

## Energy Supply Probe - Proposed Retail Market Remedies

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### Overview:

In February 2008, Ofgem launched the Energy Supply Probe, a study of the state of the retail energy supply markets in Great Britain. We published our Initial Findings Report in October 2008 and set out for consultation in April 2009 a range of proposed remedies.

In the light of responses to consultation, the Authority has decided to proceed to statutory consultation on a package of licence modifications to promote competition and protect consumers in the retail energy supply market. The drafting of these licence conditions has been amended from proposals set out for consultation in April.

This document sets out the rationale for the Authority's decision and the statutory consultation notices required for the proposed licence modifications. We invite any final representations on the proposed measures and seek the consent of suppliers to implement the licence modifications by 15 September. Subject to responses, we intend to introduce the measures into licences by October, for phased implementation over the following six months. If agreement with suppliers is not forthcoming on a package of reforms we consider to be acceptable on this timescale, we will decide what action to take, including whether to refer the market to the Competition Commission for investigation.

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## Context

Ofgem's principal objective is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition. Ofgem also has powers under the Enterprise Act 2002 to make a Market Investigation Reference to the Competition Commission. Ofgem launched a study of the state of GB energy supply markets ('the Probe') in February 2008 to consider whether to make such a reference, if there was evidence of matters that warranted a reference and that could not be resolved through other means. In October 2008, we set out our initial findings on the operation of the GB retail energy markets and in April 2009 we consulted on a detailed package of remedies to promote competition in the retail energy supply market. In the light of responses to consultation, the Authority has now decided to proceed to statutory consultation on a package of final proposals.

## Associated Documents

- Energy Supply Markets Probe - Call for Evidence (30/08), 27 March 2008
- Energy Supply Probe - Initial Findings Report (140/08), 6 October 2008
- Addressing unfair price differentials (01/09), 8 January 2009
- Energy Supply Probe – proposed retail market remedies (41/09), 15 April 2009
- Addressing undue discrimination – final proposals (42/09), 15 April 2009
- Amendment to proposals outlined in the Energy Supply Probe – proposed retail market remedies relating to automatic contract rollovers for micro-business consumers (68/09), 22 June 2009
- Addressing undue discrimination - decision document (72/09), 26 June 2009

The above documents are available via the Ofgem website at the following location:

<http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Pages/Energysupplyprobe.aspx>

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## Summary

In October 2008, Ofgem set out the initial findings of its investigation into the operation of the GB retail energy markets (the 'Probe'). This found that the fundamental structures of a competitive market are in place, and the transition to effective competitive markets is well advanced and continuing. Our investigation did, however, identify a number of areas where competition could work more effectively.

In the light of responses to our Initial Findings Report, we published for consultation in April a detailed package of proposals designed to improve the functioning of the market for all consumers, particularly vulnerable households and small businesses. The key objectives of the package are to:

- improve the quality and accessibility of the information available to consumers so that they can make well-informed decisions about their energy supply;
- empower more consumers to engage effectively in the market; and
- promote greater transparency of the activities of the major supply and generation businesses.

Responses to our April consultation revealed broad support for our objectives and proposals. Most of the proposals were seen as helpful, pro-competitive measures. Nevertheless, suppliers expressed significant concerns about some of the proposed remedies and suggested alternative ways of achieving our objectives in those areas. Consumer groups were in general strongly in favour of the package of measures, although some were keen for us to go further in several areas. Respondents also highlighted a number of policy and practical issues that needed to be resolved.

In the light of these responses, the Authority has decided to proceed to statutory consultation on a revised package of proposals, which includes the following key amendments from the package proposed in April:

- to require suppliers to send additional information to their domestic customers in the form of a statement on at least an annual basis but not each time prices rise;
- to give domestic customers who would be debt blocked longer to repay their debt while still retaining their right to switch supplier and avoid a retrospective price increase;
- to extend the new marketing objective to cover telesales activities;
- to restrict - but not eliminate - the ability of suppliers to automatically roll small businesses on to a fixed-term contract when their existing contract expires; and
- to require the major vertically-integrated supply companies to publish on an annual basis detailed financial information on their profits, underlying costs and revenues based on their own transfer pricing methodology.

A summary of the package of final proposals is set out overleaf. As part of this, suppliers will be expected to deal fairly with customers at all times and behave in a way that helps customers to engage effectively with the competitive market. From today, when considering our priorities for investigating potential licence breaches and in pursuing investigations, we will have regard to a set of overarching standards of conduct that suppliers will be expected to meet. These standards will complement our other proposals and will remind suppliers of what customers expect of them.

We invite any final representations on our package of proposed remedies and seek the consent of suppliers to implement the new licence conditions. Subject to responses, we intend to introduce the new conditions into licences by October, for phased implementation over the following six months. If supplier agreement on an acceptable package of reforms is not forthcoming, we will consider making a market investigation reference to the Competition Commission.

### **The proposed retail market remedies package**

We propose that suppliers active in the domestic market should:

- Improve the information they provide to customers by: stating on each bill the name of their tariff, their annual consumption and illustrated projected cost for the following year; and sending each customer an annual statement.
- Help vulnerable and indebted consumers who are currently blocked from changing suppliers due to outstanding debts, including by:
  - permitting them to switch where a debt is the result of supplier error;
  - increasing the threshold below which PPM customers are free to switch supplier and transfer debt to the new supplier, from £100 to £200; and
  - giving them longer to repay their debt while still retaining their right to switch supplier and avoid a retrospective price increase.
- Improve the conduct of their sales and marketing activities, including by:
  - ensuring that information provided is fair, clear and not misleading, and sales activities are conducted in an appropriate and professional manner;
  - providing each consumer prior to any sale with a written estimate expressed in cost per year in pounds and, in certain circumstances, a comparison with the consumer's current deal; and
  - providing additional information at or shortly after the point of sale.

We propose the following measures to help small business consumers:

- to introduce a range of informational remedies aimed at improving small business consumers' ability to engage with the energy market;
- to restrict suppliers' ability to automatically roll small business consumers onto a fixed-term contract when their existing contract expires;
- to work with Consumer Focus to expand their accreditation scheme to cover switching sites operating in the business-to-business market; and
- that third party intermediaries develop existing or new codes of practice, and promote their use, to encourage best practice in the sector.

We propose the following actions to improve market transparency:

- to require the Big 6 to publish on an annual basis detailed financial information on their profits, underlying costs and revenues; and
- to increase the depth of the monthly information that suppliers provide to us on switching and customer numbers.

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## 1. Introduction

1.1. We launched our study of the state of GB energy supply markets (the Probe) in February 2008. It focused on the functioning of competition in the electricity and gas retail markets for both domestic and small and medium enterprise (SME) consumers and considered wholesale energy markets only to the extent that this was necessary to assess whether retail markets are working effectively.

1.2. We published our Initial Findings Report in October 2008, which reported on the operation of the GB retail energy market. The report set out our findings and a package of measures to tackle the range of issues identified. In the light of responses to our Initial Findings Report, we published for consultation in April 2009 a detailed package of proposals designed to improve the functioning of the market for all consumers, particularly vulnerable households and small businesses.

1.3. Consultation on our proposed remedies closed in May. A summary of responses is contained in Appendix 1 and copies of non-confidential responses can be found on the Ofgem website. We also hosted a series of workshops in June with a wide range of stakeholders to help develop our thinking on the key elements of the package.

1.4. The present document sets out our final proposals for a package of remedies to address the problems identified in relation to retail energy supply markets and constitutes a statutory consultation on the range of proposed licence modifications.

### **Other Probe-related workstreams**

#### *Undue discrimination*

1.5. Over time, we would expect these remedies to make competition in the retail energy markets work more effectively and to bring significant benefits to many consumers. However, this will not happen overnight. Meanwhile, we do not believe that competitive pressures alone will protect all consumers from potential detriment caused by undue discrimination in suppliers' product offerings. Ofgem has a statutory duty to protect consumers, with particular regard to the interests of the vulnerable.

1.6. The Authority decided in June to proceed to statutory consultation on two new standard licence conditions: to require suppliers to achieve cost reflectivity between payment methods; and to prohibit undue discrimination.<sup>1</sup> In the light of responses received to this consultation, we have announced today that the new licence conditions are being introduced with effect from 1 September 2009.<sup>2</sup>

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<sup>1</sup> *Addressing undue discrimination - decision document (72/09)*, 26 June 2009.

<sup>2</sup> Notices of modification to the Standard Conditions of the Electricity and Gas Supply Licences to require cost reflective payment methods and prohibit undue discrimination in domestic supply, 7 August 2009

1.7. The prohibition on undue discrimination is intended to operate only for a limited period to allow the package of retail remedies proposed in the present document to take effect and so the licence condition includes a termination date of 31 July 2012.

#### *Wholesale energy markets*

1.8. While the Probe focused on the operation of retail energy supply markets, the Initial Findings Report also identified concerns about both the level of liquidity in the wholesale electricity markets and about the functioning of the wholesale market itself. Work on these issues is also being progressed separately from the remedies outlined in the present document:

- We have been investigating the underlying causes of low wholesale market liquidity – and considering ways to promote an increase in liquidity. We published a discussion document in June setting out our analysis to date and suggesting possible ways forward.<sup>3</sup> We also recently hosted a seminar with stakeholders to discuss the issues raised in our discussion document. We intend to publish a consultation document in the autumn on detailed options to improve liquidity.
- We published a consultation document in March, which considered three broad approaches to tackling the issue of undue exploitation of market power in the GB wholesale electricity sector.<sup>4</sup> This included the option of implementing any changes through primary legislation. We feel that this route has the advantage of enabling a route of appeal on the merits of a case to be included with any powers for Ofgem to investigate companies. Subsequently, the Government's recent White Paper set out its intention to legislate “to give the regulator the ability to address cases of undue exploitation of market power in the generation market”.<sup>5</sup> We will work with the Government to develop its proposals in this area.
- In response to calls for greater transparency about the relationship between wholesale and retail energy prices, Ofgem has committed to produce regular information on the link between wholesale and retail prices (see chapter 6). We hope that this will help interested parties gain a greater understanding of the relationship between retail prices and wholesale energy costs. Our most recent quarterly Wholesale/Retail Price Report was published in May.<sup>6</sup>

#### *Regulatory burdens*

1.9. Our April consultation paper noted that some concern was expressed by stakeholders over the burden on smaller suppliers of compliance with regulatory and market rules and obligations. These concerns are largely captured by existing initiatives, including our ongoing Code Governance Review.<sup>7</sup> Most recently we issued a consultation document on improvements to the operation of the industry codes

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<sup>3</sup> *Liquidity in the GB Wholesale Energy Markets (62/09)*, 8 June 2009.

<sup>4</sup> *Addressing Market Power Concerns in the Electricity Wholesale Sector - Initial Policy Proposals (30/09)*, 30 March 2009.

<sup>5</sup> *The UK Low Carbon Transition Plan: National strategy for climate and energy*, 15 July 2009.

<sup>6</sup> *Quarterly Wholesale/Retail Price Report – May 2009 (57/09)*, 28 May 2009.

<sup>7</sup> Further information is available on the Ofgem website.

panels and the role of the code administrators.<sup>8</sup> This consultation document contains specific proposals to assist smaller parties to engage in the codes procedures.

1.10. Those concerns that are not captured by the Code Governance Review will need to be considered further in due course. We note that a review of credit arrangements has now commenced.<sup>9</sup> We would encourage engagement from small suppliers in this review and we would be willing to discuss the means to facilitate this. We will continue to strive, wherever possible, to remove undue burdens on small suppliers and new entrants.

### **The structure of this document**

1.11. Chapter two outlines a set of overarching standards of conduct that we expect suppliers to adhere to in their dealings with consumers. These will be introduced into our enforcement guidelines and will be underpinned, where necessary, by more detailed licence conditions and by industry self regulation.

1.12. The following four chapters set out our final proposals to address the issues identified in the Probe:

- Chapter three sets out proposals to promote more active consumer engagement, particularly through improving the quality of information provided to customers;
- Chapter four sets out proposals to help consumers make well-informed choices in response to direct sales approaches by suppliers;
- Chapter five sets out proposals to help small business consumers; and
- Chapter six sets out proposals to promote greater market transparency and facilitate enhanced market monitoring.

1.13. Finally, chapter seven sets out the next steps for the Probe.

1.14. The appendices contain the statutory notices related to the proposed modifications to the electricity supply, gas supply and electricity generation licences.

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<sup>8</sup> *Code Governance Review – role of code administrators and small participant/consumer initiatives – initial proposals* (85/09), 24 July 2009.

<sup>9</sup> Review (252) of ‘Network operator credit’.



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## 2. Standards of conduct for suppliers in the retail market

2.1. Our April consultation document set out a package of proposed remedies aimed at encouraging suppliers to treat consumers fairly at each stage of the acquisition process (from marketing, through to sales and post sales) and to ensure that consumers have access to good information on the options available to them.

2.2. To support these measures, we proposed to introduce a set of overarching standards of conduct that we expect suppliers to take all reasonable steps to adhere to in their dealings with consumers. We considered that these standards of conduct should focus on achieving the following outcomes for consumers:

- consumers should be able to compare products easily;
- consumers should be confident that when dealing with suppliers, they will be treated fairly at all times
- consumers should be provided with full, clear and accurate information by suppliers;
- consumers should be confident that suppliers will take their circumstances into account and provide information on the most appropriate products for them; and
- consumers should not face unreasonable barriers to switching between products or suppliers.

