

Supply Licence Review - Further Proposals

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Target audience: Gas and electricity suppliers and potential new entrants, network operators, gas shippers, consumer groups.

Overview:

Ofgem is committed to better regulation. We have worked with suppliers, customer groups and other stakeholders to review the standard conditions of the electricity and gas supply licences to see if they remain appropriate now that competition is firmly established in the retail energy market. We propose to cut the number of obligations in the licence in half to provide a simpler, clearer set of obligations in the standard conditions of the supply licences. Competition between suppliers will be a major factor in ensuring customers' interests are upheld - if they are unhappy with the price or service they are being offered they can switch to another supply company. We are therefore only proposing to retain a limited number of conditions that are necessary for the energy market to function properly and to protect the interests of customers, in particular those who are vulnerable.

In the document we set out for further consultation our proposed modified standard conditions and explain the decisions that underpin them. We plan to introduce the modified standard conditions in June next year.

Contact name and details: Nigel Nash, Head of Market Infrastructure

Tel: 020 7901 7065

Email: nigel.nash@ofgem.gov.uk

Team: Retail Markets

Context

This consultation forms part of our comprehensive review of the standard conditions of the gas and electricity supply licences aimed at ensuring that they are fit for purpose and meet the principles of better regulation.

This document invites views on our draft legal text for modifying the existing standard conditions of the supply licences. It also sets out the views of those who responded to the July consultation, our response to those views and our further thoughts on the outstanding issues discussed in that document.

The Supply Licence Review is a major part of our commitment to better regulation. We have identified and plan to remove those parts of the standard conditions of the supply licences that are no longer necessary because competition is firmly established. We have also reviewed and simplified those standard conditions that remain necessary such as the conditions designed to protect vulnerable customers.

Associated Documents

Reviewing the gas and electricity supply standard licence conditions (February 2005) Ref 51/05

http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10280_5105.pdf?wtfrom=/ofgem/work/index.jsp§ion=/areasofwork/supplylr

Gas and Electricity Supply Licence Review - Way Forward (August 2005) Ref 187/05

http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/12156_187_05.pdf?wtfrom=/ofgem/work/index.jsp§ion=/areasofwork/supplylr

Implications for Vulnerable Customers - Consultation Document (March 2006) Ref 42/06

http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/14157_4206.pdf?wtfrom=/ofgem/work/index.jsp§ion=/areasofwork/supplylr

Supply licence Review - Initial Policy Proposals

http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15653_Supply_Licence_Review.pdf?wtfrom=/ofgem/work/index.jsp§ion=/areasofwork/supplylr

DTI Consultation Energy Billing and Metering: Changing customer behaviour

<http://www.dti.gov.uk/files/file35042.pdf>

Table of Contents

Summary	1
Next Steps	2
1. Overview	3
Structure of this document	4
Resolving complaints: Means of redress	6
Government metering and billing consultation	7
EU Directives	8
Prospects for self-regulation and the use of sunset clauses	8
Next Steps	9
2. Duty to supply	10
Obligation to offer terms	10
Methods of payment	10
Respondents' views	11
Security deposits	13
3. Domestic Supply Contracts, Deemed Contracts and Objections ...	14
Governance of electricity objection rules	14
Respondents' views	14
Ofgem's view	15
Obligation to provide domestic contracts	15
4. Customer information	17
Energy efficiency advice	17
Notification of price rises	17
Respondents' views	18
Ofgem's view	18
Transportation adjustments	19
Marketing licence condition	20
5. Vulnerable customers and codes of practice	21
Gas safety information and free gas safety checks	21
Gas safety checks	23
Gas safety information	24
Information on prepayment meters	25
PPM recalibration	25
Special controls, adaptors and meter moves	27
Notification of supply interruption	28
6. Metering	29
Provision of domestic meters	29
Respondents' views	29
Two-year meter inspection	30
Respondents' views	30
Ofgem's view	31
7. Industry Codes and Agreements	32
Compliance with industry codes	32
Respondents' views	32
Ofgem's view	32
Respondents' views	33
Ofgem's view	33

Procedures for informing distribution companies of theft or damage	33
8. Other licence conditions including SoLR	34
Supplier of Last Resort (SoLR)	34
Respondents' views	34
Ofgem's view	34
9. Ex-monopoly supplier obligations.....	36
Top-up, standby and exempt supply services	36
PPMIP services	36
10. Framework for proposed modified standard conditions	39
Standard conditions	39
Supplementary document	40
Appendices	41
Appendix 1 - Consultation Response and Questions	42
Appendix 2 – The Authority's Powers and Duties	44
Appendix 3 - Glossary.....	46
Appendix 4 - Feedback Questionnaire	53
Appendix 5 – Draft impact assessment for gas safety checks and information.....	54
Objectives	54
Background	54
Current licence requirements and consultation	54
Gas safety checks	54
Gas safety information.....	55
Respondents' general views.....	56
Key issues	56
HSE comments, statistics and research.....	57
Options	59
Option 1: "Status quo option" – keep current arrangements	59
Option 2: Restrict current eligibility to those on means tested benefits with broader information requirement	59
Impacts, costs and benefits.....	61

Summary

Ofgem is reviewing the standard conditions of the gas and electricity supply licences as part of our drive towards better regulation. We are determined to ensure that licence conditions are simple, enforceable and remain necessary now that competition is firmly established in retail energy markets. This project continues to involve a significant commitment from all stakeholders, particularly suppliers and consumer representatives. Ofgem would like to thank everyone who has engaged in and contributed to this review.

This document is a further step in our consultation process, following the feedback we received on our July proposals. Our proposals are largely the same as those we consulted on in July. But in some areas we now recommend going further and removing or amending conditions where we are satisfied that either self-regulation or customer choice and the competitive pressures on suppliers will provide customers with adequate protection. We set out our latest thinking on the major policy issues we discussed in the July consultation and we consult for the first time on draft legal text for the modified standard conditions. The key themes are:

Removal and simplification of licence conditions - these proposals represent a reduction of about a half in the size of the standard conditions. We have also used clearer drafting to simplify obligations and produce better targeted regulation.

Striking the balance between competition and regulation - these proposals remove licence obligations where competition provides more effective protection for consumers. The customer's ability to choose and switch to the supplier of their choice in response to high prices or poor service is a key protection. Removing some of the restrictions will provide suppliers with more freedom to develop more innovative products. Customers have already seen the benefits of innovative products, for example where customers on fixed term contracts have avoided recent price rises.

Protection of vulnerable customers - this remains an important objective for Ofgem. Our proposals streamline protection for customers who have difficulties in paying bills and support the provision of special services for the physically vulnerable. Clear, targeted obligations will replace the current administrative requirements for a supplier to prepare seven separate detailed codes of practice that must each be approved, complied with, monitored and reported upon.

Opportunity for self-regulation - our proposals have sought to rely upon self-regulation wherever appropriate. We still think there are missed opportunities where we would have been willing to use self-regulation but suppliers have been unwilling or unable to develop proposals.

Promotion of innovation - we have sought to identify and remove licence conditions that could stifle innovation or the development of competition.

We are proposing some changes to the position we set out in July. These include:

- Removing the obligation for a supplier to provide domestic customers with the full terms of a contract within five days of entering into or offering to enter into it.
- Removing obligations requiring suppliers to provide services to support electricity prepayment meters as old technologies fall away.
- Introducing greater flexibility about how suppliers can notify price increases to their domestic customers, for example through the use of email.
- Removing the Authority's ability to determine disputes on security deposits.

We said in July that we welcomed the supply industry's development of the Energy Supply Ombudsman that gives individual customers a right to redress and compensation in the event of poor service. Ombudsmen schemes often provide a far more effective way to resolve an individual customer's problem than relying on regulation or licence conditions. The DTI has recently proposed legislation that will place ombudsman on a statutory footing. We think these proposals strengthen the case for removing a number of the existing licence conditions. This gives us further confidence that we can rely more in the future on the existence of independent resolution of disputes on customer service issues and therefore less on prescriptive licensed-based regulation.

Since July, we have also considered whether some of the remaining licence conditions should have "sunset" clauses. We think this could be appropriate where there is evidence that either self-regulation or competition between suppliers will provide adequate customer protection over time. If we decide to pursue this route, the relevant conditions could cease to have effect on a specified date. Alternatively, the sunset clause could specify criteria that the Authority would be required to assess, after undertaking appropriate consultation, to determine whether the obligation should continue for a further period. We invite suppliers, customer groups and other stakeholders to give their views on whether we should make more use of sunset clauses, and if so, to what conditions they should apply.

The EU Internal Gas and Electricity Market Directives set down certain basic obligations on energy suppliers throughout the Union. The obligations were designed to cover all 25 Member States where competition is often embryonic or still emerging. In a small number of cases, the Directives have prevented us from amending or removing licence conditions to tailor regulation to reflect the highly competitive GB retail market. The Commission has indicated that it is considering further energy legislation next year. This may allow the UK to persuade the Commission to amend the legislation, so that these obligations are not required in markets where competition is firmly established and where there are ombudsman schemes in place giving customers the right of redress and compensation.

Next Steps

We are asking for views on the proposals set out in this document, in particular on the proposed text of modified standard conditions of the supply licences by 2 March 2007. We intend to issue final proposals in April 2007 including the final proposed legal text for the modified gas and electricity supply standard licence conditions.

1. Overview

Chapter Summary

This chapter sets out the progress that has been made since the July consultation and describes the structure of this document. We also note the implications of the two EU Energy directives, (the IMED and IMGD), and recent proposals by the DTI for changes to the wider regulatory framework.

- **Question 1.1** Do you agree with the proposals set out in this document and, in particular, with the proposed modifications to the standard conditions of gas and electricity supply licences
- **Question 1.2** Are there any system implications resulting from the proposed changes that should delay the implementation of the modified standard conditions after June 2007?
- **Question 1.3** Are there any additional circumstances where you consider it appropriate to apply a sunset clause to an obligation? If so, how should that sunset clause work?

1.1. In the July consultation we asked two general questions on the approach we were proposing:

- Do you agree with the detailed proposals for modifying gas and electricity supply standard licence conditions set out in Appendix 8 and 9 of the July consultation? (Question 1.1)
- Do you have any general comments on the issues raised in the July consultation document? (Question 1.2)

1.2. Overall, respondents welcomed the proposals contained in the consultation. There was widespread support for the better regulation agenda aimed at removing unnecessary licence obligations and simplifying and clarifying the remaining obligations. Broadly, suppliers considered that in some areas we could go further in removing obligations. Conversely, customer representatives tended to conclude that, in some areas, our proposals may go too far in removing protection.

1.3. Given the essential nature of gas and electricity to customers, there is a continuing need to have special regard to the interests of vulnerable customers. However, our review has shown that self-regulation and less prescriptive regulation can work better for customers. We expect that vulnerable customers will be better served by the reforms we propose, with suppliers having more scope and more incentive to take responsibility for serving their vulnerable customers well.

1.4. Regulation often imposes costs and unintended consequences on all customers and for this reason our proposals are designed to provide protection for vulnerable customers where no better alternatives are currently available or where we are not sufficiently convinced that the market or self-regulation will provide. Better regulation is integral to our policy work and we have sought to apply the better regulation principles throughout this review we note that the Better Regulation Commission (BRC) has recently produced a report relevant to our project, 'Risk, Responsibility and Regulation', October 2006, <http://www.brc.gov.uk/>.

1.5. Against this background, these proposals are broadly in line with our July proposals, although some further scope for elimination and/or consolidation of conditions is proposed. In a number of areas we have made further policy proposals for the removal of regulation, both for those areas where we did not make firm proposals in July and where, based on the views that have been put forward in response to the July consultation, we have changed our position. These include:

- Removing the obligation for a supplier to provide domestic customers with the full terms of a contract within five days of entering into or offering to enter into it.
- Removing obligations requiring suppliers to provide services to support electricity prepayment meters as old technologies fall away.
- Introducing greater flexibility about how suppliers can notify price increases to their domestic customers, for example through the use of email.
- Removing the Authority's ability to determine disputes on security deposits.

1.6. In addition, we have been concerned for some time about the position of customers with token prepayment meters (PPMs), where those meters are not recalibrated for some time following a price rise. We intend to take regulatory action to address this by requiring that suppliers take all reasonable steps to recalibrate these meters in a timely manner and are considering removing a supplier's ability to object to customer transfers for debt, where that debt has been incurred as a result of a failure to recalibrate the meter. In addition we have been talking to suppliers and we will tomorrow (19 December 2006) publish a report which sets out our views on what suppliers should be doing to ensure they treat token PPM customers fairly.

Structure of this document

1.7. This document is the next step in our review. In particular the document:

- Presents draft legal text for the modified standard conditions, based upon the policy proposals we consulted on in the July consultation,
- Summarises the views of respondents to the July consultation,
- Sets out Ofgem's views on the questions posed in the July consultation informed by responses, and
- Highlights changes in policy from the proposals set out in the July consultation.

1.8. We follow the same structure as the July consultation. In the July consultation, we asked a series of specific questions and we consider the views of respondents to those questions in the relevant chapters below. We also discuss those issues where our thinking has moved on since the July consultation.

1.9. In Appendices 6 and 7 we examine each of the existing obligations in the standard conditions against the proposals made in the July consultation, and discuss further the views of respondents before setting out our decision as to whether to retain the obligations in the modified standard conditions. These appendices provide information on where to locate the retained or amended obligation in the proposed modified standard conditions.

1.10. Finally, Appendices 8 and 9 contain the proposed drafting for the modified standard conditions that reflect these policy proposals. They adopt modern conventions of style and writing to achieve greater clarity and precision. We believe that the proposed modified standard conditions offer a major improvement to the current ones. Obligations are presented clearly and concisely, with an overall reduction in the length of the standard conditions by about a half. We consider that the protection for customers will be enhanced as a result of the obligations being presented in more accessible language. Equally, the removal of unnecessary and outdated obligations may encourage innovation in the market and give greater confidence to potential new entrants. We also anticipate that the removal of obligations will reduce administrative costs to suppliers.

1.11. The modified standard conditions have been prepared in collaboration with the legal workgroup, established under the SLR Steering Group. We are grateful for their contribution in the preparation of the proposed modified standard conditions.

Impact assessments

1.12. While impact assessments are essential to good regulation, we do not think that impact assessments for all of the individual changes proposed to the standard conditions would be a proportionate or appropriate response to the need to understand the likely effects of our proposals. In fact, conversely, such an approach would be expected to add substantially to the burden of stakeholders. The approach we have taken to consultation has ensured active participation by all the key stakeholders at every stage in the formulation of our proposals. This has meant that we have been able to identify key areas for further analysis and opportunity for discussing options and possible unintended consequences.

