of the Gas and Electricity Acts. Therefore we consider that there is an argument for retaining the information gathering power under SLC26(3) in its current form or as part of a revised licence obligation.

4.33. SLC26 (4 and 5) requires the licensee to provide an annual report on this area to us and energywatch, to publicise it and provide a copy to anyone who requests one. This is effectively the same information which we collect and publish under SLC26(3) above, and is arguably unnecessary duplication.

5. Other licence conditions

Chapter summary

This chapter focuses on other licence conditions that the workgroup has considered; SLC39 (complaint handling procedure), SLC43 (Contractual terms - methods of payment), and SLC45 (Security deposits).

These licence conditions apply to all customers, but can have a particular impact on vulnerable customers.

Question box

Question 1: Do competitive pressures, energywatch and the proposed Ombudsman scheme result in sufficient commercial incentives for suppliers to provide a complaint handling service such that regulation is no longer required?

Question 2: What are your views on the options for payment methods which suppliers should be obliged to offer (see paragraph 5.9), and are there any other options that we should consider?

Question 3: Would an exemption for smaller suppliers from the need to offer certain payment methods cause any problems for vulnerable customers if they could obtain frequent payment methods from most suppliers?

Question 4: If SLC45 on security deposits was changed, so the only requirement was the provision of a PPM as an alternative to a security deposit with a backstop provision for Ofgem to determine disputes, would this cause any problems for vulnerable customers given the falling numbers of security deposits and that some protection already exists under the Unfair Terms in Consumer Contracts Regulations 1999?

SLC39: Complaint handling procedure

5.1. SLC39 requires the licensee to have a code setting out its complaint handling arrangements, including the timescales for dealing with different types of complaint.

5.2. Given the extent of competition in the market it is Ofgem's initial view that there are pressures on companies to provide an effective complaint handling service. They also have an effective incentive to avoid escalation of complaints to energywatch and this incentive will strengthen with the proposed Ombudsman Scheme which Ofgem has called on suppliers to establish by July 2006 to deal with billing disputes (see also paragraph 2.6 above). On this basis, regulation in this area would not appear to be required.

5.3. However, we note that Annex A of the Electricity and Gas Internal Market Directives ("the Directives")¹⁶ requires that customers shall "benefit from transparent, simple and inexpensive procedures for dealing with complaints. Such procedures shall enable disputes to be settled fairly and promptly with provision where warranted for a system of reimbursement and / or compensation".

5.4. It is likely that compliance with the Directives is met by energywatch's remit for dealing with consumer complaints and/or the planned Ombudsman scheme. We note that the Directives do not appear to directly require suppliers themselves to provide complaint handling procedures. We intend to discuss the interpretation of the Directives further with the Department of Trade and Industry. If some obligation is required under the Directives, we consider that the condition should be redrafted in as minimal a way as possible.

SLC43: Contractual terms – methods of payment

5.5. SLC43(1) requires suppliers to offer a range of payment methods including PPM, cash or cheque at a range of frequencies including fortnightly or more regularly, monthly or quarterly in arrears. Provision for payments fortnightly or more frequently was highlighted by consumer groups who were concerned to maintain these requirements when Ofgem consulted on the Social Action Plan in 2000.

5.6. We also note that Annex A of the Directives require that customers are offered a "wide choice of payment methods".

5.7. For many vulnerable customers who may not have access to a bank account the ability to pay fortnightly (or even weekly) in cash, for example, is important in terms of managing their money and avoiding the build up of debt. Around 700,000 customers pay in this way. As part of our work on the Social Action Strategy, we are looking to support action by Government on financial inclusion which may help address this problem by increasing the number of people with basic bank accounts using direct debits. In the meantime it is clear that many vulnerable people are reliant on cash as a payment method.

5.8. The question is whether suppliers could be expected to continue to offer the full range of payment methods in the absence of regulation. Given our statutory duty to have regard to the needs of consumers on a low income it is our initial view that regulation is needed to ensure adequate payment arrangements are available for these customers. Moreover, as stated above, the Directives require that customers are offered a wide choice of payment methods.