2.3. The proposed overarching standards of conduct are outlined below.

*Standards that we expect suppliers to take all reasonable steps to adhere to in their dealings with domestic and small business consumers:*

- *You must not sell a customer a product or service that he or she does not fully understand or that is inappropriate for their needs and circumstances;*
- *You must not change anything material about a customer's product or service without clearly explaining to him or her why;*
- *You must not prevent a customer from switching product or supplier without good reason;*
- *You must not offer products that are unnecessarily complex or confusing; and*
- *You must make it easy for customers to contact you and act promptly and courteously to put things right when you make a mistake.*

2.4. We believe that a set of overarching standards along these lines would be helpful not only in making clear what consumers expect from suppliers but also in driving improved performance by suppliers. They provide a useful articulation of how we interpret the consumer interest in the context of retail supply markets. They also play an important role in helping to address particular issues identified in the Probe, such as consumer confusion about the range and complexity of tariffs.

2.5. These overarching standards will complement the more detailed licence changes that we are proposing in order to address specific improvements to consumer information arrangements. Our final proposals are outlined in subsequent chapters.

2.6. The majority of respondents to our consultation expressed support for the principle of introducing standards of conduct for suppliers, although views were mixed on what status those standards should have. A summary of responses on this issue is set out in Appendix 1.

2.7. Our April consultation considered the status that these standards should have. We considered but rejected the idea of incorporating the standards as directly-enforceable licence conditions at this stage. Respondents broadly agreed with this assessment, particularly due to concerns about the regulatory uncertainty that could result from creating such broad obligations, although two consumer groups argued that only enforceable standards would be of real value. Nevertheless, this remains an option we will consider when we review the impact of the overall package of remedies in due course. In the meantime, we will monitor suppliers' performance against the standards in their current form. If we do not see progress made, for example in addressing the complexity of tariffs, we will consider whether to take more formal action.

2.8. Instead of directly-enforceable licence conditions, we looked at two broad options for how to embed the standards on an enduring and effective basis:

- Option 1: to insert the standards as a preamble to relevant licence conditions
- Option 2: to set out the standards as overall aims

2.9. Respondents expressed mixed views on the status of the standards, with no clear preference between options 1 or 2. We considered that inserting the standards as a preamble to the licence conditions could give rise to interpretative difficulties in relation to the text of the new licence conditions, thereby leading to possible legal uncertainty. We therefore intend to pursue option 2: to have the standards as overall aims and use them to drive an increased focus on outcomes for consumers.

2.10. From now on, the standards will form part of the wider context for enforcement action. We intend to take the standards into account when considering consumer detriment and when deciding whether to investigate potential licence breaches by suppliers. The standards will continue to form part of the context as an investigation progresses and as we make decisions on the action we might take. This approach will be reflected in our enforcement guidelines when they are updated later this year.

2.11. In order to further emphasise the standards, we will also publish them on our website and refer to them where appropriate in our public statements and decisions. We will aim to publish an open letter to suppliers in the autumn alongside the introduction of the package of licence modifications setting out in more detail our approach to the assessing performance against standards. We will also explore with Consumer Focus, the Energy Ombudsman and other consumer groups whether there is scope for them to apply the standards in their work.

### 3. Promoting more effective consumer engagement

This chapter sets out our proposals to make it easier for domestic consumers to engage effectively with energy suppliers and with the energy market more broadly. These proposals include measures to improve the information that suppliers provide to their customers and to reform the current debt blocking arrangements. They are designed to both increase the number of consumers who engage in the market, particularly more vulnerable consumers, and to ensure that they have the information they need to make well-informed decisions about their energy supply.

#### Improving customer information

##### Background

3.1. Research conducted as part of the Probe found that around 37 per cent of consumers are reactive and typically only switch in response to a call from a salesperson.<sup>10</sup> A further 46 per cent are inactive and have either never switched or have done so only once and indicate that they are unlikely to switch again. Our research also suggested that around two-fifths of switchers may not achieve a price reduction even though the desire to save money is the motivating factor for the great majority of switchers.

3.2. We are keen to improve the quality of decisions made by those switching reactively by ensuring that they have information about their existing consumption, tariff and annual cost with which to compare any other deal they are being offered. We are also keen to encourage more people to consider switching supplier at their own initiative. While nearly all consumers know that they can switch supplier, doing so is rarely a priority.

3.3. We are aware that many customers currently do not want to switch supplier. Nevertheless, there may be a better deal available from their existing supplier: our proposals provide greater transparency of the price customers are paying for their existing deal.

3.4. In our April consultation, we proposed to improve the information provided by suppliers to their customers, including by:

- stating on each bill the full and exact name of their tariff, along with information on their annual consumption; and
- sending each customer an annual statement, which would include information on their consumption and a reminder of their right to switch.

3.5. Research conducted with our Consumer Panel shows that annual consumption given in cost per year in pounds is the most meaningful way for consumers to

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<sup>10</sup> Ipsos-MORI Ofgem Customer Engagement Survey July 2008.

understand their tariff and to compare this with other offers. We believe that expressing tariffs in this way is therefore more likely to result in consumers choosing to engage with the market and, by encouraging suppliers to show their prices in the cost per year format, will enable customers to make informed choices more easily.

### **Stakeholder views**

3.6. We received a wide range of responses to the proposals set out in our April consultation document. These are summarised in Appendix 1. In addition to consultation responses, we also held a roundtable discussion in June 2009 with suppliers and consumer groups to discuss the proposals for improvements to customer information.

3.7. There was a high level of support from consumer groups for the proposed improvements to customer information. Some urged us to go further and, in particular, to be more prescriptive about how the additional information should be displayed through the use of a 'summary box'.

3.8. Consumer groups were very supportive of the concept of an annual statement. Several suggested additional information that should be included on the statements.

3.9. Suppliers were somewhat less supportive of our proposals due to: the cost of increasing the amount of information on bills; concerns about cluttering of bills; and the costs of introducing annual statements. They were also concerned that historical annual cost on bills could be confusing to customers and would not form a good basis for comparing forward-looking quotes.

### **Final proposals**

3.10. Our final proposals for additional information on customer bills and a requirement for suppliers to provide customers with an annual statement are set out below. Our analysis of the likely impact of these measures is set out in an accompanying impact assessment.

#### *Billing information*

3.11. We propose that on each bill or statement of account suppliers be required to state in a clear and prominent manner:

- the customer's exact tariff name<sup>11</sup>;
- consumption for the last 12 months in kilowatt hours (except where a customer has been with the supplier for less than 12 months); and

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<sup>11</sup> The exact tariff name needs to be unique. This must, for example, include any version name so that the customer can make an accurate comparison using an online comparison site or other comparison tools.

- an illustrative projected cost in pounds per year of the supply for the following 12 months if the same level of consumption was used at current prices.

3.12. These requirements will help ensure that customers who wish to search for a better deal have the information that they need to make accurate comparisons. They will also help to ensure that those who are approached by a sales agent are more likely to have the information they need to get an accurate estimate and to be able to compare this with their current deal.

3.13. To respond to concerns that additional information may make the bills too cluttered we have kept the requested additional information to the minimum that we believe is required for customers to be able to make a well-informed decision about their energy supply. For example, in response to concerns that putting the proposed historical annual cost on bills might result in customers making misleading comparisons with forward-looking quotes from other suppliers, we have dropped this requirement. Instead, we are proposing the inclusion of the projected cost per annum for the next 12 months based on current prices and historical consumption, which will be more useful for consumers in comparing forward-looking quotes.

3.14. In response to calls from consumer groups for the information provided to be clear, with suggestion from some that this takes the form of a standard format summary box, we have included in the proposed licence condition the need for all the key information to be presented "in a form that is clear and easy to understand". We will also be carrying out some additional research with our Consumer Panel later in the year to address the broader question of how well customers understand their bills and what improvements might be made.

#### *Annual statements*

3.15. Although suppliers were generally not supportive of providing an annual statement, we continue to believe that this will bring real benefits to consumers in encouraging them to consider whether they are receiving a good deal and to think about switching to another supplier or a better deal with their current supplier. If consumers do wish to consider switching, the annual statement will give them all the information they need to do this and will signpost them to sources of impartial advice.

3.16. In response to suggestions from consumer groups we have added to our original proposals the following additional requirements for the annual statement:

- signposting to independent advice on switching (we envisage that this will be Consumer Focus' website address and Consumer Direct's phone number). We believe that providing this information along with the reminder that you can switch should increase the number of customers who decide to explore other deals that are available;
- a requirement to make it clear whether any estimates have been used in calculating the customer's consumption (this will also apply to information on bills). This is designed to provide a warning about any figures that have been

calculated using estimates as well as to encourage customers to provide meter readings so that they can be accurately billed; and

- specific principal terms of the contract that may affect the customer's switching decision. This includes for example any termination fees that apply to that customer's account.

3.17. In our original proposal, we proposed that the annual statement should contain details of any premium or discount that currently applies to the customer for: the means of payment or a 'premium' product such as a green, fixed term or capped product. We now propose to specify more closely that the annual statement should include a comparison of any premium or discount that the customer is paying in relation to the supplier's standard monthly direct debit tariff. This is designed to improve transparency and to serve as a reminder that savings may be obtained from using different payment methods or accessing different tariffs from their existing provider. We expect suppliers to present this as clearly as possible in a cost per year in pounds or a percentage format.

3.18. Our final proposal is therefore that suppliers must send to each domestic customer at least once every 12 months an annual statement that includes:

- the customer's exact tariff name;
- specific principal terms of the customer's existing contract;
- consumption for the last 12 months in kilowatt hours (except where a customer has been with the supplier for less than 12 months);
- an illustrative projected cost in pounds per year of the supply for the following 12 months if the same level of consumption was used at current prices;
- details of any premium or discount that applies to the customer's tariff as compared to the supplier's standard monthly direct debit tariff;
- a reminder that customers can switch supplier; and
- signposting to sources of independent switching advice.

3.19. The annual statement can be sent out on its own or with another communication from the supplier. The information contained in the annual statement must be clear and easy to understand.

3.20. In our original proposals we had suggested that a statement of such information should be sent whenever the supplier notifies the customer of an adverse unilateral change in contract terms (such as a price increase) under standard licence condition 23. Our intention was to ensure that customers should understand what effect the price increase would be likely to have on their bills, thus enabling them to budget appropriately. Since all bills will now include an illustrative projected cost the majority of customers will automatically receive this information within three months of a price notification. We do not therefore believe it is necessary to also send an annual statement at the time of notifying of a price increase and that the additional costs and systems difficulties of producing such individualised notifications outweigh the benefit. However, where a customer does not receive a bill or statement of account at least once every three months, we have proposed a requirement for suppliers to send those customers an illustrative projected cost within three months of notifying them of a price increase.

### *Implementation*

3.21. In the light of representations from suppliers, we recognise that the proposed new requirements will mean that suppliers need to make changes, for example to their billing systems. We therefore propose that these requirements come into effect on 1 April 2010. From this date, customers will also start to receive their first annual statement. All customers who have been with their current supplier for at least 12 months as of 1 April 2010 should receive their first annual statement by the end of December 2010 at the latest.

## **Notice period for unilateral contract variations**

### **Background**

3.22. Under standard licence condition 23 suppliers currently have a 65 working day period in which they can notify their customers of an adverse unilateral contract variation.<sup>12</sup> They can apply the variation<sup>13</sup> retrospectively but must give their customers the option to end the contract and avoid this retrospective application. Some suppliers notify their customers as part of the ordinary billing cycle. This means that while some customers receive prompt notification, a proportion of their customers do receive the notification close to three months after the change takes effect. Other suppliers will notify separately from the billing cycle but may sometimes do so close to the 65 working day limit.

3.23. Customers who receive notification after a price increase has come into effect are using energy for a period without being aware of the contract change, and therefore are unable to budget for any price change or take additional energy efficiency measures. Very few customers currently take up their right to switch away from the supplier at this time. If they did so, they would avoid any retrospective application of the change. At present, customers have ten working days after receiving the notification in which to notify their supplier that they wish to end their contract. Customers who have an outstanding debt may currently be prevented from switching and therefore will be unable to exit the contract and avoid the retrospective application of the price increase.

3.24. In our April consultation, we proposed to retain the 65 working day period but to strengthen the notification of the right to switch and avoid the application of the retrospective price increase. We also proposed to remove the right of suppliers to debt block anyone who chooses to switch supplier in response to a price increase.

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<sup>12</sup> This reflects the requirement under the EC Gas and Electricity Directives for notice to be given no later than one billing period after the change.

<sup>13</sup> Price increases are the most common form of adverse unilateral contract variation. For simplicity, we will refer to price increases when also mean other possible adverse changes.

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### **Stakeholder views**

3.25. Consumer groups have been very clear that they do not think retrospective notification of any sort is acceptable and point to the financial services industry where advance notification of price increases is required. Suppliers argue that the ability to notify retrospectively enables them to combine notification with the billing cycle, which is more cost efficient than separate notification and also allows them to spread the notification and thus handle the incoming calls that result.

3.26. At the workshop we hosted in June, consumer groups also raised the issue of the 10 working day period that customers currently have to notify their supplier that they would like to switch in order to avoid the retrospective application of a price increase. They proposed that this should be lengthened as some consumers may not react straight away (for example, if they want to consult family or friends). While suppliers tell us they are flexible in such circumstances we propose to ensure that this is always the case by introducing a licence change to increase the period to 20 working days. This will give customers more time to investigate switching options.