1.13. The reports of the Steering Group and work groups have been widely circulated and published on our website and they form the basis for most of the thinking reflected in these proposals. This work has been supported by the consultation documents we published in February 2005, August 2005 and July 2006 together with the consultation aimed specifically at issues affecting vulnerable customers published in March 2006.

1.14. Nonetheless, we consider that two particular issues warrant specific impact assessments, gas safety checks and information and the two year meter inspection requirement.

1.15. Appendix 5 is a draft impact assessment of our proposals in relation to free gas safety checks and the introduction of an obligation for suppliers to provide customers with information on the dangers of carbon monoxide. As we are considering the introduction of a significant new obligation for licensees in this area, we think it is appropriate to publish a specific impact assessment in relation to it.

1.16. We also intend to publish an impact assessment on the proposals to remove the two year meter inspection requirements. For progress on this issue, we look to

the Energy Retail Association's (ERA) risk assessment and the HSE's views on it. We aim to issue our own impact assessment in January 2007.

1.17. We intend that our final proposals in April 2007 will be accompanied by a high-level assessment of the overall effect of the proposed modified standard conditions, in particular to gauge the likely level of industry costs that will no longer be required by regulation. This may draw on work done by government on the administrative burden of regulation.

Resolving complaints: Means of redress

1.18. In the July consultation, we noted that ERA suppliers had established the Energy Supply Ombudsman (ESO). This service is now operational and deals with disputes between customers and suppliers in relation to billing and customer service. While it is still too early to comment on the success of the ESO, welcome this approach and consider that it is a proportionate solution that provides clear incentives for suppliers to improve their customer service and when things go wrong, to resolve problems quickly and provide financial compensation where necessary. In this respect, we consider the ombudsman model to be a more effective means through which to resolve particular customer service issues than prescriptive regulation.

1.19. We signalled in the July consultation that there may be an opportunity to give further consideration to removing obligations from the supply licence as the Energy Supply Ombudsman develops (currently only the six major suppliers are signed up to the scheme). In October the DTI announced proposals to reorganise the provision of consumer representation across the utility sectors, starting with the energy and postal sectors to be implemented in 2008. It is proposed that energywatch will be replaced by a new organisation (provisionally titled Consumer Voice) and that energy suppliers will have a statutory requirement to be a member of a dispute resolution or ombudsman scheme, approved by Ofgem, which would deal with the full range of customer disputes.

1.20. These proposals are aimed at strengthening the arrangements for customers to have disputes resolved and to be compensated where they have received poor service. Such a backstop may further reduce the need for particular standard conditions to set minimum standards governing the interaction between suppliers and customers.

1.21. For example, we are proposing to maintain an obligation preventing a domestic supplier from charging a termination fee in respect of indefinite term contracts, except in particular circumstances. A potential example of such a circumstance is where the customer's contract specifies that an ombudsman has a role in determining disputes arising over the payment of a termination fee. However, should the ombudsman proposals go ahead as proposed by government, the customer will have a right to go to an ombudsman regardless of what their contract says (so making redundant any need for the Authority to consider derogations in

these circumstances). This example illustrates that as the wider policy framework develops, we may want to look again at the need for some obligations.

1.22. We would expect any statutory ombudsman to be able to review in principle all types of consumer complaints, including any to do with termination fees in contracts, and to be able to award compensation where appropriate. As the proposed arrangements become clearer, Ofgem will consider further the need for licence-based regulation in this area and other areas where the ombudsman may, in due course, provide effective protection for customers.

Government metering and billing consultation

1.23. The DTI are currently consulting¹ on a number of proposals stemming from the Government's energy review² and the requirements of the EU Directive on energy end-use efficiency and energy services (the 'Energy Services Directive'). The consultation includes proposals that suppliers bill customers based on an actual meter reading at least once a year, that bills include information designed to enable customers to compare this year's energy consumption against their consumption last year, and that visual displays should be provided showing real time energy usage. Following its consultation, the government may decide that the supply licences are an appropriate vehicle for implementing some of these requirements.

1.24. When considering the need for further measures on billing and metering, and the role of the supply licences in this regard, we think that the progress that self-regulation has made on these kinds of issues in the last 18 months should be taken into account. Ofgem wants customers to have access to the tools they need to reduce their energy use and for this goal to be achieved in a cost effective manner that works with the competitive energy retail market. Recent experience suggests that energy suppliers can be encouraged to put in place measures aimed at giving customers better information about their energy consumption in the same way that self-regulation is delivering in other areas of customer service. Self-regulation has led to the establishment of an independent ombudsman as well as an end to back-billing beyond a year from July 2007 and the creation of an industry billing code of practice. These measures increase the incentive on suppliers to obtain information about their customers' actual energy use and to ensure that this is accurately reflected in bills.

1.25. These achievements result from competition between suppliers and through Ofgem encouraging self-regulation. This experience suggests that direct regulation may not always be necessary to deliver the desired outcomes. Where direct regulation or legislation is thought necessary to meet the goals of the Government's energy review or to achieve compliance with the Energy Services Directive, there are

¹ DTI Consultation Energy Billing and Metering: Changing customer behaviour November 2006

² "The Energy Challenge" July 2006 <http://www.dti.gov.uk/energy/review/page31995.html>

benefits to making sure that it is not overly prescriptive, leaving individual suppliers to decide the method by which they meet these requirements.

1.26. This approach will also create an opportunity for suppliers to introduce mechanisms targeted at the needs of specific customer categories. Suppliers may deliver more accurate consumption information to customers through many different ways and regulation in this area risks inhibiting innovation. We believe that these considerations should be taken into account in any proposals that Government brings forward.

EU Directives

1.27. In respect of some obligations, there are areas in which we might, in principle, have chosen to go further in relying upon the market to protect customers. This particularly applies to some issues covered by the IMED and IMGD Directives, for example, the duty to offer terms and the obligation to notify price increases. These Directives have been transposed into UK law by the DTI, in some cases by supply licence provisions. Examples of issues where the IMED and IMGD constrained our ability to look more radically at the scope for reform include:

- The duty to offer terms in the IMED
- The requirement for customers to be offered a wide choice of payment methods
- The obligation for suppliers to notify directly customers of increases in charges

1.28. As the debate on the appropriate regulation for customers in the European energy markets develops in the context of the Commission's third package, we intend to make the case in Europe for national regulators to adapt regulatory protections to reflect the state of competition in the domestic market. Where markets are competitive, some aspects of the regulation of a supplier's interaction with customers may be unnecessary, and may potentially hold back suppliers from offering a full range of solutions to customers. This could lead to higher prices and less product innovation for customers. If future EU law recognises this position and gives greater flexibility for Member States on when to apply supplier obligations in a fully competitive market, there might be further scope for removing obligations from the supply licences.

Prospects for self-regulation and the use of sunset clauses

1.29. Our proposals take forward the role of self-regulation in a number of areas. This reflects developments in self-regulation as a whole in the last couple of years. However, we believe suppliers could further challenge Ofgem and other stakeholders to consider dealing with licence obligations through self-regulation – for example through the development of the billing code. Where self-regulation is evolving so that it might soon provide comfort that the protections are in place, suppliers could challenge Ofgem to use sunset clauses more widely. The BRC considered the use of sunset clauses in their “Less is More” document. They supported the use of sunset clauses to be good practice “as a means to trigger reviews and ultimately to get rid of unnecessary or unsuccessful regulations.”

1.30. Sunset clauses come in different forms. We see three possible variants:

- The condition falls away on a predetermined date. If Ofgem decides the condition needs to remain in place, it consults and proposes re-inserting it through the collective licence modification process in the Gas and Electricity Acts. If the relevant percentage of suppliers objects to it, Ofgem may make a reference to the Competition Commission to reinsert it.
- The condition falls away on a predetermined date unless the Authority, after consulting, decides to extend that date. (There may be limitations imposed on the Authority's ability to extend that date.)
- Ofgem makes a general commitment to review at a certain date, but does not include this in the licence.

1.31. We invite views on whether there are any additional circumstances where it would be appropriate to apply a sunset clause to an obligation, what expiry dates may be appropriate and whether the Authority should be able to extend that date (and if so, in what circumstances). We would expect the case for sunset clauses to be stronger where there is reason to believe that the competitive market or self-regulation will develop in such a way that a condition is no longer necessary.

Next Steps

1.32. We are asking for views on the proposals set out in this document and, in particular, on the proposed modifications to the standard conditions of gas and electricity supply licences by 2 March 2007. We intend to issue a final set of proposals in April 2007 including the final proposed legal text for the modified standard conditions. We are also asking for views as to whether any of the proposals have system implications for market participants that would prevent suppliers from complying with the modified standard conditions from the proposed implementation date of June 2007.

1.33. The April document will include notices under section 23 of the Gas Act 1986 and section 11A of the Electricity Act of our formal proposals to modify the gas and electricity supply licences. If within the notice period either the Secretary of State directs the Authority not to make the modification, or 20 percent of relevant licence holders by number or 20 percent of relevant licence holders weighted by market share object to the proposals, the Authority may not make the modification. If licensees do object in sufficient number, the Authority may make a reference to the Competition Commission if we still want to proceed with the modification. If the Competition Commission then reports that it is in the public interest for the modification to be made, the Authority may then make it.

2. Duty to supply

Chapter Summary

This chapter explains our reasoning for retaining an obligation to offer terms, the introduction of a threshold below which the obligation to offer certain payment methods would not apply and the removal of the Authority's role in resolving disputes regarding security deposits.

- **Question 2.1** Do you agree that the standard conditions do not need to provide a special mechanism for Ofgem to resolve disputes between suppliers and customers over security deposits?
- **Question 2.2** Do you agree with the proposed threshold for application of the obligations to offer a range of payments methods?

Obligation to offer terms

2.1. In the July consultation we asked: Should the obligation to offer terms to domestic customers be retained? (Question 2.1). SLC 32 currently requires domestic suppliers to offer to supply all domestic customers in the area defined in their licence, and to supply a customer who agrees to the terms offered. There was a wide range of views on this issue, from those who considered it simply unnecessary in a competitive market to those who wished to see it strengthened. The majority of suppliers supported its retention, as did HSE. Centrica and SSE did not, noting that the development of competition was such that there was no evidence that suppliers would choose not to supply certain customer groups if the obligation was removed. Customer representatives were in favour of retaining the obligation. energywatch stated that they considered that the obligation should be strengthened to an obligation to provide reasonable terms. However, without such a step they concluded the obligation was weak.

2.2. We would expect that suppliers will actively offer terms to all customers, although individual suppliers, particularly new entrants, may elect to focus on specific groups of customers as happens in many other markets. However, we note the requirements of the IMED and therefore intend to retain the obligation in a simplified form (see modified SLC 22).

Methods of payment

2.3. We asked two questions on the obligations for suppliers to offer different payment methods to domestic customers.

- Do the obligations to offer defined methods of payment and frequency (SLC 43) present a significant barrier to entry? (Question 2.2)
- Would suppliers cease to offer the defined methods of payments if the obligation was removed? (Question 2.3)

2.4. In the July consultation we proposed to retain obligations for a supplier to offer domestic consumers a minimum specified range of payment methods (regular cash payment, PPM and Fuel Direct) but for the Authority to be able to issue derogations on a case by case basis. We indicated that we might expect to give derogations where we were convinced that the obligation might undermine a supplier's business model and/or deter new entry.

Respondents' views

2.5. A number of consumer groups highlighted that frequent cash payment is vital for the two million households without a bank account who may not want to incur the additional expense of taking supply through a PPM. CAB was concerned that if the current obligations were removed suppliers would not provide more costly payment options. National Energy Action noted that suppliers are free to set their own tariffs for different payment methods, and that there should be a requirement for guidance which outlines the maximum acceptable difference between various tariffs. Some consumer groups wanted more clarity on the proposal to give derogations to the obligation on a case by case basis. Other consumer groups wanted the obligations to apply to all suppliers.

2.6. A number of suppliers agreed that a minimum range of payment methods should remain, but were concerned that derogations could distort competition. Scottish Power considered that if smaller suppliers were given derogations then existing suppliers would see average debt increase as they lost low risk customers, which would lead to increasing prices for remaining customers.

2.7. Smaller suppliers had a range of views. Bizz Energy considered that there was an issue of proportionality and that large suppliers had sufficient customers paying by cash to make the obligation administratively cost effective in the way that it could not be for small suppliers. Good Energy gave the example of the failure of any independent internet energy provider to enter the market, competing to serve customers, as an example of the effects of the current restrictions. They said that if new suppliers had been able to enter the market offering only direct debit there would have been several more players in the market. However, Smartest Energy did not believe that the current obligations presented a barrier to entry.

2.8. Centrica considered that if this obligation were removed most, if not all, current suppliers would continue to offer these payment methods in the short term, although it was unlikely that new entrants would offer the complete range. SSE did not believe that suppliers would cease to offer customers a range of payment methods if the obligation was removed from the licence. SSE commented that it was in suppliers' commercial interests to make different methods of payment available to ensure that the customer will be able to make payment for the energy that they have used. Professor Stephen Littlechild argued that in a competitive market you would expect a range of payment methods to be offered to meet customers' needs, although the full range would not necessarily be offered by all suppliers. He did not see the need to oblige every supplier to offer all types of payment method to all types of customer.

Ofgem's view

2.9. In a competitive market we would expect to see a range of payment methods being offered to meet customer needs, although we recognise that not all suppliers will necessarily be offering every method. Suppliers may choose to restrict the range of payment methods they offer, in order to focus on particular groups of customers or to reduce costs, particularly when entering the market. If a supplier was not offering the payment method that the customer wants, then the customer is free to switch to another supplier that does.

2.10. In certain instances we recognise that customers may not be able to make such a choice - for example where they are unable to switch through debt or through the conditions of a tenancy agreement. We also recognise that around two million households, many of whom may be vulnerable, do not have bank accounts. Removal of cash payment services, either in terms of credit tariffs or in relation to pre-payment metering, could have serious implications for these customers. However, we note that the large suppliers have confirmed that they would generally offer a variety of payments methods regardless of this requirement, at least in the short term. The current restriction may be considered to be a barrier to market entry, since new entrants to most markets typically do not choose to offer the full range of services found in that market. There may also be issues with regard to proportionality, given the fixed costs associated with setting up cash and pre-payment services. One supplier looking to enter the domestic market has suggested that it would cost around £50,000 to set up the arrangements to support the required payment methods. These concerns were recognised in our July consultation where we proposed that the Authority would be able to grant derogations relieving a supplier of this obligation (in whole or in part).