5.9. In broad terms the options for regulation are:

- to maintain the status quo;
- to require a range of payment methods which must include payment through a PPM, payment by Fuel Direct, and payment at fortnightly (or more frequent) intervals by cash (as suggested by one supplier);

¹⁶ Directives (2003/55/EC) and (2003/54/EC)

- to limit the requirement to provide these prescribed payment methods only to those customers who are vulnerable;
- for those customers who through misfortune or inability to cope have difficulty in paying, offer Fuel Direct or PPM as an alternative to disconnection (as suggested by another supplier); or
- to replace the current obligation with a broader obligation to offer a range of payment methods, perhaps supported by guidelines, which would give more flexibility to accommodate new payment methods, such as weekly direct debit, as these develop.

5.10. The third of these options raises the question of whether we should limit the availability of frequent payment to customers on low incomes. We would welcome views on whether the practicalities of assessing eligibility would make such a restriction unworkable and indeed whether it is necessary given that in practice the only people who would want to pay in this way are people managing on a limited budget.

5.11. On the fourth option we note that this does not include a reference to fortnightly (or more frequent) payment, which can help those customers on low incomes manage their finances. However we would welcome any further views on this.

5.12. A potential concern with the current obligation is that it may impose an undue burden on small suppliers or limit competition by precluding an 'internet only' service, for example. There may therefore be a case for either limiting the application of this condition to suppliers above a certain size or providing an exception "where the Authority otherwise consents". This would still seem to provide adequate protection if vulnerable customers could obtain frequent cash payment arrangements from most suppliers.

5.13. We would welcome respondents' views on the extent to which suppliers could be relied on to offer an adequate range of payment methods in the absence of regulation and on the options above.

SLC45: Security deposits

5.14. Under SLC45(1) suppliers may not currently request security deposits from customers where the customer is prepared to accept supply through a PPM or where it is unreasonable to do so. Suppliers can demand a deposit in a number of different circumstances, typically where a contract is being entered into, for example on change of tenancy, where a customer has requested new terms and conditions or where the customer has breached the terms of their contract and been subject to disconnection.

5.15. Numbers of deposits held have been falling, and currently total around 6,000 for gas and electricity. The majority of these deposits are held by one supplier. There is a question whether specific protection needs to be retained in this area for vulnerable customers. The Unfair Terms in Consumer Contracts Regulations 1999¹⁷

¹⁷ SI 1999 No 2083

include provisions relating to the reasonableness of the size of deposits, although not quite as specific as the licence requirement of "1.5 times quarterly consumption or more as reasonable in all the circumstances".

5.16. There is therefore scope to remove a large part of this licence condition. However, given our statutory duty to have regard to the needs of consumers on a low income, it is our initial view that the requirement to offer the alternative of PPMs under SLC45(1) should remain, as well as the backstop provision for us to determine disputes under SLC45(7). We would welcome views on what regulation is needed in relation to security deposits.

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Appendix 1 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document. In particular, we would like to hear from consumer groups representing vulnerable customers who have not been able to attend the workgroup meetings.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. Responses should be received by 28 April 2006 and should be sent to:

Michael Knowles
Ofgem
9 Millbank
London SW1P 9GE

Tel: 020 7901 7118
e-mail: michael.knowles@ofgem.gov.uk

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: Further seminars with consumer groups will be held at Ofgem's Glasgow office on 31 March 2006 and Ofgem's London office on 3 April 2006. Having considered the responses to this consultation, we intend to incorporate views into the Vulnerable Customer and Codes Workgroup's report to the Steering Group of the Supply Licence Review, due in May 2006. There will then be a broader consultation on the Supply Licence Review in June 2006. Any questions on this document should, in the first instance, be directed to Michael Knowles using the contact details set out above.

Chapter: One

There are no specific questions raised in this chapter

Chapter: Two

Question 1: Are the current licence requirements effective in ensuring that suppliers exercise their right to disconnect for non-payment only as a last resort?

Question 2: Could the licence obligation to have procedures to distinguish between "can't pay" and "won't pay" and to identify failures in repayment arrangements be removed?

Question 3: Should suppliers continue to be required to accept payment by Fuel Direct?

Question 4: On ability to repay debt should the licence condition include a more prescriptive formulation, e.g. not exceeding the weekly Fuel Direct rate for those on benefits unless they agree to pay more?

Question 5: Should the moratorium on disconnecting certain categories of customers in the winter be extended to cover any customers who would be particularly vulnerable to the consequences of loss of supply?