### **Final proposals**

3.27. We do not at this time propose to introduce licence changes requiring advance notification as we recognise the cost savings that being able to combine notification with the billing cycle brings. We also recognise that the Probe has been concerned with improving the functioning of the retail market for all consumers and that the issue of advance notification of price increases is not one of the major issues that we are trying to address through the Probe and its remedies. We will, however, continue to explore practices in other industries such as financial services and consider making further proposals in this area.

3.28. Best practice is, in our view, to notify customers of an increase as soon as possible and preferably in advance. The maximum period allowable of 65 working days is a backstop. Under the existing licence condition suppliers can notify customers in advance but we have made this explicit in the proposed changes to the current drafting.

3.29. In deciding on how and when they notify their customers of any unilateral adverse changes to contract terms, suppliers should satisfy themselves that their behaviour is consistent with consumer legislation, including the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). We will be writing to suppliers separately on this point.

3.30. We are particularly concerned that customers can exercise their right to get out of the contract if they wish to avoid a price increase and, in particular, any retrospective application of it. We are proposing a number of changes to strengthen customer rights in this area, which are discussed in more detail later in this chapter.



3.31. In our original proposals we suggested a best practice approach to ensuring due prominence is given to the right to switch and avoid the retrospective increase. However, we have now included in the proposed revised licence condition a requirement for this information to be clear, easy to understand and placed in a prominent position. We have also included a requirement for suppliers to inform customers where they may obtain impartial advice and information about changing their supplier. We will monitor suppliers' adherence to these requirements.

3.32. We also wish to ensure that indebted customers who try to switch away and are subsequently debt blocked are given a reasonable opportunity to repay the debt and still be able to switch to another supplier and avoid any retrospective application of the price increase. We are therefore proposing the introduction of a 30 working day period for the customer to pay any outstanding charges if they notify the supplier of their intention to switch in response to retrospective notice of a price increase or notice that is provided less than five working days in advance of the date on which the variation has effect. The 30 working day period will commence once the supplier notifies the customer that their switch has been blocked because of the debt. At this point the supplier will be required to notify the customer of the 30 working day period.

3.33. We will also work with suppliers and the Energy Retail Association (ERA) to develop commonly applied good practice that we expect to include:

- explanation of how any price increase will be apportioned in the quarter in which it applies; and
- proactive encouragement to customers to provide a meter reading when notification of a price increase is received.

### *Implementation*

3.34. In the light of representations received from suppliers, we recognise that the proposed new requirements will mean that suppliers need to make changes, for example to their IT systems. We therefore propose that these licence requirements will come into effect from 1 January 2010.

## **Reforming debt blocking arrangements**

### **Background**

3.35. Under their licences, suppliers can block domestic customers from switching when an amount remains outstanding on their account 28 days after it has been formally demanded.<sup>14</sup> Vulnerable consumers, particularly those on low incomes, are disproportionately represented among those in debt and therefore often unable to switch supplier until the debt is cleared.

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<sup>14</sup> This is allowed for standard licence condition 14 of the electricity and gas licences.

3.36. We recognise that removing or seriously diluting the debt blocking arrangements would increase suppliers' risk of bad debt and risk additional cost to all customers. Suppliers have previously warned of a number of consequences that this would have: increased use of credit checks and requests for security deposits; the installation of PPMs when customers switch (to secure the debt up front); and more active debt collection activity. The increased costs of these actions would be borne by customers and the increased use of credit checks and security deposits could make it much more difficult for all customers to switch but in particular those with a poor credit history.

3.37. In our April consultation, we proposed some incremental improvements to the current regime that would facilitate greater engagement in the market by vulnerable and indebted customers.

### **Stakeholder views**

3.38. Our proposal to review the current debt blocking arrangements was welcomed and supported by the consumer groups who responded to our consultation. A summary of responses received is set out in Appendix 1. We also held a workshop in June 2009 with consumer groups and suppliers to discuss our proposals.

3.39. Some consumer groups would like us to go further in our proposed reforms of debt blocking and we have undertaken to look again at what further changes might be sensible as part of a broader project considering suppliers' debt practices.

3.40. The Debt Assignment Protocol (DAP) is governed by industry codes rather than licence conditions. At the workshop, suppliers offered to bring forward a code modification to raise the DAP threshold to £200. This would be a more flexible way of delivering the change and we will remove the proposed licence change if the code modification is forthcoming before the licence change is introduced.

### **Final proposals**

3.41. We propose to make the following important incremental improvements to the current debt blocking arrangements to facilitate greater engagement in the market by vulnerable and indebted customers. Our proposals require suppliers:

- when they object to a domestic transfer for debt, to offer debt, tariff and energy efficiency advice to customers at the point of objection;
- to remove the ability of suppliers to debt block where the debt has accrued, or is a result of, supplier error;
- to increase the DAP threshold to £200 to test whether customers with higher levels of debt (which would be harder to repay in the short term) might be more inclined to make use of the DAP;
- to put in place a 30 working day period for customers to repay their debt where a customer would avoid the retrospective application of a price increase by switching supplier (as discussed in the previous section).

3.42. As now, suppliers will need to make it clear to customers the grounds for the blocking of the transfer and how the customer may dispute or resolve such grounds.

3.43. Suppliers have expressed concern that removal of the right to debt block in cases of supplier error or genuine dispute could be interpreted too broadly or be abused by customers, with similar consequences to a withdrawal of the right to debt block altogether. We recognise this concern and would not envisage, for example, that a debt that had arisen as a result of estimated meter readings being replaced with an actual reading being counted as 'supplier error'.

3.44. In the absence of evidence to the contrary, suppliers would be entitled to look more sceptically at disputes being taken up about outstanding amounts that are made only after the supplier has sought to debt block. However, we expect suppliers to be particularly sensitive to cases involving vulnerable customers where the customer may not have been able to appreciate readily the circumstances leading up to the point of being debt blocked.

3.45. The ability to debt block would also still apply to any undisputed sum. We note however that the concept of debt and 'genuine dispute' is not new and has been used in electricity legislation since 1909. Furthermore, Office of Fair Trading guidance on debt collection makes it clear that debt collection agencies should not pursue a debt where it is the subject of genuine dispute.<sup>15</sup> In developing these proposals, we have sought to alleviate the extent to which the current arrangements present a barrier to market engagement, while recognising the potential detriment to consumers associated with an increase in suppliers' exposure to bad debt. We will monitor the impact of these changes to help inform our thinking on the scope for further action.

### *Implementation*

3.46. In the light of representations received from suppliers, we recognise that the proposed new requirements will mean that suppliers need to make changes, for example to literature that they provide to their customers. We therefore propose that these licence requirements will come into effect from 1 January 2010.

## **Addressing tariff confusion**

### **Background**

3.47. The Initial Findings Report identified that many consumers are confused when comparing tariffs for a number of reasons including:

- lack of knowledge as to what tariff they were currently on;
- the wide range of different tariff structures on offer;
- the large number of tariffs to choose from, some of which are very similar; and

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<sup>15</sup> *Debt collection guidance, Final guidance on unfair business practices*, Office of Fair Trading, July 2003 (updated December 2006)

- the difficulty of understanding price comparison information.

3.48. We tested potential tariff comparison formats with our Consumer Panel, where displaying tariff information in terms of the cost per year in pounds was popular. Members of the Consumer Panel found price metrics easier to understand when they did not have to do more calculations than necessary, and some found units such as kilowatt hours confusing. Work with our Consumer Panel also highlighted that when using average consumption levels (such as "low", "medium" and "high"), consumers often place themselves in the wrong consumption category. The overwhelming message from our Consumer Panel with whom we tested detailed proposals was the importance of keeping information as clear and simple as possible to improve its impact.

3.49. In our April consultation, we outlined proposals to address these issues:

- That suppliers adopt "cost per year in pounds" as the basic metric for price comparisons – in both billing information and in annual statements (see earlier section) and in price estimate information given to customers when selling face to face (set out in the next chapter).
- Accompanying initiatives set out in chapter two, including a standard of conduct stating that suppliers must not offer products that are unnecessarily complex or confusing.

3.50. We noted that additional tariff information expressed in a simplified form – such as the Consumer Focus factsheets using "high", "medium" and "low" consumption categories – could still play a useful role for consumers in circumstances where consumption data cannot be used to calculate a bespoke "cost per year" estimate for a consumer to use as a basis to compare tariffs.

3.51. In our April document we also considered options to prevent suppliers from offering tariffs with complex structures, and restricting the number of tariffs suppliers can offer. We had concerns that such initiatives could limit innovation and customer choice, particularly as smart meters are rolled out widely to domestic customers, and as offerings that promote energy efficiency and integrated energy services increase.

### **Stakeholder views**

3.52. Stakeholder views on our proposals to address tariff confusion are summarised in Appendix 1. Most of the Big 6 suppliers broadly supported our proposals to address tariff confusion by using cost per year in pounds as the basic metric for price comparisons, although some believed that comparisons based on pence per unit of energy consumed would be easier to understand. Views among smaller suppliers were mixed and one raised a concern that a cost per year in pounds metric may not be appropriate where supplier offerings did not focus simply on the cost of energy.

3.53. While one large supplier expressed strong support for the use of the Consumer Focus-style tables to aid tariff comparisons (using the "high", "medium" and "low"

consumption categories), some others felt that this would be incompatible with the wider aim to give consumers an accurate estimate based on their own consumption, and could dilute messages about energy efficiency.

3.54. Consumer groups generally supported the development of price metrics. However, several of those responding felt that considering the very large number of tariffs on the market, consumer confusion was inevitable. Given this, there was some support for us to go further in addressing tariff confusion by directly limiting the number of tariffs on the market and by directly limiting the structure of tariffs. One consumer group argued that we should set minimum standards for all tariffs.

### **Final Proposals**

3.55. Our final proposals in relation to addressing tariff confusion are set out in the earlier section on improving customer information and in the next chapter:

- to require suppliers to adopt the “cost per year in pounds” metric in billing and annual statement information, and in written estimates to customers when attempting to sell on a face-to-face basis; and
- the introduction of overarching standards of conduct, including an expectation that suppliers take all reasonable steps to not offer products that are unnecessarily complex and confusing.

3.56. As noted in chapter two, progress in this area will be kept under review. If we do not see progress in addressing tariff confusion, for example through tariff complexity and the number of tariffs on the market, we will consider whether to take more formal action.

## **Simplifying the switching process**

### **Background**

3.57. In our April consultation, we noted that the Big 6 suppliers had indicated that they were willing to take the initiative to introduce a customer switching guarantee as soon as possible - through the Energy Retail Association (ERA). At that time, we said that there could be immediate benefits if suppliers made a clear and robust commitment to consumers that switching supplier is a safe process. We also stated that we would wish to see non-ERA suppliers able and willing to support such an approach.

### **Stakeholder views**

3.58. The proposal that suppliers introduce a customer guarantee for the switching process was supported by all respondents, although one consumer group was not convinced that this would address doubts. Several consumer groups argued that it was essential for these proposals to: provide support for customers where things go

wrong; have a timetable for when things will be put right; provide regular updates to the consumer on progress; and provide compensation where such timescales are not adhered to.

### **Recent developments**

3.59. Since April, the ERA suppliers have collaborated to agree a set of high-level principles designed to reassure consumer that it is straightforward to switch. These are set out on the ERA website and include a 'Peace of Mind Guarantee' (see below). They will also be included on (or linked to) supplier websites.

#### **Energy Retail Association: Advice on Switching Supplier**

##### ***Switching Supplier: Peace of Mind Guarantee***

Energy suppliers are committed to working together to ensure that the switching process is as simple as possible.

We will work together to guarantee that:

- ➔ The switching process is straightforward for you.
- ➔ You are given advice on potential savings to the best of suppliers' knowledge based on the information available.
- ➔ You will be provided with the information you need during the switching process and will be able to contact your old or new supplier if you have any enquiries
- ➔ If you report a problem, it will be recorded and addressed. Any complaint will go through the various stages of the supplier's complaint handling process, including any appropriate redress. If you believe that you have been transferred to a new supplier without your consent, you can contact either your old or new supplier. The contacted supplier will work together with the other supplier to ensure the matter is resolved as quickly as possible.
- ➔ If this happens, the supplier you contact should explain to you:
  - What action will be taken to return you to your original supplier
  - When you can expect to be transferred back to your original supplier
  - That you will only pay once for the energy you have consumed
  - How you will be kept informed during the process
- ➔ The contacted supplier will send written confirmation of the above information within 5 working days of you contacting them. Where possible, the supplier will include an explanation of why the transfer took place.
- ➔ Within 20 working days, the contacted supplier will either confirm that you will be returned to your old supplier or, if not, explain why and when you will be returned.

3.60. The ERA has also produced a leaflet: 'Energy Made Clear: Making it Simple to Switch.' This is co-branded with Consumer Focus and Consumer Direct and includes step-by-step advice on how to switch, answers to frequently asked questions, the Peace of Mind Guarantee and signposting to Consumer Direct and the Consumer Focus Confidence Code for switching sites. The leaflet is being made available to consumer groups such as Citizens Advice.

3.61. Suppliers have committed to reviewing their own performance on switching on a regular basis using a range of measures including reports from the Energy Ombudsman. They have also committed to review the effectiveness of the scheme in 2010.