2.11. Since July, we have given further thought to how such a derogation approach might work and are now proposing that the obligation to offer cash and pre-payment services to customers should not apply to suppliers below a certain size. It has been argued that the fixed costs of putting in place the arrangements to support payment methods for which the supplier does not expect to have many, if any, customers, may deter companies from entering the market. While all suppliers face the start up costs (and transactional costs) associated with delivering these payment methods, larger suppliers are better able to meet these costs, both in terms of being able to absorb the costs and to spread them over a wider customer base. In our view this is the only circumstance that we would envisage granting a supplier a derogation from the obligation and as such it would be a simpler and cleaner to address this matter on the face of the licence rather than through a derogation arrangement. Including these arrangements clearly within the licence is, in our view, a more transparent and administratively efficient solution.

2.12. In setting the threshold for the exemption it is important that the level does not deter new entry but also that it is not set too high, as other (larger) suppliers will be incurring the costs associated with providing these payment methods. We further consider it is more appropriate to adopt a 'per licensee' approach rather than a 'per corporate group' approach on the basis that these costs will need to be met by each individual licensee in establishing the necessary administrative and contractual

arrangements needed to offer these payment methods – adopting a per corporate group approach be unlikely reflect this. Our current view is that an appropriate threshold would be 50,000 domestic customers as we consider that licensees with this number of customers will be able to meet the costs of providing these services. We welcome views on whether this size threshold is appropriate, and if not, on what would be an appropriate level. Respondents who propose a particular level are asked to clearly set out their reasons for doing so (providing supporting data where available).

2.13. While a small supplier would, under our proposal, be exempted from offering a PPM when offering a supply of gas or electricity, they would not be able to disconnect a customer with payment difficulties unless they had taken all reasonable steps to recover sums owed through a PPM, regular payments by instalments or, where available, Fuel Direct were first offered. We consider this backstop protection for customers to be an essential step before disconnection. The EU Directives (the IMED and IMGD) require Member States to ensure that household customers are offered a “wide choice of payment methods”. It follows from this that some form of legislative or licence measure is required by way of implementation. We believe our proposal to modify the requirement in the way suggested meets this requirement.

Security deposits

2.14. In the July consultation, we proposed to simplify the arrangements for regulating the use of security deposits (SLC 45). In particular, we proposed to retain the role for the Authority to determine disputes over the reasonableness of the deposit required by the supplier together with an overarching obligation that where a security deposit was demanded, the circumstances and the value of that deposit should be reasonable. The information reported to the Steering Group concerning security deposits indicates that they are not commonly used.³ We therefore think that it is sufficient to maintain a test of reasonableness (modified SLC 27.3 and 27.4 in Appendix 8 and 9) without the additional provision for the Authority to make determinations.

2.15. Ofgem has never been required to make a determination under this provision and it is highly unlikely that retaining it would be of significant benefit to customers. If suppliers do not act reasonably, we would still be able to rely on our enforcement powers to secure compliance with the licence. There may be scope in the future, for this issue to be dealt with by an industry ombudsman (with relevant powers), particularly if a scheme underpinned by statutory requirements has come into effect. In those circumstances we could review whether we need to retain any licence condition in respect of security deposits.

³ Between July and September 2005 1,218 security deposits were being held by suppliers in the electricity market. Of these 436 had been held for more than 12 months and the average value of the deposit was £112.47p. Between July and September 2005 4,662 security deposits were being held by suppliers in the gas market. Of these 1,701 had been held for more than 12 months and the average value of the deposit was £147.76p.

3. Domestic Supply Contracts, Deemed Contracts and Objections

Chapter summary

This chapter deals with the removal of the obligation to provide domestic customers with the full terms of a contract within five days of entering into it and our proposals for the objection rules in electricity to be located in the standard conditions of the electricity supply licence rather than the MRA.

Question 3.1 Do you agree that the rules on when a supplier may object to a customer transfer should be set out in the standard conditions of the electricity supply licence rather than the MRA?

Question 3.2 Do you agree with our proposal to remove the obligation for suppliers to provide the full contract terms to a domestic contract within five days of the customer entering into it?

Governance of electricity objection rules

3.1. In the July consultation we asked: Should the governance of the rules for when objections can be made in electricity be removed from the MRA⁴ and placed in the electricity supply licence? (Question 3.2)

3.2. Currently the rules regarding the circumstances in which a supplier may prevent a customer transfer are in the standard conditions of the gas supply licence, but in the MRA for electricity suppliers. We asked in the July consultation document whether this difference needed to be resolved.

Respondents' views

3.3. Suppliers were split in their views as to whether it was appropriate for the MRA rules dealing with the use of objections to be placed in the electricity supply licence. Bizz Energy, ScottishPower, SSE and EDF favoured moving the rules to the licence. EDF considered that self-governance arrangements were not strong enough to deliver the necessary level of customer protection and to "ensure that appropriate sanctions can be imposed on and enforced against any and all transgressors".

3.4. Centrica, RWE, Good Energy and Smartest Energy argue that the rules should be maintained in the MRA. Good Energy considered that the current arrangements work and that bringing them into the standard conditions of the electricity supply licence would make it more difficult to respond to changes in market conditions. RWE noted that the current arrangements should be maintained until the ICCR project had reported.

⁴ Master Registration Agreement: An industry agreement in electricity between suppliers and distributors dealing with a range of industry processes focussed on supporting customer transfers.

Ofgem's view

3.5. We think that the benefits of placing the objections rules in the standard conditions outweigh the case for leaving them in the MRA rules. We also think that there are advantages for companies operating in both markets to have a consistent approach to the interpretation and enforcement of the objection rules.

3.6. Experience in this area has shown that suppliers are, for understandable commercial reasons, very sensitive about the interpretation of objection rules. This leads to strong differences of view when disputes arise. While the MRA has in many respects proved to be a highly effective example of industry self-governance, the experience with objection rules is less positive. All cases of breach of MRA requirements have been related to objections, and the need for subsequent investigations and interpretation of the objection rules has generally been a source of frustration for the parties involved.

3.7. Although questions that arise under the MRA can be appealed to Ofgem, this adds time to the process of resolving the issue. If there is a dispute between two parties on the use of objections, the dispute must first be dealt with under the MRA compliance arrangements. Since misuse of the objections process damages competition and the interests of those customers wishing to change supplier, remedial action needs to be taken as quickly as possible to limit the detriment to customers and to provide confidence that the incentives are there for market rules to be respected and enforced. We therefore propose that the objection rules are aligned in the standard conditions of the electricity supply licence with those in the standard conditions of the gas supply licence.

3.8. In effect this will replicate the principal rules contained in the MRA in the standard conditions of the electricity supply licence. This will provide a more coherent approach to the interpretation of the objections rules, faster resolution of problems arising between suppliers and greater deterrence to the misuse of the objection arrangements.

3.9. To avoid unnecessary duplication, a party to the MRA can propose a consequential modification to the MRA to remove those obligations contained in the licence from the MRA (with effect from the date the proposed licence modifications have effect). We envisage that those rules relating to technical aspects of the operation of the objection process will be retained in the MRA.

Obligation to provide domestic contracts

3.10. In the July consultation we proposed to retain the obligation in the current standard condition (SLC 44(2) and (3)) for the supplier to provide a copy of the full terms of a contract to a domestic customer within five days it being entered into, or

the offer being made (if not rejected by the customer). A number of respondents commented that the obligation was unnecessary, as it is in the supplier's interest to provide a copy of the contract. We also note that the AES Code⁵ requires that a copy of the contract is provided by the sales agent. Additionally, the Consumer Protection (Distance Selling) Regulations 2000 requires that key information about the contract is provided to the customer.

3.11. energywatch said that there was merit in the customer having "written confirmation of the legal relationship with the supplier and all its terms". Discrepancies, including cases where the customer does not believe that they have entered into a contract, could therefore be detected earlier. We agree, but think that the incentives on suppliers generally and through consumer protection regulations, the AES Code and competitive pressure to provide good customer service will be sufficient to ensure that suppliers continue to provide contract details to customers.

3.12. We think the obligation is unnecessary, especially given that an obligation on the supplier to take all reasonable steps to draw to the attention of the customer the principal terms of the contract before the customer enters into it (modified SLC 23.1), will be retained.

⁵ The Association of Energy Suppliers Code of Practice for face-to-face marketing of energy supply. The AES has as its parent body the Energy Retail Association (ERA).

4. Customer information

Chapter summary

This chapter sets out our proposals to:

- Remove the obligations to provide energy efficiency advice to non-domestic customers.
- Introduce greater flexibility in how price rises and other changes to the significant disadvantage of customers are notified to domestic customers.
- Remove obligations requiring gas suppliers to inform customers about transportation adjustments.
- Remove reporting requirements from the marketing licence condition.

Energy efficiency advice

4.1. In the July consultation we asked: Should domestic suppliers continue to have an obligation to provide energy efficiency advice? (Question 4.1)

4.2. The current standard conditions require advice on energy efficiency to be provided to domestic and non-domestic customers. We proposed to remove the requirement in respect of non-domestic customers, but maintain a simplified obligation for domestic customers. The majority of respondents supported our proposals. Consumer representatives also supported the retention of an obligation to provide advice to domestic customers in payment difficulty.

4.3. Against the background of climate change and the need to reduce carbon emissions, the provision of energy efficiency advice is clearly important. However, there is no evidence that standardised obligations for suppliers to give information to non-domestic customers raise customer awareness or change their behaviour. If business customers want this advice, they can seek advice targeted to meet their needs from specialist companies, public bodies or organisations such as the Carbon Trust, which has been established specifically to provide advice and assistance on energy efficiency. We therefore intend to stay with our July proposal. The proposed modified standard condition is SLC 30.2 and 30.3 in Appendices 8 and 9.

Notification of price rises

4.4. In the July consultation we asked: Should domestic suppliers continue to have an obligation to provide individual notification to consumers where they are implementing a price rise? (Question 4.2)

4.5. The current licence requires domestic suppliers to give individual notification to a customer where the supplier makes a unilateral change in accordance with the terms of the contract to increase the price or otherwise makes a change to the significant disadvantage of the customer.

Respondents' views

4.6. Those suppliers who supported retaining the requirement argued that the specification of the notice requirements should allow for easier and less costly operation of the obligation. Some also said that the current arrangements were not clear where a customer gave notice but did not subsequently switch supplier. Scottish Power suggested that notification should be able to be given electronically. SSE argued for the removal of the obligation or alternatively that notification should be permitted through mass media.

4.7. Customer representatives considered the obligation to be valuable, but agreed that there should be more flexibility. energywatch noted the concerns that suppliers had about the cost of managing the unpicking of price rises, but supported the retention of the obligation and said that transparency of information is vital for customers to make informed choices.

4.8. However, major suppliers argue that the current obligation is expensive to maintain. Information provided by them suggests that it has cost the industry around £15 million this year to communicate two sets of price rises. They say that the vast majority of consumers effectively find out from the mass media, rather than their individual letters, and therefore they wonder if this is customer money well spent. Stephen Littlechild has commented: "Why do you trust suppliers to adjust prices and quality, but not to tell the customers in an adequate way what they are doing?"

Ofgem's view

4.9. The IMED and IMGD require that customers are notified directly of price increases no later than one "normal billing period" after the increase comes into effect. This is an area where we think that regulation at the European level could be updated to permit suppliers greater flexibility to inform customers of contract changes in the way they think best meets the needs of their customers, where the market is sufficiently competitive and customers have effective choice. We also note that the way the current obligation is implemented was commented on during the Davidson Review⁶, where it was described as 'gold-plating' the requirements of the EU Directives. We think that, although the requirement for individual notification should be retained, there should be far more flexibility for suppliers to manage the requirement to help them reduce its cost.

4.10. We are proposing the following arrangements:

- Suppliers have up to 60 working days following the implementation of a unilateral change (in accordance with their contract) to notify the customer.

⁶ Davidson Review of the Implementation of EU Legislation
http://www.cabinetoffice.gov.uk/REGULATION/reviewing_regulation/davidson_review/

- Notice can be given using electronic means where the customer agrees (for example, email or text messaging rather than the current requirement for notification to be given in writing by post).
- The unilateral change may not be applied if the customer gives notice terminating the contract no later than 10 working days after the receipt of the notification from the supplier, and the licensee subsequently receives notification (through the normal industry processes) within 15 working days that the customer is switching to an alternate supplier.

4.11. This final element is designed to resolve the ambiguity in the current arrangements where the customer terminates the contract but subsequently fails to transfer to a new supplier. The proposed draft legal text of the obligation is set out in modified SLC 23.3-23.7 in Appendices 8 and 9.

Transportation adjustments

4.12. Currently, standard condition 42(4)(b) of the gas supply licence requires suppliers to take particular account of the information they provide to customers where the supplier expresses its charges as being subject to transportation adjustments. Where they do, then suppliers are required⁷ to inform customers, on request, of the likely level of those charges. We are now proposing that this obligation is removed.

4.13. The issue relating to Gas Transporter charging methodologies including transportation adjustments is a historic one. These charges arose in two instances. Firstly, where Gas Transporters made supplemental charges for laying pipes and connecting new sites. Such supplemental charges have been prohibited for new networks from 31 December 2003. They do however exist for some networks in place before this date. However, there is a corresponding licence requirement on Gas Transporters who are required to publish the details of any supplemental charges and provide the information to any person on request⁸. Information on supplemental charges is therefore available for both suppliers and customers on affected networks if they ask for it.

4.14. The other instance is where an Independent Gas Transporter (IGT) charges more or less than the incumbent Distribution Network (DN). The transportation charges for IGT networks built after 1 January 2004 for have been capped under the Relative Price Control (RPC) at the level of the incumbent DN. However, networks constructed before this date are able to make higher charges than the incumbent DN⁹.

⁷ Under Gas SLC 42(4)(b) and (5) of the gas supply licence

⁸ Under Gas Transporter SLC 4c (5)(b)

⁹ Charges for such sites are moving towards the caps imposed by the RPC. This will be achieved by 2020.

4.15. In all cases we would expect a supplier to provide information to customers on the level and make up of their charges. We therefore do not consider that this obligation is needed to provide customer protection. All suppliers will be subject to the same transportation charges to supply a particular site. Suppliers will determine the extent to which they pass through any transportation adjustments as part of their overall price offerings to customers.

Marketing licence condition

4.16. We stated at the start of this review that the standard condition (SLC 48) dealing with marketing of gas and electricity to domestic customers would not be within the scope of the review. We are however proposing to update the text of the condition and to make one change in respect of the obligations it contains, removing the requirement for the supplier to maintain records of compliance and to compile quarterly reports.