Question 6: Currently the licence requires provision of information on PPM's including their operation, their advantages and disadvantages, recalibration and removal - is this information seen as effective? (In particular we would welcome evidence on any problems caused by delays in recalibrating or removing PPMs, and views on whether there should be a licence requirement referring to "timely recalibration").

Question 7: For PPM's should re-charging arrangements (and in particular distance to the nearest outlet for re-charging) be covered in the licence?

Chapter: Three

Question 1: Should the focus of requirements relating to the PSR remain on meeting the physical, safety, and communication needs of vulnerable customers or be extended to cover financial need?

Question 2: What are your views on the options for the categories of customers suppliers should identify in their PSR (see paragraph 3.13), and are there any other options that we should consider?

Question 3: What would be the practical issues and costs involved in requiring passing of PSR information on change of supplier?

Question 4: Is there evidence of problems that are not being addressed by the existing range of services?

Question 5: Are the eligibility criteria for the additional services adequately targeted at those who really need protection?

Question 6: Does the DDA provide an appropriate level of protection and is it an acceptable alternative to specific licence obligations (in particular those relating to blind and deaf customers)?

Question 7: What comments do you have on the options for reflecting the DDA in the licence (see paragraph 3.24)?

Question 8: Do each of the additional services currently required under the PSR need to be included as a specific licence requirement?

Question 9: How far can the market be expected to deliver each of these services?

Question 10: What burden do the existing obligations pose, and should smaller suppliers be exempt from providing any of the services?

Question 11: What comments do you have on the options for gas safety checks in paragraph 3.29, and are there any other options that we should consider?

Question 12: Should there be a specific requirement to provide information on the safe use of gas appliances?

Question 13: What different types of special controls and adaptors for appliances or meters are suppliers currently providing and is this an appropriate role for suppliers to fill?

Question 14: What further information is available on the cost of meter moves, and the circumstances in which they are provided?

Question 15: Are special quarterly reads an effective alternative to meter moves?

Question 16: What are your views on the marketing of special services for vulnerable customers (see paragraph 3.46)?

Chapter: Four

Question 1: What comments do you have on the following options where it is concluded that there is a need for an enforceable regulatory requirement?

Option 1 - Licence based obligations

Option 2 - A mandatory code of practice

Question 2: What comments do you have on the following options as alternatives to prescriptive regulation?

Option 3 - Principles based licence obligations supported by more detailed guidance

Option 4 - Requirements delivered through self regulation

Option 5 - Requirements delivered voluntarily

Question 3: Are there other options which we should consider?

Question 4: What are your views on the following proposal in paragraph 4.26 for communication of a code or policy statement?

Question 5: Given our proposal to retain the information gathering powers under SLC26(3), what are your views on removing licence obligations requiring suppliers to keep a record of their performance and provide an annual report?

Chapter: Five

Question 1: Do competitive pressures, energywatch and the proposed Ombudsman scheme result in sufficient commercial incentives for suppliers to provide a complaint handling service such that regulation is no longer required?

Question 2: What are your views on the options for payment methods which suppliers should be obliged to offer (see paragraph 5.9), and are there any other options that we should consider?

Question 3: Would an exemption for smaller suppliers from the need to offer certain payment methods cause any problems for vulnerable customers if they could obtain frequent payment methods from most suppliers?

Question 4: If SLC45 on security deposits was changed, so the only requirement was the provision of a PPM as an alternative to a security deposit with a backstop provision for Ofgem to determine disputes, would this cause any problems for vulnerable customers given the falling numbers of security deposits and that some protection already exists under the Unfair Terms in Consumer Contracts Regulations 1999?

Appendix 2 - The Authority's Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.¹⁸

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly¹⁹.

1.4. The Authority's principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- The need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- The need to secure that all reasonable demands for electricity are met;
- The need to secure that licence holders are able to finance the activities which are the subject of obligations on them²⁰; and
- The interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.²¹

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- Promote efficiency and economy on the part of those licensed²² under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;

¹⁸ entitled "Gas Supply" and "Electricity Supply" respectively.

¹⁹ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

²⁰ under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

²¹ The Authority may have regard to other descriptions of consumers.

²² or persons authorised by exemptions to carry on any activity.

- Protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity;
- Contribute to the achievement of sustainable development; and
- Secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- The effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- Certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation²³ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

²³ Council Regulation (EC) 1/2003

Appendix 3 - Glossary

D

[Disability Discrimination Act 1995 \(DDA\)](#)

See further in appendix 4.

[Directives \(Internal Market Gas Directive and Internal Market Electricity Directive\)](#)

Directives (2003/55/EC) and (2003/54/EC) concerning the common rules for the internal market in gas and electricity, respectively. In particular Annex A requires a number of consumer protection measures including a wide choice of payment methods, and transparent, simple and inexpensive procedures for dealing with disputes.

E

[Energy Retail Association \(ERA\)](#)

The Energy Retail Association is a trade association representing the interests of the six major domestic energy supply companies.

[energywatch](#)

energywatch is the Consumer Council set up under the Utilities Act 2000 to represent the interests of gas and electricity consumers.

F

[Fuel Direct](#)

This is the scheme administered by the Department of Work and Pensions to allow for payment to gas and electricity suppliers from sums which are deducted at source from social security benefits.

P

[Prepayment meter \(PPM\)](#)

Prepayment meters currently use electronic tokens, keys or cards. The customer therefore needs to be provided with a network of outlets where tokens can be purchased, or cards and keys can be charged up. This network of outlets needs to be linked to a payment settlement system for suppliers.

[Priority Services Register \(PSR\)](#)

SLC37(3)(a) requires suppliers to establish a list ("the Priority Services Register") of those domestic customers who, by virtue of being of pensionable age or disabled or

chronically sick, require information and advice in respect of services specified under that condition.

S

Supercomplaint

Section 11 of the Enterprise Act 2002 enables designated consumer bodies such as energywatch to make a complaint to the Office of Fair Trading or a relevant regulator, that any feature, or combination of features, of a market in the UK for goods and services is or appears to be significantly harming the interests of consumers. These complaints are called "supercomplaints".

Supply Licence Condition (SLC)

These are licence conditions that gas and electricity suppliers that have to comply with. Under the Gas Act 1986 or Electricity Act 1989 failure to comply with licence conditions can result in financial penalties and/or enforcement orders to ensure compliance.

Supply licence review

This is a comprehensive review that we are carrying out of all supply licence conditions. New licence conditions are expected to be implemented in early 2007.

Vulnerable customer and codes workgroup

This is one of the workgroups set up under the Supply Licence Review. Its original remit was to review the following conditions:

- SLC26 (Record of and report of performance on codes),
- SLC27 (Preparation, review of and compliance with codes),
- SLC35 (Code of practice on payment of bills and guidance for dealing with customers in difficulty),
- SLC36 (Code of practice on the use of PPMs),
- SLC37 (Provision of services for persons who are of pensionable age or disabled or chronically sick),
- SLC37A (Gas) (Pensioners not to have supply of gas cut off in winter),
- SLC38 (Provision of services for persons who are blind or deaf), and
- SLC39 (Complaint handling procedure).

Subsequently it was also asked to consider the following conditions:

- SLC43 (Contractual terms - methods of payment), and
- SLC45 (Security deposits).

The workgroup is due to submit its final report to the Steering Group of the Supply Licence Review in May 2006.

Appendix 4 - Disability Discrimination Act 1995 extracts

Section 1 - meaning of "disability" and "disabled person"

(1) "a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities."

(2) "In this Act "disabled person" means a person who has a disability".

Section 2 – covers past disabilities.

Schedule 1

Para 1(1) - includes mental illness only if clinically well-recognised.

Para 2(1) - long term effect if:

- has lasted for at least 12 months,
- period for which it lasts is likely to be at least 12 months, or
- likely to last rest of life of person affected.

Para 2(2) - where an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

Para 3(1) - severe disfigurement is a disability.

Para 4(1) - normal day-to-day activities only if it affects one of the following:

- mobility,
- manual dexterity,
- physical co-ordination,
- continence,
- ability to lift, carry or move everyday objects,
- speech, hearing or eyesight,
- memory or ability to concentrate, learn or understand, or
- perception of the risk of physical danger.

Para 6(1) - where a disability is treated or corrected (i.e. by medical treatment and the use of prosthesis or other aid) it shall still be treated as being a disability (with the exception of glasses or contact lenses).

Para 7(1) - if a person is on disabled persons register they shall be deemed to be disabled.