3.62. We consider that the development of this advice, particularly the customer switching guarantee, is a genuine step by the major suppliers to improve customer service standards and work together to resolve issues. We shall expect to see an improvement in performance. Much will depend upon the arrangements the suppliers introduce to measure and review their compliance with the commitments made. We will review the impact of these arrangements in due course.

## **Promoting confidence in price comparison and switching sites**

### **Background**

3.63. The Probe found that energy switching figures compared favourably with other retail services in the UK. Nevertheless, only a third (36%) of switchers did so as a result of making their own enquiries rather than in response to being approached by a salesperson and only 30 per cent considered deals offered by more than one supplier. Price comparison websites are the main source of information for consumers who investigate deals from more than one supplier before switching. However, only 18 per cent of people who switched during the preceding year consulted a price comparison website. This in part reflects that some consumers do not have access to the internet. It also reflects a lack of confidence that the sites will give unbiased information. Indeed, our research suggests that some consumers believe that switching sites are biased by the receipt of commission from suppliers. This perception can be reinforced by the experience (either directly or by word of mouth) of different switching sites giving different results.

3.64. The Fuel Poverty Summit, chaired by the Ofgem Chairman in April 2008, resulted in a number of actions to promote switching sites to vulnerable consumers. These actions included commitments from switching sites to promote their telephone services; and from switching sites and suppliers to enable more PPM switching and to include specific support for vulnerable consumers. Responses from suppliers and price comparison providers reflected their commitment to these actions. For example, many price comparison services now offer a telephone service that they promote widely in their advertising.

3.65. Consumer Focus runs an accreditation scheme for switching sites through the Confidence Code designed to make consumers more confident about the independence and impartiality of switching sites.<sup>16</sup> Our research has highlighted that awareness of the Code is not widespread and it therefore does not provide peace of mind to most potential users. While the Code was generally well accepted by consumers as a sign of credibility, impartiality and an indicator of quality, both

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<sup>16</sup> The Confidence Code itself is managed by Consumer Focus. Ofgem itself does not regulate price comparison or switching sites.

suppliers and site providers have raised concerns about the timeliness and variety of information being updated. Such factors clearly influence consumers' confidence in the sites.

3.66. The use of comparison and switching sites is an important part of consumer engagement with the market and that there is significant value in having the Confidence Code in promoting consumer confidence in switching sites. However, our April consultation set out our belief that there is scope to increase awareness of the Code and the guarantees that accreditation brings.

3.67. Consumer Focus hosted a seminar on the Confidence Code in March 2009, at which it put forward a range of possible options for improving the functioning of the Code and fostering consumer confidence in switching sites. In the light of responses received, we understand that Consumer Focus plans to consult on proposals in the autumn, with a view to taking decisions on changes to the Code later in the year.

3.68. The seminar also considered ways to raise awareness of the Code and improve confidence in switching sites. Suggestions included: making the Code more prominent and accessible on the Consumer Focus website; raising the profile of the Code with Government agencies (e.g. trading standards) and other consumer groups (e.g. Citizens Advice); and for Consumer Focus to emphasise switching sites when commenting publicly on, for example, price changes.

### **Stakeholder views**

3.69. Respondents to our consultation were generally supportive of our proposal to promote confidence in price comparison and switching sites. Several respondents believed that more work could be done with the Consumer Focus Confidence Code. A summary of responses is set out in Appendix 1.

### **Final proposals**

3.70. As highlighted in our April consultation, we welcome the commitment from Consumer Focus to develop and further promote the Confidence Code. We stand ready to work with Consumer Focus and the industry to promote confidence in price comparison and switching sites.

3.71. Other changes we have proposed in relation to the information provided by suppliers to their customers so that all bills have the exact name of the customer's tariff and their annual consumption – and the provision of annual statements – will help consumers more accurately to use switching sites and provide a basis for delivering more consistent results from the different sites. These measures should play their part in improving consumer confidence in accredited switching sites.



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## 4. Helping consumers make well-informed choices

This chapter sets out our proposed remedies to help consumers make well-informed decisions in response to direct sales approaches by suppliers. These measures are designed to prevent misleading sales and marketing activities by suppliers and - building on the measures proposed in the previous chapter - to improve the quality of information provided to customers on which they can base their decisions.

### Strengthening sales and marketing rules

#### Background

4.1. Direct selling of gas and electricity, particularly on the doorstep, has an important impact on domestic consumers and on competition. Over half of switching takes place in response to direct sales activity, the majority of which takes place on the doorstep. Direct selling is also an important way in which the benefits of competition are drawn to the attention of lower income and disadvantaged groups.

4.2. The Probe revealed a number of serious issues that may lead to poor switching decisions by consumers in response to direct sales. Consumer research found that far too many consumers who switched as a result of a direct sales approach with the intention of saving money did not achieve a price reduction. This is despite the fact that around four in five of those same consumers did so because the supplier that approached them claimed that they were cheaper than their current supplier.

4.3. While enforcement action is already available to tackle mis-selling, there are certain weaknesses in the current marketing licence condition. In particular, it focuses on the issues that were the primary concern at the time of market opening, such as ensuring customers are aware that they are signing a contract and are content to do so. Current concerns are much more about whether the information consumers are given on tariffs and the savings they will make are accurate and adequate to enable well-informed decision making. The current licence condition also focuses on the inputs to the sales and marketing process such as training and recruitment rather than the outcomes for consumers.

4.4. Whether consumers engage proactively with energy markets or engage only in response to direct sales approaches by suppliers, it is important that they are able to make well-informed decisions regarding their energy supply. Building on the measures proposed to improve the quality of information provided to customers, we consulted in April on further measures to help consumers make informed decisions.

4.5. In particular, we proposed that when attempting to sell to consumers on a face-to-face basis suppliers must: provide the consumer prior to any sale with a written estimate and, where appropriate, a written comparison with the consumer's current deal; and provide additional information to the consumer at the point of sale. We also proposed to refocus the marketing licence condition on delivering positive consumer outcomes.

## Stakeholder views

4.6. Responses to our April consultation revealed widespread support for our proposals to help consumers make well-informed decisions in response to direct sales approaches. Suppliers were broadly supportive of our proposals, provided that they did not to discourage direct sales activities by creating an overly prescriptive regulatory framework. Consumer groups generally welcomed our proposals, which they saw as having the potential to make real improvements to the consumer experience, although they expressed some concerns about how the measures would be implemented in practice. A summary of responses is set out in Appendix 1.

4.7. In addition to our formal consultation exercise, a stakeholder workshop was held on 26 June to discuss issues around practical implementation of our proposals. This was attended by 19 representatives of a range of suppliers and consumer groups. Key issues discussed included the scope of the licence condition, the new objective and the timing of implementation of any new requirements:

- Attendees expressed mixed views on whether the marketing licence condition should be extended to cover telesales. Consumer groups and a couple of small suppliers were in favour on the basis that we should not wait for problems to emerge in this area before acting. Most of the Big 6 suppliers were not keen with such an extension, arguing that the issues raised by telesales were different and that it was not costless to extend the licence requirements in this way. Nevertheless, one of the Big 6 was content on the basis that they were already meeting these standards.
- There was general agreement in principle with the proposed objective. However, concerns were expressed by several suppliers about the greater uncertainty involved with regulation based on outcomes rather than rules – and that the objective represents a tougher test than the existing licence condition.
- There was broad agreement that the objective could come into force as soon as the new licence condition is agreed. However, it was widely accepted that for some of the other requirements, IT/systems development would be required, for example to produce and/or upgrade handheld devices and to develop record keeping facilities. As such, it was felt that a suitable implementation lag would be appropriate.

## Final proposals

4.8. In the light of the responses to consultation and our further discussions with stakeholders, we propose to introduce a new marketing licence condition, broadly as set out in April. Our assessment of the impact of these proposals is set out in an accompanying document. In summary, we believe that our proposals will:

- improve consumers' ability to make well-informed decisions in response to direct sales approaches from suppliers;
- improve the quality of consumer switching activity and thereby increase competitive pressure on suppliers;

- improve the regulatory framework in order to allow more effective enforcement of the rules governing sales and marketing activity; and
- help to build consumer confidence in the competitive market.

4.9. We also believe that our proposals achieve a reasonable balance between: providing consumers with more and better information on which to make decisions about their energy supply; and placing additional responsibilities on suppliers that could lead to a reduced level of direct selling activity.

4.10. The proposed licence conditions for electricity and gas are set out in Appendices 3 and 4. The key elements of the proposed new licence requirements are discussed below.

#### *Objective*

4.11. In order to recast the licence condition so that it focuses more on positive outcomes for consumers rather than on processes, we propose to introduce a new objective and to require licensees to take all reasonable steps to secure achievement of that objective. The objective, which is consistent with the relevant proposed standard of conduct (see chapter 2), is in essence that:

- information provided during the sales process should be complete and accurate, understandable, appropriate and not misleading; and
- sales activities should be conducted in a fair, transparent, appropriate and professional manner.

4.12. We propose that this objective should apply to telesales as well as face-to-face marketing activities. The rationale here is to apply a more consistent level of protection for consumers across all direct marketing activities and, in doing so, guard against the emergence of problems in the less regulated channel of telesales. In recognition that the issues posed by telesales are different and potentially less problematic than for face-to-face sales, we propose that the more detailed requirements outlined below only apply to face-to-face marketing activities.

#### *Pre-contract obligations*

4.13. We propose to introduce a new requirement that, prior to completing a sale, sales agents must provide the consumer with a written estimate and, in certain cases, a written comparison with the consumer's current deal. This information may be presented either on paper or by means of an electronic display.

4.14. The written estimate should be expressed in terms of the projected cost per year in pounds of the relevant tariff and must take account of the consumer's annual consumption. Ideally, this would be based on information supplied by the consumer - but can also be based on a best estimate where this is not possible. In such cases, the basis for the estimate should be given.

4.15. The comparison with the current deal would be required where the consumer is either a PPM customer or the sales agent has made a comparative claim (this includes claims about monthly direct debit payment levels). The comparison must be made on a consistent basis with any relevant differences clearly explained. Where a PPM customer cannot provide details of their current tariff, the sales agent may base the comparison on their best estimate of that tariff, having regard to any relevant information available at the time. However, where a sales agent makes a comparative claim but a comparison cannot be produced (for example because the consumer does not know their current tariff), a sale cannot proceed at that time.

4.16. At our recent workshop, several stakeholders expressed the view that it would be helpful if suppliers were to make available through their websites all tariff information, notably current rates on all their products - both those currently on sale and preserved tariffs - such that this data would be readily available to all suppliers. Others argued that it would be helpful if the industry were to agree a common set of rules for carrying out comparisons in face-to-face situations. We would be willing to work with suppliers and other interested parties to explore further improvements in these areas, for example around tariff comparability.

4.17. Where a sale is completed, we propose to require suppliers to keep the records for a period of no less than two years. We believe that suppliers would wish to maintain such records to support their management controls around their sales and marketing activities. The records will also be helpful for investigating complaints. We believe that two years is a reasonable period for such records to be kept and that this is consistent with Ofgem's enforcement timescales.

4.18. We believe that these provisions are workable for all face-to-face sales. In the context of sales away from the home, the consumer is less likely to have access to information about their existing supplier or consumption levels and we recognise that estimated usage may be relied on more often in these circumstances. Nevertheless, we believe that these provisions will help consumers to make better informed decisions about their energy supply.

*Additional information at the point of sale*

4.19. We propose to require suppliers to provide additional information to consumers after a sale has been concluded. The information that we would expect to be provided includes:

- a copy of the contract;
- an explanation of what happens next;
- a reminder to the consumer to check the product is right for them (including where to find impartial advice and information, such as Consumer Direct);
- an explanation of their cancellation rights; and
- what to do if they have any concerns (including Consumer Direct's phone number).

4.20. In recognition of differing practices among suppliers, we propose that this information may be provided either at the point of sale or shortly thereafter.

#### *Post-sale follow-up*

4.21. The existing licence condition requires suppliers to carry out post-sale follow-ups with customers. We had considered making this a proactive obligation i.e. requiring suppliers to obtain positive confirmation from the customer that they wish to proceed with the transfer. However, we now recognise that this is likely to result in a very high level of drop-out and potentially customer confusion if they thought they had agreed to switch but it does not then happen.

4.22. In the light of the proposed objective, the onus will be on suppliers to determine how best to satisfy themselves that a customer is content to switch. That said, we propose to retain the requirement for suppliers to make contact with the customer after the sale, which as now can be in writing or by phone. We propose to remove the requirement for this contact to be at least 24 hours after the sale to allow suppliers to do it by phone at the point of sale, which we have previously acknowledged as being good practice. We also propose to add a requirement for the supplier to check that the customer understands the principal terms of the contract and has received a written estimate and, where appropriate, a written comparison.

#### *Other issues*

4.23. We propose to remove several elements of the existing marketing licence condition. These include the requirements around advance payments to agents (standard licence condition 25.8 and 25.9) and keeping in touch with customers in the period between entering into a contract and supply starting (standard licence condition 25.6), both of which appear to us no longer to be relevant given developments in the energy market.

4.24. We also propose that the new licence condition will not have a sunset clause. While we would expect to review the condition in the light of any developments in relation to wider consumer protection legislation or strengthening of self-regulation, for example, we see no reason to assume that problems associated with direct sales will go away in the foreseeable future. Indeed, with more effective competition between suppliers in the future the problems might arguably become greater.