4.17. SLC 48(7) to (9) requires suppliers to maintain a record of their compliance with the marketing licence condition, provide quarterly reports on their compliance with the condition to Ofgem and energywatch; and to provide a copy of that report to any person who requests it. We think this requirement is no longer necessary for monitoring suppliers' activity with regard to door-step selling. We propose to remove these obligations, and rely on our general information gathering powers to request this, and any other relevant information, in the event that an investigation into a possible licence breach is undertaken. energywatch have indicated their support for this proposal.

5. Vulnerable customers and codes of practice

Chapter summary

This chapter confirms our proposals in relation to:

- Narrowing the eligibility for free gas safety checks to pensioners, disabled and chronically sick customers on means tested benefits.
- Broadening the requirement to provide information to all customers on gas safety issues.
- Introducing clearer requirements for the timely recalibration of prepayment meters.
- Removing the obligations related to the provision of special controls and adaptors and meter moves.
- Removing the obligation to notify supply interruptions.

Gas safety information and free gas safety checks

5.1. The gas licence (SLC37(2)(a)) requires suppliers to provide annual free gas safety checks on request to owner occupier households¹⁰ where all the occupants are either of pensionable age, disabled, or chronically sick; or are such occupants and are living with a person under 18 years old. In July we proposed to amend this requirement, to make free gas safety checks more targeted by limiting eligibility to those currently qualifying who are on benefits.

5.2. It is important that customers are aware of the potential dangers of gas and the benefits of having their appliances tested for safety. We proposed, as part of our overall package of measures in this area, to introduce an obligation on suppliers to provide information to all customers on gas safety issues and sought views on what that information should be. We asked for views on the appropriate scope and format for information to all customers on: the safe use of gas appliances, the benefits of gas safety checks, the dangers of carbon monoxide poisoning and the benefits of carbon monoxide alarms and where should customers seek assistance if gas appliances are condemned? (Question 5.3)

Respondents' views

5.3. All respondents accepted that safety checks should only be free for those who cannot afford to pay for them. However, some consumer groups argued that the eligibility for free checks should be extended to all owner occupiers on benefits. Age

¹⁰ The requirement applies where a gas fitting is not required to be inspected under an annual landlord check required by the Gas Safety (Installation and Use) Regulations 1998 made under the Health and Safety at Work etc Act 1974

Concern considered that other people on the Priority Service Register (PSR)¹¹ who do not receive benefits should be offered gas safety checks at cost.

5.4. CO Gas Safety wanted the gas safety check to have a prescribed procedure and to include a test for carbon monoxide leakage with a flue gas analyser.

5.5. Centrica were concerned that any increase in volume or cost of safety checks would be at the expense of wider budgetary provision made for customer safety awareness. A number of other suppliers considered that eligibility for free gas safety checks should be limited and that a risk based approach could be applied.

5.6. In terms of the provision of information, a number of consumer groups supported information being available to all customers. energywatch also considered that it was vital that suppliers are obliged to signpost vulnerable customers who have their appliances condemned to sources of help, either at the point they are condemned or through appropriate supplier follow up. HSE commented that many consumers are not aware of the dangers so would not seek information on request.

5.7. Scottish Power, npower, and SSE had concerns about a requirement to provide information to all customers, and suggested that responsibility should be placed on manufacturers and installers. Most suppliers mentioned that they already provided information voluntarily on carbon monoxide dangers and the benefits of alarms. E.ON considered that the licence should not be prescriptive on the format and frequency, and that annual untargeted communication was likely to be ineffective and wasteful. Centrica said that a multi-message leaflet will have less impact than a single topic leaflet about carbon monoxide.

Ofgem's view

5.8. A draft impact assessment on gas safety issues is attached at Appendix 5. It is based on consultation with stakeholders, and the HSE's research on carbon monoxide. It sets out a number of options and our proposals and we welcome comments on our assessment and conclusions.

5.9. Overall we are proposing to target the availability of free gas safety checks to those customers that we consider are most at risk from dangerous appliances and would not be able to afford to pay for checks themselves. In addition suppliers will have to provide clear information on the dangers associated with gas (and the importance of safety checks) to all customers. Finally, we are encouraging suppliers

¹¹SLC37(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.

to provide financial assistance to customers where possible to help with replacement costs where appliances are condemned.

Gas safety checks

5.10. HSE research highlights that gas fires are the appliance with the highest risk of being faulty and pensioners on benefits have the highest risk of having an immediately dangerous gas fire in a living room. There is also a greater risk of longer periods of exposure to carbon monoxide from faulty gas fires in living rooms than faulty cookers or boilers (many of which are "room sealed" to prevent exposure to carbon monoxide).

5.11. Pensioners, disabled or chronically sick customers, with potentially reduced mobility, are more likely to be home for longer periods of time. They are therefore more likely to suffer the consequences of dangerous appliances, compared to others in the broader group of those on benefits. In our view targeting the free checks on pensioners, disabled and chronically sick customers on means tested benefits, is a risk based approach as these groups appear to be more at risk.

5.12. Targeting in this manner reduces the pool of eligible households from around five million to one million (based on DWP figures).

5.13. We do not envisage that suppliers will carry out free checks for all eligible customers as a free check has to be requested by customers. However, we would be concerned if the total number of free checks fell much below the current level of around 45,000 per annum. Given the increased profile that should be given to the dangers of gas (and carbon monoxide in particular), as a result of the broader information requirement, there is potential for the total number of free checks to increase. We expect suppliers to be sensitive to the needs of customers who may previously have been receiving free checks or of other vulnerable customers on low incomes, for example by offering checks at cost in such cases. We will monitor suppliers' performance on the total number of free and paid for checks undertaken.

5.14. We recognise that other low income customers could benefit from free gas safety checks it is not appropriate, in our view, to extend eligibility beyond the elderly, disabled and chronically sick as part of the supply licence review. In particular we are mindful of the likely costs of such an expansion and the risk that it may lead suppliers to be less active in promoting free gas safety checks. Elderly, disabled and chronically sick customers appear to be most at risk from exposure and as such we consider it is appropriate to continue to target the limited help that is available on this customer group.

5.15. We do not consider it necessary to specify precisely what equipment should be used to test for carbon monoxide, as flue gas analysers vary in their specification and capability and some appliances do not have a flue. We have therefore drafted a requirement to test for carbon monoxide emissions using "appropriate equipment".

Gas safety information

5.16. It is clear that gas, as a highly flammable substance, raises particular safety issues for customers. In view of this we still think the licence should include a requirement that all customers should be given suitable information about the safe use of gas appliances and the benefits of gas safety checks.

5.17. HSE statistics¹² in 2004/5 record that there were 18 deaths and 203 non-fatal injuries from carbon monoxide poisoning in that year. 11 of these deaths were in owner occupied premises. HSE has also, as part of its current gas safety review, carried out research into carbon monoxide dangers in 597 homes. Preliminary findings are¹³ that awareness of the dangers of carbon monoxide is poor with 45% of homes not receiving any information on this issue.

5.18. We consider that the level of risk from carbon monoxide poisoning is such that it is appropriate to deal with these matters through licence requirements rather than by voluntary means. We also consider it important that there is greater awareness that checks are available and that some assistance may be available if appliances are condemned. This should encourage those eligible to request free gas safety checks. Accordingly, we have included these in the draft licence conditions. We would expect suppliers to advise on sources of help at the time that compliances are condemned without a licence obligation to do so.

5.19. We note suppliers' comments that others should be responsible for providing gas safety information to customers. While we recognise that there are other sectors that might also be considered to have responsibilities towards customers on these issues, including appliance manufacturers and retailers, we consider that, in view of their existing relationships with customers, this obligation is appropriate. We do not wish to be too prescriptive on the format of information given, but as a minimum we propose that the information should be given to domestic customers at least annually and whenever it is requested by a customer.

5.20. A number of consumer groups with an interest in carbon monoxide issues have called for an industry levy to fund a high profile awareness campaign and research. We note that HSE as part of its gas safety review has identified widespread public ignorance of carbon monoxide risks and is encouraging the industry (suppliers, appliance manufacturers, plumbing merchants and CORGI) to work collaboratively to raise awareness of the dangers of carbon monoxide.

¹² <http://www.hse.gov.uk/statistics/tables/tablegs1.htm>

¹³ <http://www.hse.gov.uk/press/2006/e06096.htm>

Information on prepayment meters

5.21. In July we proposed to simplify the information suppliers would have to provide to customers using a PPM and asked: what is the appropriate scope and format for customer information on the advantages, disadvantages and removal of PPMs? (Question 5.1).

Respondents' views

5.22. A number of consumer groups considered it essential to provide customers with information on the operation of PPMs. energywatch and PUAf stated that information should specifically include the costs associated with PPMs and how to seek out cheaper payment methods; steps to take if debt repayment levels prove too onerous, details of charging, what to do if the PPM develops a fault and relevant standards of performance.

5.23. ERA and some suppliers had concerns with our proposals to inform customers of the disadvantages of PPMs. They did not regard it as appropriate for the licence to continue to specify what information is provided to PPM customers and the format in which it should be provided. Scottish Power said that the move to key meter prepayment technology would remove many of the perceived disadvantages of PPMs. Scottish Power and SSE considered that there was a strong commercial incentive on suppliers to provide general information on PPMs to customers.

Ofgem's view

5.24. We agree that in many areas suppliers will have a commercial incentive to provide information to customers about PPM usage. Our proposals reflect this in removing obligations to provide a large amount of information which we consider to be basic customer service information. However we are not yet convinced that these incentives may be relied on for certain types of information, in particular in relation to information on the possible disadvantages of PPM and how a customer can have a PPM removed if they wish to move to credit terms. The revised licence has been drafted (modified SLC 28) so that at a minimum the supplier is required to provide details on: the advantages and disadvantages of a PPM, where to obtain information and assistance if the PPM or payment device is not operating effectively, and procedures for removing or resetting the PPM. The proposed condition also sets out the requirements for how this information should be publicised.

PPM recalibration

5.25. In the July consultation we highlighted our concerns that failure to manually recalibrate electricity token PPMs was causing a build up of customer debt following the recent price increases. Whilst suppliers have plans to exchange this old type of PPM technology, such replacement programmes will inevitably take time. In view of this we stated that we were minded to include a requirement "to take all reasonable steps to recalibrate PPMs in a timely manner" in the electricity supply licence. We

said we would also consider proposals for self-regulation in this area given that suppliers are planning to replace these meters with better technology which does not raise debt issues.

Respondents' views

5.26. energywatch and CAB considered that our proposal did not go far enough to alleviate the problem and argued for an obligation ensuring that a price increase could only take effect on the date that the PPM was recalibrated.

5.27. ERA had concerns about the ability of suppliers to gain entry to premises to recalibrate meters. Scottish Power and E.ON commented that an obligation not to impose a price increase until date of recalibration of the PPM could be abused by some customers by giving them an incentive to make access even more difficult. E.ON accepted that a licence obligation was needed but not at any cost, and suggested that the obligation on suppliers should be for them to take "reasonable, cost effective steps in a timely manner". SSE did not see a need for regulation as all suppliers had plans to replace token PPMs.

5.28. Scottish Power and npower stated that the ERA billing code could provide an alternative solution to a licence obligation. Scottish Power proposed that the increase should not be applied until certain steps had been taken by the supplier to gain access to premises.

Ofgem's view

5.29. The debt built up by customers due to delayed recalibration of token meters is a serious concern. One of the customer benefits of a PPM should be that it prevents them from getting into debt. Consumers believe that they are using a PPM as a "pay as you go" method of payment. The impact of delays in recalibrating electricity token PPMs could cause significant harm, particularly to vulnerable customers on low incomes. We recognise that suppliers have plans to replace these token meters but these programmes will take time. Meanwhile, customers will continue to build up debts through no fault of their own. Action is needed now to help ensure that these customers are treated fairly.

5.30. While we welcome SSE, EDF Energy and now Centrica's voluntary action not to charge increased prices until the meter has been recalibrated, we recognise that this is not the only way to address this issue. Where suppliers do charge their customers increased prices in advance of recalibration, we consider that they must take effective steps to recalibrate promptly and must provide help and assistance to customers who have built up debts due to delayed recalibration. We therefore propose to proceed with an amendment to require that suppliers take all reasonable steps to recalibrate these meters in a timely manner, and are publishing a good practice statement setting out our views in this area.

5.31. In addition we are concerned that customers who have built up such debts (through no fault of their own) should then be prevented from switching to another

supplier by virtue of that debt. Therefore we are consulting on proposals to modify the licence to remove a supplier's ability to object to customer transfers in the circumstances where the debt is as a result of a PPM (of any type) not being recalibrated to take account of a price increase.

5.32. Given that the new licence condition will not come into effect until later this year and recognising the urgency of the situation, we have been discussing with companies the steps they need to take now. We will tomorrow publish a report which sets out our views on what we think suppliers should be doing to ensure that these customers are treated fairly.

Special controls, adaptors and meter moves

5.33. In July we proposed to remove the obligations to provide these services on request for customers on the PSR. However, we stated that before we made our final decision we would be seeking further information from suppliers on the different types of special controls and adapters provided, the cost of meter moves and the circumstances in which meter moves were carried out. Suppliers have now provided further details of the special controls and adaptors they provided, which included adaptors for holding plugs and "bump" stickers for controls on appliances.

Respondents' views

5.34. A number of suppliers commented that there was adequate consumer protection under the DDA, and for meter moves under the Gas and Electricity Acts. However, a number of consumer groups reiterated their concerns about reliance on the DDA which would place an onerous burden on consumers to pursue cases through the courts. energywatch and CAB suggested that we should further consult organisations representing disabled groups.

Ofgem's view – special controls and adaptors

5.35. We still think that this obligation can be removed. These devices are already available from a range of sources which includes social services, charitable organisations and suppliers. We do not think that customers will be unable to access these devices where they are required. In addition, suppliers have indicated that the cost of these adaptors is very low and that generally they would continue to provide these free of charge to customers registered on the PSR even if the obligation were removed. Suppliers said that they would advise customers where such adaptors can be obtained.

Ofgem's view – meter moves

5.36. Suppliers' average costs of meter moves vary between £50 and £500, and in one case a figure of £3000 was quoted. In many instances there may be a more appropriate alternative to repositioning the meter, for example providing special

quarterly reads or the fitting of remote display units. We will continue to require suppliers to offer quarterly meter reads to customers eligible for the PSR.