Para 8(1) - where a person has a progressive condition (such as cancer or multiple sclerosis) and an impairment which does not have a substantial adverse effect on ability to carry out day-to-day activities but which is likely to develop as such, that person shall be treated as disabled.

Appendix 5 – Collated summary of the existing licence requirements

Requirements where consensus to retain as formal obligations

| <i>GAS</i> | <i>ELECTRICITY EQUIV</i> | <i>COMMENTS</i> |
|---|---|---|
| SLC35 (2) Must include procedures (b) licensees to accept payment from social security benefits in appropriate cases | Ditto | Initial view obligation should remain - Fuel Direct may be a payment method that the market would not otherwise deliver. |
| (d) in making repayment arrangements, consider customers' ability to comply with them | Ditto | Initial view ability to repay debt should remain as a core licence obligation. However, preference to leave flexibility within the licence for suppliers to interpret ability to pay on a case by case basis. A more precise formulation on maximum weekly amounts to repay debt for those on benefits could still be included as guidance. |
| (e) ascertain, with the assistance of other organisations, the ability of customers to comply with repayment arrangements | Ditto | |
| (f) provide, where customer fails to comply with arrangements, a PPM (where safe and practicable to do so). | Ditto | Initial view this is a very important prior step that should be made mandatory before disconnecting a customer. |
| SLC35 (3) Prohibition disconnection of customers with payment difficulties otherwise than in compliance with COP | SLC35(3)(a) Procedures to avoid disconnection of customers with payment difficulties. | Initial view is that this should be incorporated into the other obligations on disconnection. |
| | SLC35(3)(b) procedures to avoid disconnection pensioners, disabled or chronically sick with payment difficulties during winter. | ERA voluntary safety net seems to be working effectively, but we consider that it is worth retaining the licence obligations to provide clarity and to ensure all suppliers are covered. |

Vulnerable Customers and Codes Initial Consultation

March 2006

| <i>GAS</i> | | <i>ELECTRICITY EQUIV</i> | <i>COMMENTS</i> |
|----------------|--|--|--|
| SLC35 (4) | Licensee to formulate code (a) particular regard pensioners (not covered in 37A), disabled or chronically sick. (b) avoid disconnection of those customers in winter months | See SLC 35(3)(b) | Initial view is that this should be incorporated into the other obligations on disconnection. ERA safety net seems to be working effectively, but we consider worth retaining licence obligations to provide clarity and to ensure all suppliers covered. |
| SLC36(2) | Code on PPM policy & procedures (b) calibration of PPMs for customers in difficulty to take account ability to repay debt. | Ditto | As for SLC35(2)(d) and (e), this requirement should remain and be subsumed into a single licence obligation on ability to repay debt. |
| SLC37(3) | Must include arrangements for (a) establishing a priority services register of pensioners, chronically ill or disabled. (b) customers to be notified annually of the existence of the PSR & how to be included on it. (c) maintenance PSR & info and advice to those customers on additional services in SLC37(2) | SLC 37(3)(a)(i) Ditto Ditto Ditto | Initial view should continue to be an obligation to identify those who are vulnerable (see options para 3.13). However, may not be necessary to be prescriptive as to means of informing of the existence of the PSR, and as may be room to allow suppliers to be creative in marketing. At present there is no requirement on suppliers to pass across PSR information when customers change suppliers. |
| 37(4) | (d) for provision of PSR information to the relevant Gas Transporter . | Ditto (to relevant DNO) | Given suppliers access to customer information on their database, and the need for distributors to comply with parallel obligations, our view is that this should be retained as a licence obligation. |
| SLC37A (1)&(2) | Not to disconnect gas during winter months where pensioner living alone (or living with another pensioner and /or under 18 year old) | | ERA safety net seems to be working effectively, but we consider that it is worth retaining the licence obligations to provide clarity and to ensure all suppliers are covered. |