4.25. Attendees at our stakeholder workshop did not raise any concerns about these proposed deletions.

#### *Implementation*

4.26. We propose that the new marketing objective should come into force shortly after the new marketing condition is inserted into suppliers' licences (potentially around 1 October 2009). No supplier has made representations to us that they would not be in a position to comply with the new objective on this timescale.

4.27. For the more detailed requirements that we propose will apply to face-to-face marketing activities, we recognise that suppliers will need time to prepare for compliance. This may include: retraining staff; upgrading IT systems and handheld technology; and developing record keeping facilities to store copies of written estimates and comparisons. We therefore propose that these requirements should come into force on 1 January 2010.

## 5. Helping small business consumers

This chapter sets out our proposed remedies to improve the functioning of the non-domestic retail energy market by increasing the regulatory protection for small business consumers - in particular, by improving the general visibility and transparency of products and services offered to small business consumers.

### Improving the market for small business consumers

#### Background

5.1. The Probe highlighted a number of concerns relating to the operation of the energy retail markets for small business consumers, including:

- The amount of information small business customers receive about contract terms and conditions can vary significantly depending on the supplier and the sales channel, and full terms and conditions are not always provided;
- Small business consumers may not have the ability to negotiate contract terms and conditions with their supplier and those contracts may not provide appropriate risk sharing between the two parties;
- Switching rates in the non-domestic market have been lower historically than in the domestic market. While there may be good reasons for this, concerns remain about the availability of information concerning energy offers for small business consumers;
- Concerns have been raised that some third party intermediaries (TPIs) do not provide consumers with clear information about the service they are offering. This can leave energy consumers uncertain about who the TPI represents, how they are funded and which energy suppliers they are able to provide quotes for. Although TPIs can play a valuable role in helping business consumers procure energy, the issues identified have left many consumers mistrustful of all TPIs.

5.2. We consulted in April on a number of proposed remedies to address these concerns. In doing so, we proposed to target the remedies at micro-business<sup>17</sup> consumers and stated that we were minded to propose a change to supply licences in order to implement the measures. The proposed remedies are outlined below.

- We proposed that suppliers provide their customers with timely, clear and understandable information regarding the terms and conditions of their contracts and their rights and responsibilities at the end of any fixed-term contract period. This included a requirement that suppliers must provide consumers with key contract terms and conditions before a contract is agreed and, shortly following such an agreement, a copy of clear terms and conditions in writing.

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<sup>17</sup> A micro-business is defined in Article 2(1) of the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 as including businesses that employ fewer than ten people and which have an annual turnover of less than 2 million Euros; or which use less than 200,000 kWh of gas per year or 55,000 kWh of electricity per year.

- We proposed to remove suppliers' ability to automatically rollover fixed-term contracts. As such, once an initial fixed term period ended, customers would be free to stay with their existing supplier, and able to agree another fixed-term contract should they choose, or move to a new supplier. If a customer had not arranged a new contract at the end of their fixed-term period, suppliers would have the ability to set prices as appropriate. However, the customer would not be locked in, and so be able to agree a new contract or switch supplier at any point. We also proposed to clarify the circumstances when a supplier should be permitted to object to a customer transfer after a fixed-term period has ended.
- We indicated our keenness to work with Consumer Focus towards extending its accreditation scheme (the Confidence Code) to include internet price comparison and switching sites for non-domestic consumers.
- We recommended that TPIs seek guidance from the Office of Fair Trading (OFT) on developing the existing voluntary industry code of practice or create a new code of practice and to seek to promote wide membership to build consumer confidence.

## **Stakeholder Views**

### *Consultation responses*

5.3. We received 29 responses relating to our proposed non-domestic remedies. Most respondents welcomed measures to improve the functioning of the market for smaller businesses and were broadly in support of our proposed remedies around:

- clear terms and conditions;
- accreditation of switching sites; and
- dealing with TPIs.

5.4. However, significant concerns were expressed regarding on our proposal to ban automatic contract rollover, including from the Big 6 suppliers and some smaller non-domestic suppliers. They were particularly concerned about the potential impact on the dynamics of competition in the targeted segment and about the impact on costs. One consumer group also expressed a concern that customers may face higher energy prices as a result of this measure and urged Ofgem to reconsider the proposal. On the other hand, there was support for this proposal from many non-domestic customers and trade associations, and from two small suppliers.

5.5. There was some support for targeting the remedies at micro-businesses as defined in Article 2(1) of the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008. However, some suppliers felt that the definition would include too many consumers, and some wanted the criteria for determining eligibility to be restricted to consumption in order to ease their ability to identify eligible customers. Some consumer groups wanted a broader definition to capture larger businesses.

5.6. A detailed summary of the responses to consultation is contained in Appendix 1.



*Amended Proposals – June 2009 Open Letter*

5.7. In the light of responses to the April consultation and our discussions with stakeholders, we published an open letter in June 2009 setting out an amendment to our proposal to eliminate suppliers' ability to automatically rollover fixed-term contracts.<sup>18</sup> Our amended proposal was to limit the conditions under which suppliers could automatically roll over customer contracts, while not eliminating their ability to do so. The measures would require that consumers are given clear information about their rights and responsibilities in good time ahead of the end of their contract, and provide consumers with ample time to then act on this information and engage with the market.

5.8. We recognised that these measures would not entirely eliminate the risk of potential consumer detriment as a result of automatic contract rollover. We noted our belief that the alternative proposal would help address the key concerns raised through our research into the small business market, while minimising potential negative impacts on the market. We noted that if this alternative proposal were to prove insufficient in addressing the problems identified, we could choose to revisit our policy options around this issue.

5.9. There was general support for our alternative proposal. Stakeholders broadly agreed that these measures represented a step in the right direction, and would give small business consumers added protections and help address the concerns raised in the Initial Findings Report. Many felt the alternative proposal represented a more proportionate response to the concerns identified than the original proposal, and noted that it would minimise the risk that more small businesses would go onto higher out-of-contract rates when their fixed-term contract came to an end. However, some consumer groups, one small supplier and several TPI representatives expressed a clear preference for an outright ban on automatic contract rollover, which they felt would have been more effective.

5.10. A summary of responses to the open letter can be found in Appendix 2.

**Final Proposals**

5.11. Our key objective is to facilitate increased engagement of small business consumers with the retail energy markets by improving their ability to understand their energy options and make procurement decisions that best meet the needs of their business.

5.12. We are also seeking to ensure that small business consumers are not rolled over automatically onto a subsequent fixed-term energy contract without their knowledge, and that consumers have adequate time to consider energy offers toward the end of a fixed-term contract and to inform their supplier of their intentions.

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<sup>18</sup> *Amendment to proposals outlined in the Energy Supply Probe – proposed retail market remedies relating to automatic contract rollovers for micro-business consumers (68/09), 22 June 2009.*

5.13. In the light of our research and consultation with a wide range of stakeholders, we propose to introduce licence requirements to increase the amount and timeliness of information that suppliers provide to small businesses regarding their contract terms and conditions; these are broadly consistent with measures outlined in April.

5.14. We also propose to introduce measures restricting suppliers' ability to automatically roll a small business customer onto a subsequent fixed-term contract. We intend to achieve this by requiring suppliers to meet certain criteria before they would be able to roll over a customer contract. In particular, a supplier would need to demonstrate the following:

- there is a minimum period of 30 calendar days between the time a customer is sent a reminder notice that the fixed-term period of their contract is due to come to an end and the last point they are able to notify their supplier that they would like to switch supplier or agree a new contract;
- when contacting customers to alert them that their contract is coming to an end, and offering new contract options, suppliers will be required to promote customer engagement by highlighting the importance of the material, making the customer aware of their options and what action they may wish to take;
- customers can give notice that they wish to transfer to another contract any time from the inception of the contract until the close of the regular notice period; and
- the length of time a contract can be automatically rolled-over is no more than 12 months.

5.15. An assessment of the impact of our proposed licence changes is set out in an accompanying document. This concludes that our proposed measures would have significant benefits for small business consumers, while recognising that there may be an increase in some costs associated with these proposals. We understand the concerns raised regarding the April proposal to ban automatic contract rollover. On balance, we consider that our final proposal will meet our stated objectives and constitutes a significant change in regulation of this segment of the market.

5.16. In addition to these proposed licence changes, we are working with Consumer Focus towards extending its accreditation scheme (the Confidence Code) to include internet price comparison and switching sites for non-domestic consumers. We note that the criteria used would need to differ somewhat from that currently in place for the domestic market to reflect the varying structures of these two distinct market segments.

5.17. Ofgem has no direct powers to regulate TPis. However, we note there are a range of self-regulatory measures that TPis and others in the energy industry may explore to improve consumer confidence in the working practices and services offered by TPis. We recommend that:

- TPIs seek advice from the Office of Fair Trading (OFT) on developing one or more of the existing voluntary industry codes of practice (such as that administered by the Utilities Intermediaries Association (UIA)) or create a new code of practice<sup>19</sup>;
- TPIs seek to promote one or more of the existing codes of practice (such as that administered by the UIA) or a new code of practice to establish best practice among a wide membership and to build consumer confidence - in particular, by ensuring that TPIs accredited under any such code(s) of practice are required to explain before a customer signs any contract: (i) how they are funded, and (ii) which suppliers are covered by their brokering services; and
- customers and suppliers consider a TPI's practices prior to entering into a business arrangement with them. Suppliers and consumers both have a role to play in exerting pressure on TPIs to demonstrate robust and transparent business practices.

### *Implementation*

5.18. In the light of representations received from suppliers, we recognise that suppliers will need some time to make various changes in order to be compliant with these measures, including amending their systems and processes; amending customer materials (including contract terms and conditions) and sales literature; and retraining staff. We therefore propose that these licence requirements will come into effect on 1 January 2010.

5.19. It should be noted that these do not apply retrospectively. For the avoidance of doubt, the requirements only apply to new small business consumer contracts or new contract extensions entered into on and after 1 January 2010.

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<sup>19</sup> The OFT operates the Consumer Codes Approval Scheme for "approving and promoting business-to-consumer codes of practice in consultation with business and other stakeholders." Only businesses serving domestic customers are eligible for the formal scheme and the TPIs concerned operate in a business-to-business market. Any advice that the OFT were able to provide beyond materials already available (for example on their website in relation to business-to-consumer codes) would be of an informal nature. Details of the Consumer Codes Approval Scheme can be found on the OFT website.

## 6. Promoting market transparency

This chapter sets out our final proposals for introducing greater transparency on certain aspects of the market, to give consumers and firms confidence that the market is competitive and fair. In particular, we put forward our proposals to require the large, vertically-integrated suppliers to provide greater clarity regarding the relationship between the supply and generation activities. We also set out our plans for Ofgem to collect additional information from suppliers in order to monitor the effectiveness of the package of remedies set out in the present document.

### Improving transparency of supply and generation

#### Background

6.1. The Probe highlighted the need for more transparency with regard to the relationship between the generation and supply activities of the large, vertically-integrated companies (the Big 6). As not all Big 6 produce separate segmental accounts (for gas supply, electricity supply and electricity generation) it can be difficult for current and potential market participants to assess the profitability of these different activities. In addition, there is little transparency regarding the transfer price used by the supply and generation businesses to exchange wholesale energy, giving rise to concerns about cross-subsidisation.

6.2. Segmental reporting and increased transparency on transfer pricing should provide better visibility to existing market participants and potential new entrants regarding margins in different parts of the value chain. We therefore published for consultation in April four options for financial reporting requirements:

- Option 1: the Big 6 would each publish separate financial information on their gas supply, electricity supply and electricity generation businesses, at the same time as their statutory accounts are published. The information would be readily available on their websites and reconcilable to GB Group EBITDA<sup>20</sup>. All accounting policies (including transfer pricing) would need to be consistent with and reconcilable to the policies adopted in the company's statutory accounts.
- Option 2: the Big 6 would submit financial information in pre-designed templates to Ofgem. This would involve more granular data on revenues, costs, volumes and profits for gas supply, electricity supply and generation businesses than in option 1. Based on detailed guidance notes we would ensure a higher degree of consistency across companies. All accounting policies (including transfer pricing) would need to be consistent with and reconcilable to the policies adopted in the company's statutory accounts. We would publish headline figures on an industry-wide basis to avoid issues of commercial sensitivity.

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<sup>20</sup> EBITDA stands for earnings before interest, tax, depreciation and amortisation.

- Option 3: the Big 6 would provide Ofgem with financial information as in Option 2 but only information pertaining to gas and electricity *supply* businesses. There are two mutually exclusive sub-options: (a) information would be submitted on gas and electricity supply business costs (as specified in option 2), but excluding information on weighted average cost of electricity and gas; and; (b) information would be submitted only on the weighted average cost of electricity and gas for the supply business. Ofgem would publish headline figures on an industry-wide basis to avoid issues of commercial sensitivity.
- Option 4: the Big 6 would provide financial information to Ofgem as in options 1 and 2, but would also produce revised revenue and cost data based on a specified market-based transfer pricing methodology. We would publish headline figures on an industry-wide basis to avoid issues of commercial sensitivity.

## **Stakeholder views**

### *Responses to consultation*

6.3. In response to consultation a broad range of stakeholders commented on the proposal for separate supply and generation accounts, with the majority of opinion (small suppliers, consumer groups and one of the Big 6) in favour of increased transparency in this area. A summary of responses is set out in Appendix 1.