5.37. We intend to remove the obligation to provide meter moves. Removal of this obligation will not, in our view, remove essential protection for customers as protection is provided by sectoral legislation and the DDA. Under the Gas and Electricity Acts, where a meter is to be moved to meet the needs of a disabled person this shall be free of charge (although we note that this is a reactive restriction rather than a proactive requirement to provide a meter move). In addition suppliers under the DDA are required to make "reasonable adjustments" to allow the disabled customer to have access to the supply of gas or electricity.

5.38. In many instances suppliers may be able to provide alternative assistance to customers that meet their needs through the use of low cost arrangements such as quarterly meter reads or remote display units rather than being required to move the customer's meter. In other cases we recognise that these arrangements may not be appropriate. One example where such alternative arrangements would not be feasible is for customers using PPMs who clearly require access to their meter to ensure that they can top-up their account. There are also likely to be other situations where customers will still require a meter move. In such cases we would expect suppliers to be proactive in advising customers that further help can be provided (indeed must be provided by them) in compliance with the legislation.

Notification of supply interruption

5.39. In July we asked: are there any differences between the way that suppliers notify customers who are electricity dependent and the way that distributors notify all customers of an interruption to supply? (Question 5.2). The current standard conditions require electricity suppliers to give information and advice to customers on the PSR on planned interruptions of supply.

Respondents' views

5.40. Centrica was unaware of any differences between the way in which suppliers notify customers who depend on electricity for medical reasons, and the way in which distributors notify all customers of a planned interruption of supply. United Utilities had no objection to the removal of the obligation on suppliers as there is a parallel obligation on distributors. United Utilities said that they usually gave five days notice by sending cards to those affected, which is greater than the two days notice required by the Electricity Safety, Quality and Continuity Regulations 2002.

Ofgem's view

5.41. On the basis of the similar requirements on distributors we intend to remove this obligation from suppliers. These regulations provide sufficient protection for customers.

6. Metering

Chapter Summary

This chapter discusses:

- Whether regulation is required for the provision of domestic meters.
- The removal of obligations for meters to be inspected every two years.

Question 6.1 Do you agree with our proposal to remove the requirement for meters to be inspected every two years?

Provision of domestic meters

6.1. In July we proposed to remove obligations in the gas and electricity standard conditions that refer to the provision of meters in recognition of the development of metering agent services and metering competition. We consulted on whether there should be a requirement in the gas and electricity supply licences to provide domestic customers with a meter. We asked: are licence obligations required to ensure the provision of a meter at domestic premises? (Question 6.1)

Respondents' views

6.2. Some respondents noted the importance of an accurate meter being provided, and that a meter should only be replaced where a new one was installed. energywatch considers that there was merit in retaining the obligation to offer terms including meter provision "...sufficient to protect consumers from being denied supply from all suppliers when they wish to switch." Many respondents agreed that regulation here was unnecessary. SSE noted that the Gas and Electricity Acts require that a supply is given through a meter, and that therefore a specific obligation is not required.¹⁴

Ofgem's view

6.3. The provision of the meter is one of the components that make up the overall price offer to the customer. Supply competition will provide adequate protection for domestic customers in this regard since supply can only be given to a customer through a meter. Suppliers have arrangements in place to provide meters to the customers they supply. For clarification, we intend to provide guidance to the effect that Ofgem would not consider it reasonable to refuse to offer terms of supply to a

¹⁴ Schedule 7 paragraph 1 of the Electricity Act 1989 provides that where a customer is to be charged for supply by reference to the quantity of electricity supplied, the supply must be given through an appropriate meter (except in such circumstances as may be prescribed); Schedule 2B paragraph 2 of the Gas Act 1986 provides that every customer must take supply through a meter which is of a type appropriate for registering the quantity of gas supplied and which does not contravene section 17 of the Act (Meter Testing and Stamping).

domestic consumer solely on the grounds that a meter was not available. We see no need to include a specific obligation in gas and electricity supply licences to provide a meter, and propose that this obligation is removed.

6.4. The provision of a domestic meter by a Meter Asset Manager (MAM) is currently covered in SLC 34(2) and (3). There may be a case for retaining the element of that condition that relates to the use of MAMs. HSE has indicated that for safety reasons where a supplier contracts for meter related services, he should do so by contracting with a MAM. We will consider this issue in the impact assessment which is looking at the safety issues surrounding the need for a 2 yearly inspection.

Two-year meter inspection

6.5. We asked (in Question 6.2) if the requirements of SLC 17 to inspect and read meters at least every two years should be removed subject to arrangements being made with regard to safety, theft and domestic customer billing. Suppliers are required to inspect meters for safety and theft detection purposes every two years.

6.6. Suppliers say that the requirement is disproportionately expensive compared to the benefits it brings. Suppliers have also consistently said that by requiring suppliers to make a site visit, it undermines the business case for smart meters that offer remote reading capability. We therefore proposed in July that the requirement could be removed if an effective ombudsman scheme was introduced, together with an end to backbilling, and the safety and theft related concerns were resolved. We noted the ERA suppliers proposed to undertake a risk assessment to help inform the debate on the future requirements for meter inspections for safety and theft purposes.

Respondents' views

6.7. The majority of suppliers considered that the obligation to read and inspect meters every two years should either be removed or should be removed subject to the outcome of the ERA's risk assessment of the safety and theft implications. Some supported a partial removal of the obligation but only in circumstances where a smart meter had been installed. Others argued the current provisions should be retained. A few took the view that they should be strengthened as there was concern about the potential degradation of settlement data, customer billing, safety and an increase in theft. One respondent considered the impact of the ombudsman needed to be assessed over a longer term before consideration could be given to removing any regulatory backstop.

6.8. Some Distribution Network Operators (DNOs) noted that if the obligation was removed they may be required to undertake further work to manage the safety of their networks. It was likely that this would lead to a request for increased price control revenues. One estimated that this would cost in the region of £2.5 million a year for each Distribution Network Operator. Some argued the removal of a reading obligation was at odds with wider energy policy which aimed to encourage greater consumer engagement with markets and their own individual consumption. They also

noted concerns in relation to the management of revenue protection. The HSE said they were not against a change to the status quo but that any changes should be risk and evidence based and should not result in any reduction in existing levels of safety.

Ofgem's view

6.9. We understand that DNOs are concerned about the effects of removing the obligations, particularly in regard to revenue protection. However, we think any potential adverse effects of removal can be dealt with through other means, notably through the relevant industry codes; for example by code obligations requiring suppliers to undertake an inspection of the meter when their agent takes a meter reading and to inform the distributor where a problem is found.

6.10. We are not convinced that an obligation to inspect meters every two years is justified. Suppliers have indicated that the administration of the two year obligation costs exceed £20 million a year. This is a significant overhead for which customers ultimately pay. Furthermore, if it is true, as suppliers say, that the inspection requirement is a significant impediment to smart metering, the real costs of the requirement are much greater. In contrast, its benefits are unclear, and even where there are benefits, there are likely to be alternative solutions available which enable us to remove this requirement while continuing to meet the needs identified.

6.11. The introduction of an ombudsman scheme, the commitment not to back bill beyond a year, together with the demands of a competitive supply market, mean that there are already sufficient incentives for suppliers to obtain meter readings. We note that the DTI's consultation on metering and billing is proposing that suppliers should bill at least once year on an actual meter reading, but that such a requirement would not necessarily require a visit to premises or an inspection of the meter. We also note that the DTI shares the view that the requirement needs to be addressed if smart metering is to move forward.¹⁵

6.12. We are therefore still proposing to remove the obligations in SLC 17, as we set out in the July consultation. To support this view and to make the case for change more transparent, we intend to publish an impact assessment of our proposal, once we have received the views of the HSE's advice on the ERA risk assessment. Our proposal is subject to the advice on safety that we receive from the HSE following their review. If the HSE's advice is that there are significant safety risks associated with removing the obligation, then we will need to understand how the requirement delivers these benefits and explore if the risks can be satisfactorily managed through other means that impose less cost on customers. We expect the ERA to continue to take the initiative in this work, given its importance to suppliers and customers.

¹⁵ DTI Consultation Energy Billing and Metering: Changing customer behaviour November 2006

7. Industry Codes and Agreements

Chapter Summary

This chapter sets out the way forward for the consolidation of the requirements for electricity suppliers to become a party to a range of industry codes and agreements. We also propose to remove obligations in the standard conditions of the electricity supply licence to inform distributors of theft or damage, when these have been replicated in the DCUSA.

Question 7.1 Do you agree with the proposal to remove current SLCs 16(2) to (4) if equivalent arrangements have been replicated in the DCUSA?

Compliance with industry codes

7.1. The standard conditions of the electricity supply licence require suppliers become a party to a range of industry codes and agreements. In gas there is a single agreement, the SPAA, where the obligation applies only to domestic suppliers. During this review the role that Ofgem plays in enforcing compliance with these codes and agreements has been questioned by stakeholders. As a result, Ofgem proposed a separate review, the Industry Codes Compliance Review, to consider whether the current arrangements should be changed. Ofgem has consulted on the scope of the project, which aims to review the role that Ofgem has in enforcing industry codes and agreements.

7.2. In the July consultation we asked: should the licence maintain the current requirements to accede and comply with codes and agreements until the results of the ICCR are known? (Question 7.1).

Respondents' views

7.3. Those respondents who commented supported the proposal for a single standard licence condition for the electricity supply licence dealing with industry codes. There were a range of views as to how the ICCR project should be taken forward and the conclusions it should reach. There was also general support for the proposals in respect of consequential changes.

Ofgem's view

7.4. We propose to maintain the current requirement to become a party to and comply with the provisions of the various codes (see modified SLC 11 in Appendix 8). We are proposing to change the point at which licensees have to be a party to and comply with the DCUSA and the MRA (currently, from when the licence is granted) to the earlier of the date at which it offers to supply, or begins to supply, electricity to premises. This will bring the obligations in relation to DCUSA and MRA in line with the current obligations in relation to the BSC and CUSC. Our proposals for a modified condition dealing with the SPAA are set out in modified SLC29 in Appendix 9.

7.5. There is the potential for a change to one code to require a consequential change to another code to ensure industry arrangements remain coherent. We asked whether it was necessary for a licence condition to require licensees not to impede such consequential changes being made. In the July consultation we asked: Should the obligations in respect of change co-ordination extend to making consequential changes in respect of the Grid Code, Distribution Codes and the MRA? (Question 7.2)

Respondents' views

7.6. Those respondents who commented supported the approach set out in the July consultation document. energywatch stated that the change should be made for "consistency and efficient change coordination". SmartestEnergy went further and suggested that the MRA "...be subsumed by the BSC".

Ofgem's view

7.7. The proposed drafting set out in modified SLC 11 (see Appendix 8). We have drafted the condition to require that the licensee must take all reasonable steps to secure, and must not take any unreasonable steps to prevent or delay, the making or implementation of a consequential change.

7.8. We have considered including a paragraph in the standard condition to make it clear that the obligation to make consequential changes is without prejudice to any rights of appeal the licensee has, or any rights of approval, veto or direction available to the Authority or Secretary of State. However, it is our view that this is unnecessary to have in the body of the licence. We will make it clear in the supplementary document that this obligation is without prejudice to these rights.

Procedures for informing distribution companies of theft or damage

7.9. SLCs 16(2), (3) and (4) place obligations on electricity suppliers to inform the relevant distributor of circumstances where there has been damage or interference with metering equipment. Given that the DCUSA has the role of consolidating the governance of the access to a distributor's system and that this includes many aspects of information exchange between the users of the system and the system operator, there may be merit in relocating these obligations to the DCUSA.

7.10. We understand that the industry will come forward with a proposal of this kind. If accepted, we would propose the removal of the obligations set out in modified SLC 12. We also note that there is a question over whether the requirements of SLC 14(4) are still needed and expect that these issues will be fully discussed as part of any proposal to include obligations within the DCUSA. We propose to retain the obligation on electricity suppliers to prevent and detect theft subject to the outcome of the industry's review of the current theft arrangements and Ofgem's consultation on these arrangements planned next year.

8. Other licence conditions including SoLR

Chapter Summary

This chapter confirms the way forward in relation to our proposals to simplify the arrangements for appointing a Supplier of Last Resort (SoLR) and requiring a SoLR to provide information on a customer's ability to subsequently switch supplier.

Supplier of Last Resort (SoLR)

8.1. The SoLR arrangements enable Ofgem to appoint a supplier to take over the portfolio of customers of a failed supplier whose licence has been revoked. In the July consultation we proposed a number of simplifications to the current arrangements, in particular the removal of the requirement for suppliers to maintain a bond to fund the costs of a SoLR. In the July consultation we asked: Do you agree with the proposals to retain and simplify the SoLR arrangements? (Question 8.1)

Respondents' views

8.2. The majority of respondents who commented supported the proposed SoLR arrangements. However there were mixed views on the proposal for the letter sent to customers by the newly appointed SoLR to make clear to the customer that they are free to switch to a new supplier (See Appendices 6 and 7 for details).

Ofgem's view

8.3. We think that it is appropriate that there be an obligation for the SoLR to make clear to the customer that they are free to enter into a contract with an alternative supplier of their choice. The circumstances of the appointment of an SoLR are highly unusual and the charges made by the new supplier under a deemed contract may be much higher than those the customer can obtain by switching to a different supplier. Customers should be clear that they are not restricted in these circumstances from seeking a better deal, even if that turns out to be improved terms with their newly appointed supplier.

8.4. Since July we have considered whether we need to retain the arrangements set out in SLC 29A, that enable a supplier to claim the unrecovered costs arising from them complying with a direction to appoint them as a SoLR made under SLC 29. SLC 29A permits a supplier to make a claim for the costs, if approved by the Authority, to the relevant distributor. In turn the distributor, under provisions in their licence, may raise their distribution/transportation charges to recover the money. The mechanism is generally referred to as the levy arrangements.

8.5. The arrangements operate as an insurance scheme for emergency situations, Were they not there, suppliers would presumably price in the risks to their offers as they thought necessary. The current arrangements mean that in the event that the situation arises Ofgem, on behalf of all customers, will be required to evaluate any claim, in a situation where the supplier will be claiming its costs (notably its energy

purchase costs) are greater than it had foreseen at the time of submitting its offer. The supplier will also be transferring some of its wholesale price risk through to the mass of customers, although the supplier would appear to be better placed to manage this risk than Ofgem or customers.

8.6. However, suppliers argue that these arrangements should be seen as an essential part of the SOLR arrangements. They argue that the levy arrangements will only ever come into play in very unfavourable market conditions where the supplier is in a situation where it is required by the regulator to take over the portfolio concerned at short notice, without the usual due diligence. Against this background, they argue that the pooling of risk implied by the levy arrangements is more equitable and that a supplier's ability to price in the risk in its offer to Ofgem is not adequate protection, given the uncertainties that the supplier may face in taking over the customers.