| Requirements where there are a number of potential options | | | |
|--|---|--------------------------------------|--|
| GAS | | ELECTRICITY EQUIV | COMMENTS |
| SLC26 (3) | On written request, licensee must provide information to us & energywatch on its performance under the codes. | Ditto | Although powers under S47 Gas Act & S34 Elec Act to collect information to keep the markets under review - no enforcement mechanism if supplier fails to comply with request. In comparison enforcement mechanism for breach of this obligation. |
| SLC27 | The licensee must | | |
| SLC27 (4) | Review code if requested to do so by us | Refers only to codes, not statements | Some options in ch4 are likely to need some form of review mechanism to cope with changing circumstances but the precise form would depend on the approach adopted. |
| SLC27(5) | In reviewing code consult energywatch. | Refers only to codes, not statements | |
| SLC27 (6) | Submit any revisions to us for approval. | Refers only to codes, not statements | |
| SLC27(7) | (b) at least annually, inform customers existence of codes & provide copy free of charge if requested. | Refers only to codes, not statements | Depending on option chosen (see ch4) initial view proportionate obligation publication code / policy statement on suppliers' website, drawing attention at least annually, with back-stop to provide a copy free of charge if requested. |
| SLC27 (8) | No changes to be made to any code unless above procedures followed | Refers only to codes, not statements | Some options in ch4 are likely to need some review mechanism to cope with changing circumstances but the precise form would depend on the approach adopted. |
| SLC27 (9) | Licensee to comply with the arrangements or provisions set out in the statements or codes to which SLC27 refers | Refers only to codes, not statements | Depending on option chosen (ch4), this will need amendment so that we can only take enforcement action against breaches of licence or minimum requirements in Ofgem standard code. |

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| <i>GAS</i> | | <i>ELECTRICITY EQUIV</i> | <i>COMMENTS</i> |
|------------|--|------------------------------|--|
| SLC36(2) | (a) provide information on the operation and appropriateness of ppms | Ditto | Previously Public Accounts Committee queried the information to customers on disadvantages of having to pay more for PPMs. Question whether current guidance "customers should have to travel a max of 1 mile to purchase top-ups for PPM unless considered to be unreasonable" - should be included in the licence. |
| | (c) arrange recalibration of PPMs at the end of repayment arrangements or at price change. | Ditto | Question whether should be redrafted to refer to "timely recalibration" to take account of disadvantages with old technology. |
| | (d) arrangements to remove PPMs | Ditto | Question whether any consumer detriment is being caused by delays in removing PPMs. |
| SLC37(2) | Arrangements for the provision, on request without charge, for | | |
| | (a) annual safety examinations of gas appliances for pensioners, disabled or chronically sick, living alone who are owner occupiers. | NONE | One of our duties relates to the safety of customers - see options under para 3.29. Useful any further reports on effectiveness of checks and risks. Need to discuss further with HSE. |
| | (b) where reasonably practicable and appropriate for pensioners, disabled or chronically sick | | |
| | (i) special controls and adaptors for appliances and meters. | SLC37(2)(a) | Suppliers no longer have own showrooms selling appliances. On ability to recharge a PPM the DDA may provide appropriate backstop protection, (although note that Ofgem no enforcement remit DDA). |
| | (ii) repositioning of meters (iii - Gas) reimbursement of transporter to move meter | | Difficulties with reading a meter could reasonably be dealt with by special quarterly reads (see 37(2)(vii)). Still an issue with ability to recharge a PPM (as above DDA may provide appropriate backstop). |

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| GAS | | ELECTRICITY EQUIV | COMMENTS |
|----------|---|----------------------|---|
| SLC37(2) | (iv) special means of identifying representatives of the licensee ("password scheme"). | SLC37(2)(b) | Popular in particular with the elderly. Also requirement under SLC24 but advantages in ensuring the visibility of this service. |
| | (vi) bills to be sent to another person nominated by the customer. | SLC37(2)(d) | Our initial view still helpful to include this in some form to ensure visibility of the availability of the service. |
| | (vii) special quarterly reads & to inform customer of that reading, where neither vulnerable customer nor anyone living with them are able to read meter. | | One supplier estimated the cost of these as £11 per read. Seems reasonable requirement, and better alternative to a most costly meter move (see 37(2)(ii)). |
| SLC38(2) | Arrangements on request and free of charge | Ditto | |
| | (a) for blind or partially sighted customers provide billing information by telephone or other appropriate means. | Ditto | Area where the overlap with the DDA provisions is most marked. Disability Rights Commission guidance specifically refers to utility bills on request in alternative formats such as Braille or large print. But Ofgem statutory duty to have regard to the interests of pensioners, disabled and chronically sick. Ofgem has no enforcement remit under the DDA, necessary for individual consumers to take court action. |
| | (b) for blind or partially sighted and for deaf or hearing impaired customers, facilities for enquiring or complaining about bills or any other service. | Ditto | |
| SLC39(1) | Code on procedures for handling complaints from domestic customers | Ditto | Annex A of the Electricity and Gas Internal Market Directives require that customers shall "benefit from transparent, simple and inexpensive procedures for dealing with complaints". Initial view it is likely that this is met by energywatch's remit &/or the planned Ombudsman scheme. If some further obligation is required under the Directives, condition should be redrafted in as minimal a way as possible. |
| SLC39(2) | Must include timescales for complaint resolution | Ditto | |