6.4. Four of the Big 6 suppliers agreed to the proposal in some form. They broadly accepted the need for ensuring consistency in reporting, while highlighting the need for any information requested to be proportionate and comparable, to minimise the costs of compliance and for publication to adhere to non-disclosure if/where relevant. A preference for option 1 was expressed by three of these four respondents.

6.5. Two of the Big 6 expressed strong concerns about the proposals in their current form, arguing that none of the options would fully achieve Ofgem's objectives. Both argued that because they do not run their supply and generation businesses separately, the need to report these accounts in such a way would be based on arbitrary assumptions rather than a true reflection of their operations.

6.6. The majority of other respondents who voiced their support (including some small suppliers and consumer groups), favoured either option 2 or 4 on the grounds that they provided greater cost detail to Ofgem and therefore a greater potential level of confidence to the market.

### *Subsequent discussions*

6.7. In addition to our formal consultation exercise, a stakeholder workshop was held on 30 June to discuss issues around practical implementation of our proposals. This was attended by the Big 6 suppliers, and several small suppliers and consumer groups.

6.8. At this workshop, there was support from most of the Big 6 for the adoption of option 1, subject to agreement on points of detail. Attendees generally agreed that the information prepared should include an explanation of: how the licensee defines revenues, costs and profits; how they can be reconciled to UK statutory accounts; and the transfer pricing methodology used. Attendees also recognised that such explanations should be easy to understand by industry stakeholders.

6.9. The group also reached agreement that the financial statements envisaged under option 1 should be produced in a reasonable timeframe following the licensee's financial year end in order not to place unreasonable administrative costs on suppliers and for the information to be timely and useful for market participants.

6.10. Attendees felt that it would be helpful for Ofgem to provide guidance on any new requirements in order to aid completion of the statement and to ensure that the information presented was clearly explained.

### **Final proposals**

6.11. A detailed appraisal of the benefit and cost of the options on which we consulted is set out in the impact assessment published alongside this document. The conclusion of the assessment is that option 1 provides the most favourable balance between costs and benefits. Option 1 should provide significant additional transparency regarding the supply and generation activities of the major vertically-integrated supply companies and is likely to result in the smallest cost. While option 4 would provide the greatest additional transparency, it would also be the most expensive option to implement and we do not believe that the additional cost would be justified in terms of incremental benefit.

6.12. Based on this assessment and in the light of responses to consultation and our discussions with stakeholders, we propose to introduce a new licence condition to implement option 1, subject to some changes to the timeframe of disclosure. The licence condition is set out for statutory consultation in Appendices 3-5. Guidance on the proposed licence requirements is set out in Appendix 6.

6.13. We are keen for the information provided for in option 1 to be published in a timely fashion in order to be useful to market participants. Option 1 as originally proposed involved requiring companies to publish the new financial statements at the same time as their statutory accounts. In most cases these reports are published within two to three months of the financial year end. In the light of stakeholder views on the appropriate timescale within which complex financial data and reconciliations can be conducted, we propose to require the companies to publish the new financial statements on their main websites no more than six months after the companies' financial reporting year end. As such, the first reports would need to be published during 2010 for the financial year 2009/10. We would welcome earlier publication by the companies if that is possible.

6.14. Ofgem intends to publish links to the relevant web pages on its own website, to ease the process of comparison for market participants.

## Enhancing market monitoring

6.15. Ofgem has general monitoring duties and keeps the operation of the GB retail markets under ongoing review. Our April consultation set out our view that our market monitoring needs to evolve to better reflect market developments and provide us with better information on certain customer segments.

6.16. Currently, we collect monthly information on total domestic customer numbers and total switching by fuel type and region. However, more granular information is necessary for us to monitor better the impact of our proposed remedies on different domestic customer segments, following our assessment that some customer groups were not yet fully benefiting from the competitive market. We also noted that this included the need to expand our monitoring of the non-domestic market, specifically of the small business sector.

6.17. Since April, we have engaged with domestic suppliers to investigate whether they would be able to provide switching and customer number information broken down by customer segments and, where possible, by tariff offerings on a regular basis. In general, we have had a positive response to this request and, consequently, will be increasing the information we receive from domestic suppliers. However, it is clear that not all of this information is equally accessible or robust. In part this is because of differing arrangements in gas and electricity. We are discussing this with suppliers, to ensure that we strike an appropriate balance between the level of granularity of the data we seek, and the robustness of that data. We will then finalise the data requirements and accompanying guidance of reporting terms to enable suppliers to build appropriate reporting systems.

6.18. We have also examined market monitoring requirements for the non-domestic market, where we are focussing on improving our access to switching and objections data in particular. Assuming the package of remedies outlined in Chapter 5 is agreed, including our proposal to adopt the micro-business definition as the focus for many of our remedies in this area, our next step will be to refine our proposed information requirements and to engage with non-domestic suppliers to explore the practicalities of obtaining these data on a regular basis.

## Examining the link between wholesale and retail energy prices

6.19. The Initial Findings Report set out analysis of the relationship between wholesale and retail energy prices. Market participants and other stakeholders subsequently called for greater transparency on this relationship. In response, Ofgem committed to produce regular information on the link between wholesale and retail energy prices and, in March 2009, we published our first Wholesale/Retail Price Report.<sup>21</sup>

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<sup>21</sup> *Quarterly Wholesale/Retail Price Report – February 2009 (15/09)*, 2 March 2009.

6.20. By updating the analysis from the Probe, Ofgem hopes that this report will help interested parties gain a greater understanding of the relationship between retail prices and wholesale energy costs. Ofgem is intending to publish the report on a quarterly basis (the latest report was published in May 2009<sup>22</sup> and the next is due out later this month). In addition, when appropriate, we may publish the report and related information outside of this time scale.

6.21. The reports will provide clearer information and analysis for customers who want to understand the relationship between wholesale and retail prices. The report will include information on forward wholesale gas and electricity costs, which make up the bulk of retail energy prices.

### **Improving EU energy market transparency**

6.22. The proposals set out in this chapter are put forward in the context of broader developments in transparency in EU energy markets. GB wholesale prices are already linked to markets in North West Europe, particularly in gas, and this is likely to increase over time with new electricity interconnection being developed. Ofgem has been active in promoting transparency through the gas regional initiative, and the European Commission now publishes a quarterly review of wholesale and retail electricity prices across Europe, through its Market Observatory for Energy.

6.23. With the implementation of the European Third Energy Package (Third Package), a new Agency for Cooperation of Energy Regulators will be created, which will have responsibilities for market monitoring. The Agency will also develop Framework Guidelines, which will lead to binding cross-border codes intended to promote market integration in a range of areas, including transparency.

6.24. Greater clarity about developments in continental European markets will improve market understanding of the impacts on GB wholesale and, in turn, retail markets. The shortages of gas in central Europe in January 2009 as a result of the dispute between Russia and the Ukraine showed how impacts can be transmitted across borders. The Agency's remit will also extend to monitoring retail markets, where there are new protections for customers through the Third Package and the Commission also remains active in investigating retail price controls, which remain in place in many European energy markets.

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<sup>22</sup> *Quarterly Wholesale/Retail Price Report – May 2009 (57/09)*, 28 May 2009.



## 7. Next steps

This chapter discusses the approach we are taking in proposing modifications to the existing licences and to implementation and review of the package of retail market remedies. It also sets out our plans for working with consumer groups to raise awareness among consumers of how the changes are likely to affect them.

### Legal framework for making the modifications

7.1. We propose to introduce the licence modifications outlined earlier in this document using the collective licence modification process. The Statutory Notices contained in Appendices 3 to 5 propose licence modifications to the standard conditions of the gas and electricity supply licences and the electricity generation licence. These licence modifications are set out in the Schedules to each Notice.

7.2. It is open to any interested party to make representations. Relevant licence holders under section 23(12) of the Gas Act 1986 and section 11A(10) of the Electricity Act 1989 may give notice to the Authority if they object to any of the proposed modifications. It will be open to licensees to object at the level of each relevant licence condition. It will not be open to them to object to a particular part or paragraph of an individual licence modification.

7.3. Any of the proposed modifications may be blocked by the objections of relevant licence holders<sup>23</sup> or by the Secretary of State directing the Authority not to make a modification.

7.4. In the event that one or more of the proposed licence modifications are blocked by way of objection, the Authority may decide not to implement any of them and may consider alternative approaches. These include making a reference to the Competition Commission if we still want to proceed with a particular licence modification. If the Competition Commission subsequently decides that it is in the public interest for the modification to be made, then the Authority may implement the modification. The Authority may also consider consulting on a market investigation reference to the Competition Commission.

7.5. We would encourage relevant licence holders to let us know as soon as possible if they propose to object to any of the proposed modifications. This way, we will be able to understand properly the nature of any objection and to discuss possible ways forward. It should be noted that objections cannot be withdrawn after the final date set out in the Statutory Notices for objections to be submitted (15 September 2009).

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<sup>23</sup> The Authority will not be able to make the modification that is subject to the objection where: 20 per cent or more of the relevant licence holders; or 20 per cent or more of the relevant licence holders weighted according to their market share, have given notice of objection to the Authority (and not withdrawn it) by the relevant date (which cannot be less than 28 days after the date that the notice is published).

## Implementation and review

7.6. We are keen that consumers can start benefiting as soon as possible from the measures contained in our package of proposed retail market remedies. Subject to consultation responses, our intention is for the new requirements to be inserted into licences by October.

7.7. For measures where suppliers do not need additional time to prepare for compliance, we propose that the relevant licence provisions come into force without delay. However, as set out in the preceding chapters, we recognise that several of the measures will require suppliers to make changes to their systems, processes, marketing materials etc, some of which could be quite significant. We also recognise that some suppliers are currently making changes to their systems for other purposes. While we do not wish to unduly hold up these changes already under way or impose significant additional costs, we consider the proposed remedies to be important for consumers and are not willing to accept significant delay.

7.8. We therefore propose a phased approach to implementation of the package of remedies, involving three implementation dates: 1 October 2009, 1 January 2010 and 1 April 2010. The proposed implementation dates for each of the new licence requirements are set out in the table below. Where suppliers are able to meet the proposed requirements earlier, we would encourage them to do so.

<b>Implementation date</b>	<b>Measures</b>
1 October 2009	Marketing objective (SLC 25)
1 January 2010	Specific measures for face-to-face marketing (SLC 25) Reforms to debt blocking arrangements (SLC 14) Reforms to notification requirements (SLC 23) Small business consumer measures (SLC 7A)
1 April 2010	Customer information requirements (SLC 31A)

7.9. As set out in our recent decision document on the issue of addressing unjustified price differentials, we would expect to undertake a review of the impact of the proposed Probe remedies before the new licence condition prohibiting undue discrimination terminates at the end of July 2012. In doing so, we would consider the functioning of the retail energy supply market.

7.10. In the meantime, we will evaluate the impact of the package of retail market remedies as part of our ongoing market monitoring work.

## **Raising consumer awareness**

7.11. Through the package of proposed retail market remedies, Ofgem will put in place a range of improvements to the information that consumers receive from their energy suppliers and at the point of sale. Consumers should become aware of how they can obtain better deals from suppliers through the introduction of better information on bills and annual statements, and improvements to sales and marketing rules.

7.12. The introduction of the overarching standards of conduct for suppliers should also improve consumer confidence in the competitive market. We will work with Consumer Focus, the Energy Ombudsman and other consumer groups to see how they might be able to use the overarching standards in their work.

7.13. Consumer Focus has a role to inform and support consumer behaviour through a range of information and empowerment tools. We confirm our intention to work with Consumer Focus, the ERA, suppliers and intermediaries to help raise consumer awareness as to how they can make the most of the competitive market. It is particularly important that intermediaries such as Citizens Advice, Age Concern and Help the Aged, and the Money Advice Trust have the information that they need. In particular, we will explore how more vulnerable consumers can be targeted with appropriate information, messages and advice.

7.14. The Energy Best Deal campaign being run by Citizens Advice and funded by the Department for Energy and Climate Change (DECC) is also being evaluated. Initial indications are that the campaign has been very successful at reaching lower income and more vulnerable consumers with messages about switching and accessing help with energy bills available from suppliers and government. The evaluation will help Citizens Advice, potential funders and other intermediaries to decide on the continuation of this scheme or the introduction of similar schemes.

7.15. We also intend to work with the Financial Inclusion Taskforce to help them take forward some of their recommendations regarding initiatives to increase take up of direct debit as a means of payment where this is appropriate for the customer and to help ensure that customers are aware of more flexible payment methods where these better meet their needs.

## Appendices

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## Appendix 1 - Consultation Responses

1.1. Our April consultation document sought the views of interested parties in relation to a package of proposed retail market remedies. We received 41 responses. This appendix lists all those that responded and summarises their views.