8.7. Given the strong opposition from suppliers (and energywatch) to any notion of removing the levy arrangements, we propose to retain them. However, we believe that Ofgem would face a difficult task in evaluating any levy claim, should one ever arise in the future.

9. Ex-monopoly supplier obligations

Chapter Summary

This chapter confirms our proposals to remove obligations in section D of the standard conditions. In relation to PPMIP services we propose to retain regulation (limited by sunset clauses) for electricity token and smart card meters, but remove obligations in respect of key meters and move this to Section B of the licence.

Question 9.1 Do you agree with our proposals for the regulation of PPMIP services?

Top-up, standby and exempt supply services

9.1. Section D of the standard conditions of the electricity supply licence applies to ex-monopoly suppliers in their ex-monopoly service areas and therefore affects only five supply companies. In the July consultation we asked: Are there specific reasons for retaining the obligation to provide top-up, standby or exempt supply services, in particular to support the development of distributed generation? (Question 9.1)

9.2. We received no responses indicating that these provisions should be retained although some noted the link with distributed generation¹⁶ and the joint Ofgem and DTI consultation on removing barriers to this activity. Most respondents who discussed the issue were in support of the removal of the obligations as the market can be relied upon to deliver these services.

9.3. We therefore intend to remove these obligations from the electricity supply licence.

PPMIP services

9.4. Prepayment Meter Infrastructure Providers (PPMIPs) provide a range of service (including provision of PPM devices and access to payment network services) to other suppliers within the ex-monopoly service areas. In the July consultation we were not in a position to set out a clear set of proposals on the regulatory requirements for PPMIPs. To inform the debate we asked: Is regulation needed for the provision of PPMIP services? (Question 9.2.)

Respondents' views

9.5. The question in the July consultation concerning the need for regulation of PPMIP services prompted a range of views from respondents. E.ON considered "that Competition Law provides sufficient protection for suppliers, and hence customers,

¹⁶ Distributed generators may require the provision of top-up and standby services to ensure that their demand for electricity is met where the energy produced by the distributed generator is not consistent or is insufficient.

over any PPMIP seeking to restrict trade or price unfairly. We also do not believe that there is any better solution, which will ensure that suppliers make available legacy systems, without undermining the aspiration to switch off systems and hence complete meter modernisation programmes as soon as possible, or can anticipate all future developments."

9.6. ScottishPower said that "We believe that given current developments in the market it would be appropriate to retain the existing licence obligations for token and smart card technology, but remove the obligation for the provision of key meter PPMIP services." They added: "... competition in key metering technology services is likely to be strong, given the significance of key as an emerging prepayment technology." Centrica supported this view.

9.7. npower and SSE suggested that obligations to provide PPMIP services should be placed equally on all suppliers. Bizz Energy said that the current obligations should be retained, as there was the "...possibility that these services may be withdrawn or offered on highly discriminatory terms".

9.8. energywatch considered that the current licence obligations should apply to all domestic suppliers. They referred to the problems that some customers had encountered when switching between suppliers, where the new supplier was unable to support a key meter. They also noted that reliance on general competition law would not provide effective protection to customers given the time that investigations can take.

Ofgem's view

9.9. Since the July consultation, it has become clearer that the industry is adopting key meter PPM technology as the standard across the electricity market. Suppliers are currently able to source PPMIP services to support key meters from two national providers (Actaris and E.ON) or develop their own in-house provision. We also note that some suppliers are investigating innovative metering to provide more sophisticated services to customers.

9.10. Currently there are around 1.1 million token meters. All suppliers have programmes to replace token meters within the next three years (typically with key meters). Token meters have significant drawbacks in comparison with more sophisticated technologies in respect of revenue protection and their need for site visits to enable recalibration following price changes. Our understanding is that the use of smart card technology is not expanding. Maintaining the PPMIP obligations in respect of these types of meters in the long term may artificially delay their replacement with more efficient technologies.

9.11. The concept of an electricity supplier with responsibility to provide services within an ex-monopoly service area as they are dominant in that area will become increasingly difficult to sustain. We have already seen that some of the ex-monopoly suppliers have seen their market share fall below 50% within their previous

monopoly area. We expect that the effect of customers switching between suppliers will inevitably erode the notion of a locally dominant supplier.

9.12. We therefore propose that regulation of PPMIP services should only be maintained in respect of those technologies - token and smart card - for which there is little prospect of competitive service provision being made available. We expect that the numbers of such meters in use is likely to decline over the next few years, in particular the replacement of token meters with key meters. The costs of providing PPMIP services for an individual meter can therefore be expected to increase as the population of the meters falls, which may in turn be expected to accelerate the replacement programme. We therefore consider that the obligation to continue to provide token and smart card PPMIP services should be subject to sunset clauses that would have the obligations fall away so as not to unnecessarily impede suppliers replacement programmes.

9.13. We are proposing separate sunset clauses reflecting the different circumstances of token and smart card meters. For token, we intend that the market should have clarity that as this technology is being replaced; the case for maintaining the regulation of the PPMIP services for token meters should come to an end on a specified date. We anticipate that most token meters will be replaced during the next three years. We therefore propose that the obligations in respect of token meters will end on 31 March 2010.

9.14. For smart card, it is less certain whether suppliers will wish to adopt a wholesale replacement programme for this technology. We therefore propose that those suppliers who currently provide a PPMIP service to support smart card meters should provide notice of their intention to withdraw the PPMIP service to the Authority and to all other suppliers using the service. That notice would be for a period of not less than two years and we would expect the notice to be accompanied with a plan showing how the numbers of smart card meters were expected to decline over the two year period. However the Authority would have the ability to direct the licensee (up to three months before the date specified in the notice) to maintain the service if we considered that its removal would be likely to have a detrimental effect to the interests of customers.

10. Framework for proposed modified standard conditions

Chapter Summary

This Chapter sets out the rationale for a new structure and style for the proposed modified standard conditions for electricity and gas supply licences. It also highlights Ofgem's intention to develop supplementary documentation to support the SLCs in the form of explanatory notes, limited guidance on the interpretation of particular requirements and an index of defined terms.

Question 10.1: Is the proposed new structure and drafting of the proposed gas and electricity supply SLCs clear and effective?

Question 10.2: Do you support the development of supplemental documentation to support the modified gas and electricity supply SLCs?

Standard conditions

10.1. In proposing modifications to the SLCs in Appendices 8 and 9 we have adopted a new approach to the order and structure of the current conditions. This is intended to assist the reader in identifying the location and intent of the obligations.

10.2. Currently the SLCs are arranged into four discrete sections. Section A includes definitions and obligations that establish the structure of the SLCs. Section B sets out obligations for all supply licence holders. Section C sets out obligations for those suppliers who are licensed to supply domestic customers. Finally, section D sets out obligations for the ex-monopoly supply licence holders that they are required to comply with in their previous monopoly service areas. Our proposal is to restructure the SLCs into two parts. The first part, section A, sets out those obligations that apply to all licensees and section B contains those obligations that apply only to domestic suppliers. By removing section D (as all such obligations are proposed for removal from the SLCs) and merging sections A and B into the new section A, we will make the new licence structure simpler and clearer.

10.3. We propose to retain the alignment of structure and numbering of the conditions in both the gas and electricity supply licences. Where a SLC is used in the gas supply licence but is not relevant in electricity it will be simply denoted as "Not Used". To ease navigation of the individual SLCs each condition is numbered, with sub-headings used to identify particular issues within the condition. The use of sub-headings is new and is intended to provide an "at a glance" tool for the reader to understand the content of each SLC and where specific obligations are located. Within the revised section A and section B of the gas and electricity supply licences we have sought to group together the SLCs that are related to each other or share a common theme. We have proposed four such groupings in section A and 3 groupings in section B.

10.4. The drafting of the standard conditions has been simplified to ensure that each obligation is clear. In particular, we have endeavoured to use direct and unambiguous modern language, concise paragraphs, the active and present tenses and positive expressions. We sought to be consistent in the application of these

principles throughout the conditions. We have also amended the paragraph numbering protocol to make it clearer which condition each paragraph is contained within. For example, the third paragraph of SLC 12 will be numbered "12.3" rather than "3" as currently.

10.5. Except in particular circumstances, we propose to replace the words "best endeavours" with "take all reasonable steps within its power" and the words "reasonable endeavours" with "take all reasonable steps". We have proposed these changes to modernise the language in a manner consistent with the drafting of the proposed modified SLCs.

10.6. The drafting of the standard conditions has been simplified to ensure that each obligation is clear. In particular, we have endeavoured to use direct and unambiguous modern language, concise paragraphs, the active and present tenses and positive expressions. We try to be consistent in the application of these principles throughout the conditions. We have also amended the paragraph numbering protocol to make it clearer which condition each paragraph is contained within. For example, the third paragraph of SLC 12 will be numbered "12.3" rather than "3" as currently.

10.7. Defined terms are listed with their definition in the first standard condition (except for two conditions introduced into the electricity supply licence by the DTI that contain a number of defined terms specific to those conditions). Defined terms are now signified by the use of initial capital letters to make it clearer to the reader when they are being used.

10.8. We have reviewed the possible benefits of using purpose clauses. Whilst we understand the rationale behind them (i.e., to summarise the obligation) we do not think that they are generally required given the measures we are taking to improve the clarity of structure and drafting. We have included a purpose clause in a limited number of standard conditions, (for example, modified electricity conditions SLC 15 and 21), as those conditions are particularly complex. Improved drafting and the use of sub-headings will make each of the SLCs more clearly understood. We intend to use explanatory notes (see below) to assist with the interpretation of conditions.

Supplementary document

10.9. The standard conditions will be accompanied by a supplementary document which we intend to publish with our final proposals in April 2007. That document will support the standard conditions but will not be a component of them, or have any legal effect. It will include:

- Explanatory notes for each condition describing its purpose and function and any relevant background information necessary to an understanding on the condition,
- In limited circumstances, guidance on interpretation of particular requirements in the conditions, and
- An index of defined terms that are used in the modified SLCs.

Appendices

Index

Appendix	Name of Appendix	Page Number
1	Consultation Response and Questions	42
2	The Authority's Powers and Duties	44
3	Glossary	46
4	Feedback Questionnaire	52
5	Draft impact assessment for gas safety checks and information	55
6	Detailed Electricity Supply SLC Proposals and Consultation Responses	Published separately
7	Detailed Gas Supply SLC Proposals and Consultation Responses	Published separately
8	Proposed Modified Standard Licence Conditions for Electricity Supply	Published separately
9	Proposed Modified Standard Licence Conditions for Gas Supply	Published separately

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. 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.

1.2 Responses should be received by 2 March 2007 and should be sent to:

Nigel Nash
Markets
9 Millbank, London SW1P 3GE
020 7901 7065
nigel.nash@ofgem.gov.uk

1.3 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.

1.4 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.

1.5 Having considered the responses to this consultation, Ofgem intends to issue final proposals and start the collective licence modification process in April 2007. We will then publish the final proposed legal text for the modified gas and electricity supply standard licence conditions and anticipate an implementation date of June 2007. Any questions on this document should, in the first instance, be directed to:

Andrew Wallace
Markets
9 Millbank, London SW1P 3GE
020 7901 7067
andrew.wallace@ofgem.gov.uk

CHAPTER: One

Question 1.1 Do you agree with the proposals set out in this document and, in particular, with the proposed modifications to the standard conditions of gas and electricity supply licences by 23 February 2007

Question 1.2 Are there any system implications resulting from the proposed changes that should delay the implementation of the modified standard conditions past June 2007?

Question 1.3 Are there any additional circumstances where you consider it appropriate to apply a sunset clause to an obligation, what the expiry date should be and whether the Authority should be able to extend that date?

CHAPTER: Two

Question 2.1 Do you agree that Ofgem should not have a role in resolving disputes between suppliers and customers in respect of security deposits?

Question 2.2 Do you agree with the proposed threshold for application of the obligations to offer a range of payments methods?

CHAPTER: Three

Question 3.1 Do you agree that the rules on when a supplier may object to a customer transfer should be set out in the standard conditions of the electricity supply standard licence conditions rather than the MRA?

Question 3.2 Do you agree with our proposal to remove the obligation for suppliers to provide the full contract terms to a domestic contract within five days of the customer entering into the contract?

CHAPTER: Six

Question 6.1 Do you agree with our proposal to remove the requirement for meters to be inspected every two years?

CHAPTER: Seven

Question 7.1 Do you agree with the proposal to remove current SLCs 16(2) to (4) if equivalent arrangements have been replicated in the DCUSA?

CHAPTER: Nine

Question 9.1 Do you agree with our proposals for the regulation of PPMIP services?

CHAPTER: Ten

Question 10.1: Is the proposed new structure and drafting of the proposed gas and electricity supply SLCs clear and effective?

Question 10.2: Do you support the development of supplemental documentation to support the modified gas and electricity supply SLCs?

Appendix 2 – The Authority’s Powers and Duties

2.1 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).

2.2 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.¹⁷

2.3 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 accordingly.¹⁸

2.4 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.

2.5 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 them¹⁹; and
- The interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.²⁰

2.6 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:

¹⁷ entitled “Gas Supply” and “Electricity Supply” respectively.

¹⁸ 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.

¹⁹ 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.

²⁰ The Authority may have regard to other descriptions of consumers.

-
- Promote efficiency and economy on the part of those licensed²¹ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
 - 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.

2.7 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.

2.8 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 Regulation²² 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.

²¹ or persons authorised by exemptions to carry on any activity.

²² Council Regulation (EC) 1/2003

Appendix 3 - Glossary

A

Authority

The Authority is the governing body for Ofgem, consisting of non-executive and executive members.

B

Back Billing

Back billing is the practice of charging a consumer for the costs of energy previously unbilled for a year or more. The circumstances may arise from a failure to issue a bill, or because no meter reading has been taken and billing has been done based on estimates that proved to be too low or through some other error. The ERA suppliers have undertaken to cease back billing for periods of more than two years from July 2006 and for periods of more than one year from July 2007.

BSC

Balancing and Settlement Code

C

CAB

Citizens Advice Bureau

CSR

Corporate Social Responsibility

CUSC - Connection and Use of System Code

The contractual framework for connection to, and use of, National Grid's high voltage transmission system.

D

DDA

Disability Discrimination Act 1995. Link to the Department of Work and Pensions website: http://www.dwp.gov.uk/aboutus/dda_2005.asp

Deemed contract

The Electricity Act and the Gas Act, provide that where a supplier supplies gas or electricity to premises (electricity) or a consumer (gas) otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the consumer for the supply of gas or electricity from the time when he began to supply that gas or electricity. Typically a deemed contract will occur where a customer moves into a new property and has not agreed contractual terms with a

supplier who is supplying energy to that property or where a fixed term contract expires and the contract continues after that date.