| Requirements which could be removed | | | |
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| GAS | | ELECTRICITY EQUIV | COMMENTS |
| SLC 26(1) | Maintain records of operation of code arrangements | | These requirements do not appear to add anything over and above the requirement to provide information under SLC26(3). Also potentially burdensome if it requires companies to keep records over and above the information they provide to us. |
| SLC26 (2) | Where Domestic Supply Direction issued licensee must keep a statistical records. | Ditto | |
| SLC26 (4) | Each year must give to us and energywatch a report on performance. | | Effectively the same information which we collect and publish under SLC26(3), and is arguably unnecessary duplication. |
| | (a) publish & adequate publicity | Ditto | |
| | (b) send free copy on request | Ditto | |
| SLC26 (5) | Report presented in a standard form designated by us | Ditto | |
| SLC27 (1) | Applicability of SLC27 to SLC24,25,35,36,37,38 & 39 | Ditto | Subject to options in ch4 can be removed, note codes on site access (SLC24) & energy efficiency (SLC25) to be considered by other workgroups |
| SLC27 (2) | Must consult energywatch prior to preparing codes, and have regard to their representations. | Refers only to codes, not statements | Subject to options (ch4) can be removed. |
| SLC27 (3) | Must comply with any request by us to amend a code if within 30 days of submission. | Refers only to codes, not statements | |
| SLC35 (1) | Must submit for approval a code on payment of bills. | Ditto | Subject to options (ch4) can be removed. |
| SLC35 (2) | Must include procedures for distinguishing customers in difficulty | Ditto | Initial view requirement to distinguish "can't pays" and "won't pays" does not add to overall obligations. |
| | (a) provide information on how these customers might reduce their bills by more efficient use. | Ditto | Initial view energy efficiency advice a broader issue best dealt under SLC25. |

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| <i>GAS</i> | | <i>ELECTRICITY EQUIV</i> | <i>COMMENTS</i> |
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| SLC35(2) | (c) detect failures by such customers in complying with instalment arrangements | Ditto | Our view this requirement does not appear to add to the overall requirements, as would be done as part of credit management. |
| SLC35(5) | SLC35 subject to SLC27 Approval & code compliance | See SLC 35(4) | This obligation can be removed. See SLC27. |
| SLC36(1) | Submit PPM code for approval. | Ditto | Subject to options (ch4) can be removed. |
| SLC36(3) | SLC36 is subject to SLC27 Approval & code compliance | Ditto | This obligation can be removed. See SLC27. |
| SLC37(1) | Submit PSR services code for approval. | Ditto | Subject to options (ch4) can be removed. |
| SLC37(2) | (v) advice on efficient use | SLC37(2)(c) | Covered elsewhere (SLC25), does not appear to be any additional benefit linking to PSR. |
| | | SLC37(3)(a)ii advance notice supply interruption where customers electricity dependent | As obligations on distributors to provide notice of supply interruption to all customers under Reg 29 of the Electricity Safety Quality and Continuity of Supply Regulations 2002 - therefore scope to remove this. |
| SLC37(4) | SLC37 is subject to SLC27 Approval & code compliance | Ditto | This obligation can be removed. See SLC27. |
| SLC38(1) | Submit code for approval on blind and deaf services. | Ditto | Subject to options (ch4) can be removed. |
| SLC38(3) | SLC38 is subject to SLC27 Approval & code compliance | Ditto | This obligation can be removed. See SLC27. |
| SLC39(3) | SLC39 is subject to SLC27 | Ditto | This obligation can be removed. See SLC27. |

Appendix 6 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

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