### List of respondents

	Name
1	Age Concern and Help the Aged
2	AGW Consultants
3	Association of Convenience Stores
4	Auditel UK Ltd
5	British Chambers of Commerce
6	British Gas [Confidential]
7	Chartered Institute of Purchasing and Supply
8	Citizens Advice
9	Consumer Focus
10	Contract Natural Gas Limited [Confidential]
11	Corona Energy
12	Drax Power Limited
13	East Ayrshire Community Planning Partnership
14	EBICo Ltd
15	E.on UK PLC
16	EDF Energy plc [Confidential]
17	Federation of Small Businesses
18	First Utility Ltd
19	Forum of Private Business
20	Gazprom Marketing and Retail Trading Ltd
21	Good Energy
22	Haven Power Limited [Confidential]
23	IPM Energy Retail Ltd
24-28	Members of the public [Confidential]
29	National Energy Action
30	NLC Associates Ltd
31	Opus Energy Ltd
32	PJW Business Services Ltd
33	RWE Npower plc
34	Scottish and Southern Energy [Confidential]
35	ScottishPower
36	Shell Gas Direct Limited

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37	Telecom Plus
38	Total Gas and Power
39	uSwitch.com [Confidential]
40	Utilities Intermediaries Association [Confidential]
41	Which?

## Summary of responses

1.2. Responses received by Ofgem which were not marked as being confidential have been published on Ofgem's website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)). Copies of non-confidential responses are also available from Ofgem's library.

1.3. The following is a summary of those responses which were received.

### Chapter 2: Standards of conduct for suppliers in the retail market

1.4. The majority of respondents offered support for the principle of introducing standards of conduct for suppliers, though views were much more mixed on what status these standards should have.

#### *The Big 6 Suppliers*

1.5. Four of the Big 6 offered support for the principle of introducing standards of conduct for suppliers, with the other two expressing some concerns about the idea.

1.6. Three of the Big 6 preferred option 2, setting these standards as overall aims, to be included in guidelines. These respondents considered that option 1 - inserting the standards as a preamble to the relevant licence conditions - would create significant regulatory uncertainty as the standards were drafted too widely. Conversely, one of the Big 6 preferred option 1 on the grounds that it would give more certainty on the status of the standards.

1.7. The remaining two Big 6 suppliers expressed no clear preference between options 1 and 2. One expressed the view that setting the standards as a mission statement for suppliers would be preferable to either of the options, while the other expressed concern that the standards were drafted too widely and would be hard to achieve. Several Big 6 firms suggested that the standards should be used to inform our work but should not be directly enforceable.

#### *Smaller suppliers*

1.8. There were six responses from smaller suppliers. All bar one of these expressed support for the principle of introducing standards of conduct for suppliers. The remaining respondent suggested that this would result in duplication, arguing that a

proxy for these standards was already in place in the form of the Energy Ombudsman's statutory complaints handling scheme. Three smaller suppliers expressed a preference for option 1, with the remainder expressing no preference between the two options.

1.9. There were mixed views on whether the standards should be enforceable. One suggested that they should be, one that they should not.

1.10. Several respondents had comments on the drafting of the standards. One suggested that they were drafted too widely and that we should remove the reference that suppliers should 'take all reasonable steps' because it would be too difficult for suppliers to meet that test. One suggested that we should clarify what we meant by 'unnecessarily complex or confusing' products stating that it was not clear where the line was drawn between innovation and unnecessary complexity. One stated that we should add an additional standard that 'consumers should not face unreasonable barriers to switching between products or suppliers'.

#### *Consumer groups*

1.11. Four consumer groups commented. Two of these preferred option 1, the other two did not think either of the options went far enough.

1.12. Of those that supported option 1, one suggested that it would give the standards 'better status' and would influence decisions on whether to take action when investigating a possible breach of licence conditions. The other requested clarification of the legal status of the standards, questioning how they would interact with the Consumer Protection from Unfair Trading Regulations (CPRs). They suggested that we should consider how to promote the standards, noting that their inclusion on bills or annual statements should be considered.

1.13. One respondent considered that neither option went far enough; arguing that both were not enforceable and that only enforceable standards would have utility value. This view was shared by the remaining respondent, who additionally argued that we had not made a sufficient case that the CPRs could not be effectively applied.

#### *Other respondents*

1.14. All of the three remaining respondents supported the introduction of standards of conduct, with two preferring option 1 and the other expressing no clear preference.

1.15. Several stated that the standards reflected good practice and should be applied to all customers. One argued that a requirement to compensate customers for financial loss should be added.

**Chapter 3: Promoting more effective consumer engagement**

1.16. There was broad support from consumer groups for most of our proposals though some highlighted areas of concern or measures that could be improved.

1.17. Suppliers were less supportive. There was strong opposition to some of the measures proposed on debt blocking, in particular the proposal to ban debt blocking in situations of retrospective notification of adverse contractual change. There were also concerns regarding the proposals to improve the information customers are given on their bills and to address tariff confusion.

*Improving consumer information**- Billing information*

1.18. Consumer groups strongly supported the proposals to improve the information that customers are given on their bills while suggesting a number of areas where they thought these measures could be improved. One suggested modifying supply licences to require the inclusion of a summary box on all bills, statements and marketing materials that would set out key information to help consumers to understand their bills. That respondent additionally argued that we should require suppliers to use uniform and simple language to express how much consumers' owe or are owed. One argued that in addition to mandating additional information on customers' bills we should also be prescriptive in how that information is set out. Another consumer group highlighted that the summary box approach was used in the financial services industry and might provide a useful template for the energy industry to consider. A number of domestic consumers argued that we should introduce a summary box for bills and minimum standards for tariffs. One respondent suggested that what should appear on the first page of energy bills as priority items should follow recommendations of the European-wide working group on energy billing.

1.19. Big 6 suppliers were less supportive. Several suggested that our proposals could lead to cluttered bills, with one suggesting that there should be a wider review of all regulatory information requirements. Another suggested that it is unnecessary and unhelpful to advise customers what their past year's bill totalled in monetary terms and that price comparison should be on a forward-looking basis.

1.20. Several of the Big 6, and one smaller supplier, expressed concerns that our proposals could cause significant additional systems costs.

1.21. One respondent would like to see Ofgem and Consumer Focus work with suppliers to ensure that consumers have easy access to and clearer explanation of the information needed.



- Annual statement

1.22. Consumer groups also broadly supported the proposals for annual statements. One suggested the need to clarify the situations in which customers would receive annual statements. Several consumer groups suggested additional information that should be included on the annual statements. These suggestions included: encouraging consumers to use Confidence Code accredited price comparison sites; providing a summary of the information required to switch; reminding them of the energy efficiency and social assistance programmes available; confirming the number of estimated bills the customer had received in the year; a reminder of the importance of having actual meter readings; and a reminder that savings may be obtained from using different payment methods or accessing different tariffs from their existing provider. It was suggested that suppliers would need to conduct marketing to raise consumer awareness of the introduction of annual statements. One consumer group said that it was important that the statement could not be mistaken for a bill.

1.23. Big 6 and small suppliers were less supportive of these proposals. A few commented that producing an annual statement is unnecessary as it would effectively duplicate information on bills. Two suggested that rather than sending out the annual statement in its own right they would look to incorporate the annual statement into a billing communication to give the statement context, or as part of the existing requirement for other annual information. One supplier argued that this would be a costly communication.

1.24. Suppliers strongly oppose annual prompts every time the price rises. One argued that this could reduce the price responsiveness of suppliers as this process will also need to be built in to the timing, announcement and implementation of the price change.

- 65 day notice period

1.25. Some consumer groups expressed concerns with our proposals to retain the 65 working day period in which suppliers' can retrospectively apply contract variations. One argued that this means that consumers are denied the opportunity to budget for the extra costs or to decide to decrease their usage in light of increased prices. They believed that there is a case for implementing a licence condition requiring suppliers to give consumers advance notification of price increases. Another considered that the rule is unbalanced in favour of the energy suppliers.

1.26. One small supplier argued that the 65 day notice period should be eliminated and that suppliers' existing customers should be informed of price changes in advance.

*Addressing tariff confusion*

1.27. Most of the Big 6 supported our proposals to address tariff confusion by using cost per year in pounds as the basic metric for price comparisons although they raised a range of issues around exactly how these are framed. Some argued that

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pence per unit is easier for the customer to understand while others are for cost per year in pounds.

1.28. One advocated the standardised format but believed that their use would still be complex. For them a better solution may be an independent, non-commercial web-based and telephone comparison service, which, if promoted sufficiently, could increase customer awareness of prices and enable those customers that do not have access to the internet to take advantage of the service as well. Some suppliers also believe that further clarification of both billing information and the annual statement information is required. One suggested that placing consumers into consumption brackets of high, medium or low could cut across or dilute energy efficiency messages. One supplier argued that the proposals to increase the use of tables are incompatible with the wider aim to give consumers an accurate estimate based on their own consumption.

1.29. Smaller suppliers held mixed views. Two clearly supported our proposals while others expressed some concerns. One argued that our proposals could be misleading where the supplier also provides the customer with non-energy services. Another argued that these remedies may be misleading if the consumer has been with the supplier for less than 12 months.

1.30. Consumer groups generally supported the development of price metrics, although one noted that consumers often incorrectly categorise their energy consumption level and several suggested that consumer confusion was inevitable given the plethora of tariffs on the market. That respondent also argued that we had not sufficiently justified our decision not to progress alternative approaches to restrict the number and complexity of tariffs or introduce core benchmark tariffs upon which comparisons could be focussed. Another argued that we should review whether the structure of tariffs should be simplified, and add information regarding alternative payment methods.

1.31. One consumer group was critical of the view that regulatory intervention might necessarily dampen innovation that benefits consumers. They argued that nearly all innovation to date has been the restructuring of tariffs and that this might not be economically efficient or in the consumers' interest – indeed, that if it resulted in prices being difficult to compare that this could be seen as anti-competitive rather than innovative. They also considered that we had not sufficiently justified our concerns that alternative proposals could jeopardise within-tariff cost reflectivity or be disproportionate.

1.32. A number of domestic consumers argued that our proposals do not go far enough in making tariffs easier to compare. They argued that we should introduce a 'summary box' for bills and minimum standards for tariffs.

#### *Simplifying the switching process*

1.33. The proposal that suppliers introduce a 'peace of mind' guarantee for the switching process was supported by all respondents, although one consumer group

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was not convinced that this would address doubts effectively. Another consumer group was concerned that consumers would be given the standard customer service number instead of a direct contact number, so that there would still be difficulty in contacting the correct person within a company. Several consumer groups argued that it is essential that these proposals provide support for customers where things go wrong; have a timetable for when things will be put right; provide regular updates to the consumer on progress; and provide automatic compensation where such timescales are not adhered to.

#### *Reviewing debt blocking arrangements*

1.34. Suppliers and consumer groups were largely polarised in their views on debt blocking. Suppliers were generally against our proposals. There was also a different level of support for various measures proposed.

1.35. Consumer groups were more supportive, although several felt that we had not gone far enough and remained concerned about debt blocking. One expressed dissatisfaction with the proposals for reform of debt blocking. They accepted that the proposals put forward represent progress on the current situation but also a missed opportunity to take a fresh look at this area. They suggested that suppliers should do more to alleviate the causes of debt and reasserted the view that debt blocking should be banned.

1.36. Another consumer group expressed alarm at suggestions by the Big 6 that there could be 'more aggressive debt collection activity' as a result of our proposals and suggested that we should adopt standards, in line with those of the Office of Fair Trading, to protect consumers from threatening and aggressive debt recovery behaviour.

- Providing enhanced advice following objection

1.37. Broadly all respondents supported the proposal to provide enhanced advice following an objection.

- Increasing the Debt Assignment Protocol (DAP) threshold

1.38. Suppliers were divided on increasing the DAP threshold. Views among the Big 6 were very mixed: with two clearly supporting the proposal; two opposing it; and two suggesting that they had no objections to the change but did not think it would make much difference. The two Big 6 suppliers who opposed this proposal argued that it would not be used by consumers but would increase suppliers' costs. Two suppliers who were in favour of this proposal also noted that there has not been a significant take-up of this protocol by customers. One small supplier contended that a radical reworking of the DAP is necessary as current arrangements have completely failed.

1.39. Consumer groups argued that our proposals did not go far enough. One called on Ofgem to investigate the possibility of extending the DAP to vulnerable and low-income consumers paying by standard credit and direct debit. They argued that a revised DAP of £200 was arbitrary and was below average debts for electricity alone.

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Two consumer groups suggested we should do more to analyse why the current DAP had not worked.

- Removing the ability to debt block where debts result from supplier error

1.40. The views of the Big 6 suppliers were very mixed. Two were clearly in favour of this proposal, two sought further clarifications while two opposed.

1.41. Those Big 6 suppliers opposing this proposal, or seeking clarifications, argued that: existing processes and protections were adequate or could not easily be re-configured to cater for this proposal; that it was not clear what we meant by supplier error; or that only those customers with an agreed repayment plan should qualify.

1.42. One small supplier expressed disappointment that we had not adopted the option they proposed on debt blocking. This option is that a PPM customer with a debt is always allowed to transfer to a different supplier and the debt remains with the original supplier, but that the money collected through the PPM is used both to pay off the debt with the original supplier and to pay for new fuel from the gaining supplier.

1.43. Consumer groups welcomed this proposal, although one asked for further definition of what constituted 'supplier error'.

- Removing the right to debt block where there is an adverse unilateral contract variation

1.44. All of the Big 6 opposed this proposal. They noted that suppliers could face significant financial exposure if the ability to block for debt following a price rise was removed and that this cost would be borne by other consumers. A common view was that customers should not be permitted to switch supplier until settling a pre-existing debt if no additional debt arises due to the price change. For one supplier this proposal would effectively undermine the point of the objections mechanism.