DN (or DNO)

Distribution Network (Distribution Network Operator)

DTI

Department of Trade and Industry

DWP

Department of Work and Pensions

E

EEC - Energy Efficiency Commitment

The Energy Efficiency Commitment requires gas and electricity suppliers to achieve targets for the promotion of domestic energy efficiency in Great Britain.

Electricity Act

Electricity Act 1989 as amended.

ENA - Energy Network Association

Trade association open to owners and operators of energy networks in the UK. Membership includes CE Electric UK, Central Networks, EDF Energy, National Grid, Northern Ireland Electricity, Scottish and Southern Energy, Scottish Power energy Networks, United Utilities, and Western Power Distribution.

Energy Service Directive

DIRECTIVE 2006/32/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2006 concerning common rules for on energy end-use efficiency and energy services and repealing Directive 93/76/ECC.

Energy Supply Ombudsman

Independent body, established by the ERA, that resolves disputes between a customer and their energy supplier associated with billing and transfer issues. Ombudsmen are an independent and impartial means of resolving disputes outside the courts and the Energy Supply Ombudsman. <http://www.energy-ombudsman.org.uk/>

energywatch

energywatch is the Gas and Electricity Consumer Council set up under the Utilities Act 2000 to represent the interests of gas and electricity consumers. Link to the energywatch website: <http://www.energywatch.org.uk/bst/index.asp>

ERA - Energy Retail Association

The Energy Retail Association is a trade association representing the interests of the six major domestic energy supply companies - British Gas, EDF Energy, npower, E:ON, ScottishPower, and SSE.

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

Directives (IMED 2003/55/EC) and (IMGD 2003/54/EC) set out rules for the internal markets in gas and electricity, respectively. In particular, Annex A requires Member States to ensure that a number of consumer protection measures are transposed into domestic law including a wide choice of payment methods, and transparent, simple and inexpensive procedures for dealing with complaints.

[Exempt Supply Services](#)

SLC 53B(2) requires that any offer for the provision of exempt supply services must include detailed provision regarding:

- i) the making, maintenance and termination by the supplier of registrations under and in accordance with the Master Registration Agreement (MRA) and exchange of associated information between the supplier and the exempt supplier,
- ii) appointment of a provider of meters, metering equipment, meter maintenance services and the provision of data retrieval, data processing and data aggregation services,
- iii) apportionment and settlement of registration charges,
- iv) reimbursement by the exempt supplier (by way of indemnity) of registration charges,
- v) provision of reasonable security or collateral for performance of obligations under the agreement, and
- vi) varying the agreement.

F

[Fuel Direct](#)

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

[FSC - Fuel Security Code](#)

The FSC covers arrangements when the Secretary of State calls a Fuel Security Period (a power under the Electricity Act). In these circumstances, he can ask for certain generation types to preserve fuel (i.e. not generate) or switch to alternative back-up fuels. This is an interventionist power that is only likely to be used in extreme circumstances. The FSC sets out how these instructions will be carried out and how parties will be compensated for doing things they otherwise would not have done.

G

[Gas Act](#)

Gas Act 1986 as amended.

H

HSE

Health and Safety Executive.

I

ICCR

The Industry Codes Compliance Review. Ofgem is reviewing the relationship between the obligation in the various classes of licence and the industry codes and agreements to which they refer. In particular, the review will consider the appropriateness of licensees being obliged by the licence to comply with the provisions of codes and agreements. Ofgem has published a consultation document on the scope of the project 'Industry Codes Compliance Review Consultation'

http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15594_ICCR_Condoc_FINAL.pdf?wtfrom=/ofgem/index.jsp

IGT

Independent Gas Transporter

IMED

DIRECTIVE 2003/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC.

IMGD

DIRECTIVE 2003/55/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

M

MPRN -Meter point reference number

A unique number provided by a gas transporter, identifying a gas supply point.

MRA – Master Registration Agreement

This agreement, along with its associated documentation, sets out the inter-operational arrangements that support the processes for the registration of a change of electricity supplier in the UK retail market.

O

Ofgem Approved Meter Installer (OAMI)

Ofgem Approved Meter Installers (OAMI's) are CORGI registered gas meter fitters with a specific Meter Installation Qualification. OAMI's sign up to the Ofgem Codes of Practice 1/a, 1/b and 1/c depending on what work they intend to do. The codes set out the processes that the meter fitter must undertake to install a meter. The OAMI scheme (run by Corgi) ensures that the meter fitter is trained to the relevant CoP standard to undertake a meter installation. Therefore if a meter fitter is competent at the CoP/1a level only then it cannot install a meter

with a capacity exceeding 6m3. These CoPs are updated/reviewed by Technical and currently CoP/1c is being reviewed.

P

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

Prepayment meters currently use electronic tokens, keys or cards to enable an amount of energy bought by the consumer to be used. The consumer 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.

[Prepayment Meter Infrastructure Provider \(PPMIP\)](#)

The PPMIP services must provide, as may be reasonably appropriate, for prepayment meters which require tokens, cards or keys for their operation, facilities for: (where requested) the purchase by electricity suppliers and/or encoding with data of tokens, cards or keys, the use by domestic customers of local outlets for the purchase of tokens and the crediting with value of cards or keys, the making of payments to electricity suppliers in respect of sums received by the licensee on behalf of domestic customers, and where relevant, the transfer of domestic customer data to electricity 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.

R

[RPC – Relative Price Control](#)

Relative Price Control. A price cap on the charges that may be made by an Independent Gas Transporter that links charges to the local gas Distribution Network Operator.

S

[SLC - Supply Licence Condition](#)

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

[SLR - 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 June 2007.

[SLR Steering Group](#)

A committee chaired by Ofgem, made up of key stakeholders to review and advise on the progress and direction of the Supply Licence Review. Papers for the Steering Group may be found on the Ofgem website.

SoLR - Supplier of Last Resort

The Authority may require a supplier under SLC 29 to accept appointment as a Supplier of Last Resort, to take over responsibility for a portfolio of supply points, where the previous supplier has had its licence revoked following insolvency.

SPAA

Supply Point Administration Agreement. Industry governance agreement between domestic gas suppliers and gas transporters.

Standby

"Standby" means the periodic or intermittent supply or sale of electricity:

- i) to an authorised electricity operator to make good any shortfall in the availability of electricity for the purposes of its supply of electricity to persons seeking such supply, or
- ii) to a customer of the supplier to make good any shortfall between the customer's total supply requirements and that met either by its own generation or by electricity supplied by an electricity supplier other than the supplier.

Super complaint

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 "super complaints".

Supply licence exemptions

The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 provides that the supply of electricity need not be undertaken in pursuance of a licence in certain defined circumstances. The equivalent for gas are the Gas Act 1986 (Exemptions) (No. 1) Order 1996, the Gas Act 1986 (Exemptions) (No. 2) Order 1996, the Gas Act 1986 (Exemptions) Order 1999, the Gas Act 1986 (Exemptions) (No. 2) Order 1999 and the Gas Act 1986 (Exemption) Order 2005.

T

Top-up

"Top-up" means the supply or sale of electricity on a continuing or regular basis:

- i) to an authorised electricity operator to make good any shortfall in the availability of electricity for the purposes of its supply of electricity to persons seeking such supply, or
- ii) to a customer of the supplier to make good any shortfall between the customer's total supply requirements and that met either by its own generation or by electricity supplied by an electricity supplier other than the supplier.

U

Unfair Terms in Consumer Contracts Regulations 1999 ("UTCCR")

The regulations protect consumers from unfair terms which are contained in standard contracts. For example, they protect consumers from any standard contract terms that reduce their statutory or common law rights and protect consumers from contract terms that try to impose unfair burdens on them over and above the obligations of the ordinary rules of law. A standard contract term is unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

V

Vulnerable customer

Citizens who are disabled or chronically sick, of pensionable age, or living on low incomes.

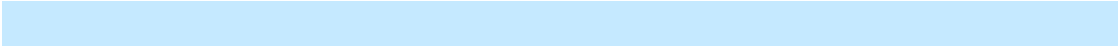
Appendix 4 - Feedback Questionnaire

4.1 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?

4.2 Please send your comments to:

Andrew MacFaul
Consultation Co-ordinator
Ofgem
9 Millbank
London
SW1P 3GE
andrew.macfaul@ofgem.gov.uk



Appendix 5 – Draft impact assessment for gas safety checks and information

Objectives

5.1. The objective of this impact assessment is to assess the effects of the proposed changes to the supply licence obligations in relation to the promotion of gas safety and the provision of gas safety checks. It is based on discussion and consultation with stakeholders, and takes into account the recent HSE research on carbon monoxide undertaken as part of its current gas safety review. It sets out the policy options and our proposals. We welcome comments on our assessment and conclusions, and will make changes to these if appropriate in our final impact assessment.

5.2. It explores how we should target free gas safety checks and how and what information should be provided to ensure public awareness of gas safety issues. We have considered, amongst other things, the costs and benefits of three options to assess whether the proposed licence requirements would be proportionate and appropriate.

5.3. The modification of licence conditions is a function under Part 1 of the Gas Act 1986 and accordingly Ofgem has to act in accordance with its principal objective and general duties, which are set out in full Appendix 2.

Background

Current licence requirements and consultation

5.4. The amendments as set out below to the licence requirements on gas safety checks and the provision of information were considered by us in the July consultation to be a reasonable package, which would serve to target gas safety checks and raise awareness of safety issues.

Gas safety checks

5.5. The current gas SLC 37(2)(a) requires suppliers to provide a free gas safety check on request at least annually for customers who are eligible for the Priority Services Register ("PSR")²³ provided that they are:

- not entitled to a free annual gas fittings check because they live in rental accommodation²⁴; and

²³ To be eligible for the PSR a customer must be either of pensionable age, chronically sick or disabled.

²⁴ The requirement applies where a gas fitting is not required to be inspected under an annual landlord check as required by the Gas Safety (Installation and Use) Regulations 1998 made under the Health and Safety at Work etc Act 1974

-
- are living alone or are living with others who are either eligible for the PSR or are aged under 18 years.

5.6. In carrying out these checks suppliers (or their agents) must test safety of gas appliances and other gas fittings on the customer's side of the meter. The examination must be carried out by a person with appropriate expertise.

5.7. In the July consultation we proposed to amend the requirement to provide gas safety checks so that they would only be free for a subset of these customers who are in receipt of certain listed benefits. The rationale for this proposal was to better target help at customers who need financial assistance as many of the people currently eligible may be able to afford to pay for these checks. In the July consultation we explained that we would be giving further thought to these proposals including eligibility, and that we would take into account HSE's research on carbon monoxide dangers.

5.8. We also propose to include a requirement for the free gas safety check to include a test for carbon monoxide emissions using appropriate equipment.

Gas safety information

5.9. The current gas SLC 37(2)(v) requires suppliers to give, on request and where reasonably practicable and appropriate, to customers who are eligible for the PSR "advice on the use of gas, gas appliances and other gas fittings".

5.10. In the July consultation we proposed to broaden the information requirement so that suppliers are required to provide information to all customers (not just those eligible for the PSR) on:

- the dangers of carbon monoxide poisoning;
- the benefits of fitting a carbon monoxide alarm;
- advice on the use of gas appliances and fittings;
- the benefits of gas safety checks; and
- where to seek assistance if appliances are condemned as the result of a gas safety check.

5.11. The rationale for this was that the current information requirement is quite vague and does not include reference to the dangers of carbon monoxide poisoning. As these dangers apply to all users we considered that it would be better to make all customers aware of the risks. In addition we considered that information should be provided to all customers on carbon monoxide alarms and on the benefits gas safety checks (whether at appropriate cost or free for qualifying customers) which can significantly reduce such risk.

5.12. Concerns were put forward by consumer groups, in particular National Energy Action²⁵ that many eligible customers do not request a free gas safety check because they fear that their appliances will be condemned and that they will not be able to afford the cost of replacing them. In relation to the short term

²⁵ "Report into the provisions for vulnerable customers when gas appliances are deemed unsafe" – prepared for the Department for Environment, Food and Rural Affairs by National Energy Action (March 2006)

while distribution networks have licence obligations to provide temporary heating and cooking provisions to PSR customers in the event of an interruption to gas supply, no such help is required when an appliance has to be turned off for safety reasons. In the longer term help may be available to fund purchase of new appliances for example through Warm Front, the Social Fund or supplier trust funds, but many customers are unaware that this help exists. In view of this we propose that literature promoting free gas safety checks should make reference to the fact that assistance may be available if appliances are condemned.

5.13. As customers are highly likely to ask for advice at the time that appliances are condemned, we would expect suppliers to advise at that stage on the sources of further assistance without a licence obligation to do so.

Respondents' general views

5.14. All respondents to the July consultation have accepted that those who can afford to pay for checks should do so. Some consumer groups would also like to see the eligibility for free checks extended to include all owner occupiers on benefits, rather than just those eligible for the PSR.

5.15. HSE commented that there should be free gas safety checks for the most vulnerable customers where there is an appreciable risk. HSE also mentioned that the current number of free checks represents a low percentage take up of the service. However, HSE accepted that not all current beneficiaries of PSR schemes need financial support for these services and that a more targeted approach may be appropriate.

5.16. HSE supported our proposal to broaden the information requirement. HSE also mentioned that many consumers are not aware of the dangers of carbon monoxide and as such would not proactively request such information or take preventative action.

5.17. Some suppliers were concerned that providing gas safety information to a wider audience would increase the uptake of free checks which would lead to increased costs. Suppliers have expressed some reservations about the obligation to provide information to all customers, commenting that other bodies such as appliance manufacturers, transporters, HSE or government, should have responsibility in this area.

Key issues

5.18. In considering further who should be eligible for free gas safety checks and the wider dissemination of information on gas safety we consider that it is particularly important to consider:

- the level of risk faced by particular customer groups, and
- the costs to suppliers of providing these services.

HSE comments, statistics and research

5.19. HSE statistics²⁶ show the number of fatalities from carbon monoxide poisoning in the owner occupier and rented sectors:

Year	Fatalities in owner occupied accommodation	Fatalities in rented accommodation	Not known	Total
1996/7	16	12	3	31
1997/8	15	13		28
1998/9	21	15	1	37
1999/0	8	18		26
2000/1	22	3		25
2001/2	15	7		22
2002/3	10	10		20
2003/4	8	2	1	11
2004/5	11	6	1	18
Total	126	86	6	218

5.20. We note for carbon monoxide poisoning that there is the potential for under-reporting of deaths as the real cause may not be detected at time of death/injury or at all.

5.21. As part of its gas safety review this year the HSE has carried out research into carbon monoxide dangers in 597 homes²⁷. The majority of this survey (90%) covered owner occupied homes. The provisional findings of this survey were²⁸:

- 45% of homes had received no information on the dangers of carbon monoxide, and
- gas fires were found to be the appliance most likely to be rated as "Immediately Dangerous"²⁹ or "At risk" (28% of all gas fires), then cookers (9%), and boilers (3%).

²⁶ These figures mainly include piped gas but also include some bottled LPG.

²⁷ We note that the size of this sample is not statistically very large. However, this is the largest survey of its type and we consider that the results are indicative for the purpose of this assessment.

²⁸ <http://www.hse.gov.uk/press/2006/e06096.htm> HSE press release dated 2/10/06

²⁹ Under CORGI's Gas Industry Unsafe Situations Procedure "an Immediately Dangerous appliance is one, which, if operated or left connected to a gas supply, is an IMMEDIATE danger to life or property. Broadly, these will be installations that fail tightness tests, appliances that fail spillage tests or appliances which have serious flueing and/or

5.22. There is greater risk of longer periods of direct exposure with dangerous gas fires in living rooms than dangerous cookers, in addition a large proportion of boilers are "room sealed" to prevent exposure to carbon monoxide.

5.23. The HSE has also provided further provisional disaggregated statistics. This shows that pensioners on benefits have the highest risk of an immediately dangerous gas fire in a living room.

Premises with at least one pensioner	Benefit receiver	Number in group ³⁰	"Immediately dangerous" gas fire in living room	"At risk" gas fire in living room
✓	✓	151	13.3%	2.00%
X	✓	150	7.1%	5.9%
✓	X	85	6.0%	3.3%
X	X	208	7.2%	4.8%

Further information provided by suppliers

5.24. In terms of understanding the effectiveness of the current gas safety check obligation, information provided by suppliers shows:

- 45,059 free gas safety checks were carried out last year,
- faulty appliances were found in between 1% to 10% of checks (although some faults did not require immediate shut down of the appliance),
- the average estimated cost of each gas safety check was £52.50,
- most suppliers indicated that they would charge at cost if they were allowed to charge customers who could afford to pay, and
- most suppliers already provide information as "bill stuffers" on the dangers of carbon monoxide poisoning, often linked to the sale of carbon monoxide alarms.

5.25. On 7 September 2006, Ofgem observed gas safety checks carried out by an engineer working on behalf of one of the suppliers. He had been carrying out such checks for a number of years. The average length of visit was 45 minutes and was considered by the engineer to be typical for a gas safety check. He considered that if the check included a test for carbon monoxide emissions this would not add significantly to the overall time.

ventilation, or combustion deficiencies, when measured against the appliance manufacturer's instructions, British Standards or other relevant standards / guidance documents" and "an At Risk appliance is one where one or more recognised faults exist and which, as a result, if operated, may in future constitute a danger to life or property.

³⁰ There were 3 households out of 597 where the age was not recorded.

5.26. The engineer also commented that 99% of the free checks he carried out were for people of pensionable age (in exceptional cases checks have been carried out for blind persons). He also estimated that of those pensionable age, 80% of checks were carried out for single women.

Options

Option 1: "Status quo option" – keep current arrangements

5.27. The Department of Work and Pensions ("DWP") has calculated that around 5m customers would be currently eligible for free gas safety checks. Out of these around 45,000 checks were carried out last year. The key question is whether this current eligibility is appropriately targeted as some of these customers could afford to pay for the check.

5.28. On gas safety information the current requirement is vague, does not specifically refer to the dangers of carbon monoxide poisoning and does not apply to all customers although some suppliers are providing useful information on a voluntary basis.

Option 2: Restrict current eligibility to those on means tested benefits with broader information requirement

5.29. This was the option that was proposed in our July consultation, although the reference in that document was to "income related benefits". DWP has calculated that a little over 1m households would be eligible under this option. We are proposing reference to "means tested benefits"³¹ as a method for suppliers to be able to readily identify such customers who would have difficulties in paying for gas safety checks. "Income related benefits" are incorporated within this definition as well as customers receiving assistance due to low capital assets.

5.30. This eligibility option captures the group indicated in the HSE research who has the highest risk of having an immediately dangerous gas fire in a living room (see table in 5.23)³². Pensioners, disabled and chronically sick customers are more likely to have mobility problems and be at home for longer periods of time. In our view they are, accordingly, more likely to be exposed to carbon monoxide from dangerous appliances. It should also be noted that the time period of exposure to a dangerous gas fire in a living room is likely to be longer than gas cookers (the second most dangerous appliance).

5.31. With this option we would also include a requirement that the free gas safety check includes a test for carbon monoxide emissions. CO Gas Safety has commented that the cost of a flue gas analyser may be as low as £300. It is our view that requiring a gas safety check to include such a test will not significantly

³¹ Current examples of means tested benefits are Pension Credit, Income Support, Housing Benefit, Council Tax Benefit and Jobseeker's Allowance (Income-based).

³² It should also be noted that the HSE's category of "premises with at least one pensioner on benefits" is not an exact match with our definitions. However, we consider that the HSE research is a reasonable proxy in our analysis.

increase the cost of the check. We do not feel it is necessary to specify precisely what equipment should be utilised for these checks, not least because flue gas analysers vary in their specification and capability and some appliances do not have a flue. We therefore would include a requirement to test for carbon monoxide emissions using "appropriate equipment".

5.32. With this option it is intended that the supplier would take all reasonable steps to provide the information, mentioned above at paragraph 5.10, free of charge to all customers at least annually, and to any customer who requests it. This is to ensure that all customers are made aware on a regular basis of the dangers and the means to reduce risks.

5.33. We consider that information provided to customers on carbon monoxide alarms should be information on "the benefits of fitting an audible carbon monoxide alarm which complies with British or European safety standards". This is to take into account a comment from the HSE that there are other carbon monoxide monitors on the market that are not so effective.

5.34. Some suppliers are concerned that broadening the information obligation will increase the uptake and hence total costs of providing free gas safety checks. We want to ensure that customers are made aware of specific safety issues and the benefits of gas safety checks, but note that the "pool" of customers eligible for free checks under this option would be much more focused on those in need of it.

Option 3: Change eligibility to all owner occupiers on means tested benefits with broader information requirement

5.35. This is the option favoured by some consumer groups. DWP has calculated that around 1.7m households would be eligible under this option.

5.36. Whilst this group in total is at some risk from dangerous appliances, the sub-set of customers who are pensioners on benefits have the highest risk of having an immediately dangerous gas fire in the living room. In addition, in our view, pensioners, disabled and chronically sick customers may be more likely to suffer the consequences of dangerous appliances. We note that owner occupiers on benefits may include some households with very young children who may also be more at risk than other occupants of adult age and good health to suffer the consequences of dangerous appliances. However, the HSE study shows that this group of non-pensioner households on benefits are less at risk than pensioners on benefits of having a dangerous gas fire in a living room.

5.37. This option will include checks with "appropriate equipment" and the broader information requirements as set out under option 2.

5.38. The broader eligible group under this option (compared to option 2) together with the broader information requirement may reduce the incentive on suppliers to market the free checks as effectively as possible if they are concerned about possible increases to their total costs. However, we note that the "pool" of eligible customers under this option is still significantly smaller than option 1

Option 4: A risk assessment based approach

5.39. This option would target gas safety checks to individual households where the risks are likely to be highest, on a case by case basis. Anecdotal evidence from suppliers was that the first check was more likely to detect problems than subsequent ones, although no firm evidence could be provided to support this. Equally in some cases the engineer making the check can reasonably gauge the risk by judging the age and general condition of the appliance.

5.40. However, in considering how to adopt this approach a number of difficulties were identified. The evidence available on which to judge risk is not robust enough to set specific criteria or extended periods between checks in the licence at this stage. An alternative approach would be to place the obligation on the suppliers to judge the risks on a case by case basis. However, this would not be practical given the limited information available on how risk can be identified. In addition there could be difficulties for suppliers' customer call handling staff to assess risk over the telephone, when relying on information provided by the customer.

5.41. Accordingly, this option has not been explored further at this stage. The draft licence condition allows the Authority to direct a longer interval period between checks (currently 12 months), following consultation with the DTI and persons the Authority considers likely to be affected, should robust evidence be presented in the future supporting a change.

Competition assessment

5.42. As this is a safety related issue it is not expected that any of the options will have any impact on competition. Issues relating to new entrants are discussed under "small businesses" below.

5.43. A number of suppliers already provide differentiated gas servicing contracts or supply carbon monoxide alarms. It will be at the supplier's discretion whether they would use a broader information requirement to promote these other products.

Impacts, costs and benefits

5.44. In this section we have assessed the impacts, costs and benefits of options 2 and 3, compared to the "status quo" option 1. This has been carried out based on the responses of consumers and suppliers and HSE's research, using a mixture of qualitative and quantitative assessments.

Criteria	Option 1 – Status quo	Option 2 – Current eligibility limited to those on benefits + broader info requirement	Option 3 – Eligibility all owner occupiers on benefits + broader info requirement
		Impact compared to option 1 (√ positive, X negative, 0 neutral)	Impact compared to option 1 (√ positive, X negative, 0 neutral)
Environment	None of the options have a significant impact on the environment		
Security of supply	None of the options have an impact on security of supply		
Health and safety	<p>Does not include test for CO emissions</p> <p>Current information requirement insufficient to raise general public awareness of safety issues.</p>	<p>Eligibility for free checks targeted at the group who have the highest risk of immediately dangerous gas fire in a living room.</p> <p>In addition this customer group also has the risk of being more likely to suffer the consequences of dangerous appliances due to reduced mobility.</p> <p>Will include test for CO emissions</p> <p>Broader information requirement potential to raise general public awareness on safety issues.</p>	<p>√ Eligibility for free checks captures a broad group of at risk customers (although many in the group will not have the additional risk of reduced mobility)</p> <p>√ Will include test for CO emissions</p> <p>√ Broader information requirement potential to raise general public awareness on safety issues.</p>
Distributional effects	Eligibility can result in some receiving free checks who could afford to pay and/or at lower risk.	Targeting those customers with highest risk who may not be able to afford to pay.	√ Covers a broader group of customers who may not be able to afford to pay and many of whom are at the highest risk.
Small businesses	Current requirement has negligible impact on new entrants. Their customer profiles generally do not include many customers of pensionable age, disabled or chronically sick.	There will a broader information requirement to all customers, but the additional cost of including such information with bills and/or other information requirements will be marginal.	0 There will a broader information requirement to all customers, but the additional cost of including such information with bills and/or other information requirements will be marginal.

Risks and unintended consequences	If the status quo is continued some customers will continue to receive free checks who could afford to pay and who are lower risk. Such free checks should be better targeted where there is the highest risk.	Risk that some customers who currently qualify will not have a check carried out. Nevertheless these customers may be prepared to pay for the check. There is a risk given the decrease in the numbers of customers eligible that the numbers of checks could fall. There is limited likelihood that free checks will increase but if this happens there is a risk that licensee will not market free checks in the most effective manner and will have reduced initiatives to help if appliances are condemned.	0 X	Risk that some customers who currently qualify will not have a check carried out. Nevertheless these customers may be prepared to for the check. Less risk that the number of checks could fall. However, there is increased likelihood that free checks will increase and that the licensee will not market free checks in the most effective manner and will have reduced initiatives to help if appliances are condemned.	0 X
Costs and benefits	Last year there were 45,059 checks at an average cost of £52.50. Therefore total industry cost was around £2.4m.	The eligible group would fall from around 5m to 1m. The broader information requirement is expected to increase the response rate from eligible customers (currently 1%). From recent discussions with one supplier on a separate voluntary initiative we estimate that the probable range of response rates would be between 3 to 5%. If 3% of those eligible had a free check there would be 30,000 checks a year, costing £790k less than at present. If 5% of those eligible had a free check there would be 50,000 checks a year, costing £260k more that at present	0	The eligible group would fall from around 5m to 1.7m. However, a broader information requirement is expected to increase the response rate from eligible customers (currently 1%). From recent discussions with one supplier on a separate voluntary initiative we estimate that the probable range of response rates would be between 3 to 5%. If 3% of those eligible had a free check there would be 51,000 checks a year, costing £310k more than at present. If 5% of those eligible had a free check there would be 85,000 checks per year, costing £2.1m more than at present. Therefore, at both these	X

		Therefore, this option could give a cost saving or at most could result in a relatively small cost increase.		response levels this option would cost more.	
		Flue gas analysers could cost as low as £300 per engineer. As many engineers are carrying out checks for a number of suppliers this will be a negligible cost.	0	Flue gas analysers could cost as low as £300 per engineer. As many engineers are carrying out checks for a number of suppliers this will be a negligible cost.	0
		The additional cost of including the safety information with bills and/or other information requirements will be marginal.	0	The additional cost of including the safety information with bills and/or other information requirements will be marginal.	0
Total impact			✓ ✓ ✓ ✓		✓ ✓

Conclusions

5.45. Based on the information we have received from HSE, suppliers and consumer bodies it is our view that option 2 is the most appropriate way forward. Our principal objective requires that we have to protect the interests of customers, wherever appropriate by promoting effective competition. It is our view that the requirement for all customers to be provided with gas safety information meets with that objective. Ofgem also has to have regard to the interests of pensioners, disabled, chronically sick customers and those on low incomes. It is our view that option 2 focuses eligibility for free checks on pensioners, disabled and chronically sick customers on low incomes who have the highest risk of dangerous gas fires. Such customers are also more likely to suffer the consequences of dangerous appliances due to potential reduced mobility.

5.46. We have also had regard best regulatory practice when considering these options in particular the risks faced by certain customer groups. It is necessary to have a requirement in the licence on gas safety information and in particular, the provision of safety checks may not be delivered by effective competition given the costs involved. Option 2, with its reduced eligibility for gas safety checks, ensures that the burden on suppliers is proportionate in terms of cost and targeted where there is the highest risk. It also ensures that costs are not likely to increase and that incentives on suppliers to market gas safety checks in the most effective manner and to provide assistance to customers who have appliances condemned are not reduced.

5.47. We have a duty to consult with the HSE and take into account any advice that it gives on gas safety issues. We have had regard to HSEs research and statistics and its response to the consultation, in particular its comment that checks should be targeted and that carbon monoxide awareness is poor.

5.48. Further reasons for our proposals are found in Chapter 5 of the consultation document.