1.45. Of small suppliers, one was also clearly against this proposal. They believed that this is a charter for "won't pay" customers to keep avoiding paying bills when prices change.

1.46. One consumer group welcomed this proposal, while another sought clarification on how this would work in practice.

*Promoting confidence in price comparison and switching sites*

1.47. Respondents were generally supportive of our proposal to promote confidence in price comparison and switching sites.

1.48. One consumer group recommended modification of the supply licence conditions to require that energy suppliers make their tariffs fully accessible at independent switching sites, and that consumers will not be required to navigate away from a switching site to the supplier's site in order to switch tariff.

1.49. Another consumer group suggested that suppliers should play a role in improving awareness of switching sites while several respondents believed that more work could be done with the Consumer Focus Confidence Code.

1.50. One Big 6 supplier advocated an independent, non-commercial web-based and telephone comparison service which could increase customer awareness of prices and enable those customers that do not have access to the internet to take advantage of the service as well. One large and one smaller supplier expressed concern that the main focus of the switching sites continues to be comparisons on the basis of price and believe that other comparison options, such as payment method and customer service, should be presented to the customer upfront before the results page is displayed.

#### *Raising consumer awareness*

1.51. There was wide-ranging support for the need to raise consumer awareness of the informational and empowerment tools identified by the Probe, although there was little commentary on how this should be approached. One small supplier suggested that we should link to the Consumer Focus Confidence Code from the front page of our website.

### **Chapter 4: Helping consumers make well-informed choices**

1.52. Overall, there was widespread support for our proposals to help consumers make well-informed choices about switching supplier in response to direct sales approaches. Suppliers were broadly supportive of our proposals, provided that they do not discourage direct sales activities by creating an overly prescriptive regulatory framework. Almost all consumer groups welcomed our proposals, which they saw as having the potential to make real improvements to the consumer experience, although some concerns were expressed about how the measures would be implemented in practice.

#### *Written quotation*

1.53. Suppliers and consumer groups were generally supportive of our proposal to provide the consumer with a written quotation prior to any face-to-face sale. Nevertheless, respondents raised a number of practical issues.

1.54. A number of concerns were raised by suppliers and consumer groups alike about the practicalities of producing the quotations. For example, two suppliers argued that the use of the word 'quote' may be misleading as projected costs would only be indicative. Most respondents welcomed the proposal to provide information in

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the form of cost per year, although a couple argued that such a figure could potentially be misleading and could lead to complaints if the actual bill were to deviate from the estimate. As such, several respondents noted the importance of making it clear to customers that the estimate was not an exact cost of energy going forward, merely an illustration of likely costs and savings.

1.55. Several respondents noted that the accuracy of the information presented to customers would depend on what they provide to the prospective supplier - and that customers may not readily have information to hand. This was particularly the case for sales activities conducted away from the home. Several respondents noted that the consumption information provided by customers would in many cases be out of date or an estimate from a previous bill. One supplier noted that this would be a particular issue for PPM customers, many of whom only receive an annual statement. Two suppliers suggested that in the absence of actual consumption data, energy use should be linked to a range of levels such as low, medium or high consumption. Several suppliers suggested making use of the estimated consumption data currently held in industry systems (Estimated Annual Consumption for electricity and Annual Quantity for gas). One consumer group argued that where quotes are based on estimates of consumption a clear warning should be provided to consumers.

1.56. Several suppliers expressed concern that our proposals risk putting undue emphasis on price and noted that consumers often switched for other reasons. One large supplier was concerned that this proposal would stifle innovation because suppliers would invest only in price to remain competitive. One smaller supplier suggested that we do more research on why people switch to 'worse' deals. They contended that many of their customers consciously switched to a more expensive tariff to achieve better service or a green tariff.

1.57. Several suppliers were keen for the new requirements to be compatible with the use of electronic sales tablets. One proposed that, where an electronic tablet is used, the rules allow for the customer to view and acknowledge the illustration on the tablet. The same information would then be sent to the customer following the sale. It was noted that some development time would be needed to make the necessary changes to systems, software etc.

#### *Comparison with consumers' current deal*

1.58. Suppliers and consumer groups generally felt that it would be helpful for consumers to be able to compare their estimate with their current deal, particularly for PPM customers. The proposal prompted similar comments to those regarding written quotations. There was also some concern that providing consumers with accurate bespoke comparisons could be difficult to implement and could be potentially misleading to consumers.

1.59. The main issue raised by respondents was in relation to the availability of information that would allow the supplier to make a reliable comparison. Almost all suppliers expressed some concerns on this - for example, the difficulties related to replicating the existing supplier's calculation at the doorstep, or the availability of

information on a competitor's historic tariff. One supplier suggested that only 30 per cent of consumers have bill details to hand at the doorstep and many of these bills are based on estimated meter readings. One small supplier suggested that the likelihood of a customer being able to provide the necessary information for comparison away from their home would be remote. Several respondents cautioned that customers might unreasonably rely on this comparison in determining how much of a saving they will make.

1.60. One consumer group argued that the requirement to provide a comparison should be expanded to cover all consumers. Another consumer group was not convinced that comparisons could reliably be made until the new billing requirements have been in place for at least a year.

1.61. Several suppliers noted that not all consumer choices are based on price and emphasised the importance of ensuring that comparisons are made on a like-for-like basis. However, respondents differed in their views on whether we should be prescriptive on how non-monetary elements are compared or whether this should be left to suppliers. One supplier argued that it must be for the customer to evaluate the benefit they perceive they receive from any non-monetary elements.

*Additional information at the point of sale*

1.62. This proposal was generally accepted, with particular support from several consumer groups. Many suppliers stated that they already provide the proposed additional information at or shortly after the point of sale. One supplier argued that specifying the format in which this information should be provided would lead to additional marketing cost for little customer benefit.

*Post-sale follow up*

1.63. Consumer groups and most suppliers supported this proposal. However, two suppliers had some misgivings about the requirement for suppliers to obtain positive confirmation from customers, arguing that there was a danger of making the sales process harder for consumers. One noted the risk that in seeking positive confirmation, a consumer would effectively be required to agree to a contract twice. The other argued that while positive confirmation is achievable where customers are spoken to on the telephone, it is not realistic for a written process, as this is likely to have a relatively low response rate. They believed that seeking positive confirmation in those cases could adversely impact the overall economics of direct sales.

1.64. Two suppliers agreed that the additional requirement should be general, so that suppliers could adopt their own best practice. However, two consumer groups were cautious about this, arguing that any requirement should be standardised.

*Recasting the marketing licence condition*

1.65. Several respondents - including one consumer group and two small suppliers - expressed support for the proposal to refocus the marketing licence condition on consumer outcomes, rather than supplier inputs. One supplier agreed that there is probably a need to reconsider the marketing licence condition and to focus it so that it meets the objectives set out in our consultation. However, several major suppliers and one consumer group were sceptical of what the new condition would achieve.

1.66. The views of the Big 6 suppliers were mixed. Two challenged the benefits of redrafting the licence condition. One argued that existing regulation was sufficient protection for consumers and that the licence condition should be subject to periodic review. The other argued that such a change should not delay implementation of the proposed improvements at the point of sale and in follow-up. Another supplier suggested that we should remove detailed requirements (such as the written comparisons) if we wished to progress these changes, in order to give suppliers scope to decide how best to comply with the high-level objective. They were concerned that overly prescriptive regulation in this area could increase costs and seriously discourage doorstep selling. Finally, one supplier urged that the licence condition should not be overly prescriptive; and another questioned how the licence condition could be redrafted to achieve an 'outputs based' approach.

1.67. One consumer group expressed concern that strengthening the rules governing face-to-face sales could simply push some of the poor practices into other sales channels, particularly telesales. They argued that these channels should be included within the strengthened marketing licence condition.

**Chapter 5: Helping small business consumers**

1.68. Most respondents welcomed measures to improve the functioning of the market for smaller businesses and were broadly in support of our proposed remedies around:

- Clear terms and conditions;
- Accreditation of price comparison and switching sites; and
- Encouraging best practice among third party intermediaries (TPIs).

1.69. Views were most polarised on our proposal to ban automatic contract rollover, which was opposed by the Big Six and most smaller non-domestic suppliers. This contrasted with considerable support for the proposal from non-domestic consumers and trade associations.

1.70. There was some support for targeting the remedies to micro-businesses using the definitions in The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008. However, some suppliers wanted the criteria for determining eligibility to be restricted to consumption only due to concerns about the practicalities of applying the other criteria. Some consumer groups wanted a broader definition, to



capture larger businesses. On the other hand, some suppliers favoured a narrower definition.

*Increasing availability, clarity and transparency of information*

1.71. All respondents that commented on improving the clarity of information on terms and conditions of contracts supported the aims of our proposals.

1.72. Two suppliers preferred a self-regulatory approach, possibly with a code of practice, to a mandatory licence condition although one respondent felt that a voluntary code of practice would not work due to the diversity of suppliers.

1.73. Several suppliers expressed practical concerns around implementation. One expressed concern about the number of principal terms and conditions that should be provided before a contract is signed. One considered that the measures may reduce switching rates by making telesales more difficult. Two suppliers noted that changes would take time to implement.

1.74. There were a number of comments, particularly by consumer representatives, expressing the view that the end of contract notification process should be robust and give customers enough time to respond or explore alternative offers. Two respondents felt that suppliers should publish terms and conditions on their websites.

1.75. Consumer groups broadly welcomed the informational remedies. One stated that they would help to create a level playing field, suggesting that small businesses can currently be exploited by suppliers due to lack of expertise. Another thought that we should go further and seek to vastly simplify the market for small business consumers. They argued that we should consider adjudicating on whether contract terms are fair.

1.76. One trade association welcomed our proposals and suggested that they could be enhanced by adding a requirement on suppliers to publish their contract terms and conditions in a prominent position on their website.

*Eliminate ability for contracts to be automatically rolled over*

1.77. Responses were split on the proposal to remove suppliers' ability to automatically roll over contracts, with most suppliers expressing strong objections and most consumer groups in favour.

1.78. Suppliers were concerned about increases in costs, particularly of hedging contracts and sales and marketing, which they considered would be considerable. They considered that any benefits to consumers in terms of increased competitive pressure and lower supplier margins would be more than offset by these cost increases. One respondent argued that there would be more uncertainty, particularly in the first few years of implementing any change, around the number of customers

they could expect to retain and this would significantly increase the risks of hedging retail contracts in wholesale markets and, hence, increase costs. The respondent also felt that they would have to spend a great deal of time, effort and resources contacting customers and inviting them to re-contract. A number of suppliers felt that a ban on automatic contract rollover was a disproportionate response to the problem of customers being inadvertently locked in to contracts.

1.79. Smaller non-domestic suppliers were also particularly concerned about their ability to hedge contracts, the increase in risk, their ability to raise capital, debt management and admin costs.

1.80. Some smaller suppliers supported a ban on automatic rollover as they had experienced difficulties signing up business customers due to high exit fees. One small supplier cautioned us against accepting arguments from others that a ban on automatic rollover would increase hedging costs, stating that allowing automatic rollover is a disproportionate response compared to alternative risk management techniques available to suppliers.

1.81. The majority of suppliers supported remedies around improving notification of contract end dates and ensuring adequate timescales and processes for customers who wish to change suppliers. One supplier suggested that customers be offered a choice of either rollover contracts or fixed term contracts. Two suppliers suggested shortening the renewal period, i.e. limiting the rollover period, to 12 months.

1.82. There was some recognition that the objections process could be improved for customers and some suppliers suggested providing better information to customers about objections. One supplier suggested a requirement to provide the reasons for any objection to transfer and details of how to transfer in the future. Another supplier called for enhanced monitoring and transparency around the use of objections.

1.83. The majority of consumer groups that commented supported a ban on automatic rollovers. One respondent commented that the current arrangements caused many consumers to be locked in to contracts with unjustifiably high prices for long periods. However, one consumer group was concerned that banning automatic rollovers might be bad for consumers by meaning that more end up on higher out-of-contract rates.

1.84. One trade association also supported a ban, arguing that this measure would help to ensure that consumers engage with the market. They suggested that every bill issued after a fixed term ends should draw the customer's attention to the supplier's out-of-contract rates.

#### *Accreditation scheme for non-domestic switching sites*

1.85. Ten respondents were broadly in support of our proposal for Consumer Focus to extend the accreditation scheme (the Confidence Code) to include internet price

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comparison and switching sites for non-domestic consumers. Most other respondents provided no views on this proposal. However, some respondents felt that there would be difficulties with extending the accreditation scheme due to the wide variety of contracts available for business consumers including bespoke offerings. One consumer group suggested that this remedy should be delayed until some of the more fundamental issues with the non-domestic market are resolved.

#### *Strengthen code of practice for third party intermediaries*

1.86. All the respondents that commented on this proposal were broadly in support but a number noted the difficulty with Ofgem overseeing third party intermediaries (TPIs) and the implications for the likely effectiveness of our proposed measures.

1.87. One supplier felt that voluntary measures represent a significant missed opportunity and that a licence condition should oblige all suppliers to disclose commissions to TPIs on their quotes and their bills. This respondent also felt that TPIs should be urged to adopt the same level of transparency as suppliers regarding contract terms and conditions, end-of-contract rights, and responsibilities around switching or re-contracting. Another supplier considered it unclear that our proposals would have any effect on offending TPIs.

1.88. One supplier considered that given the range of TPIs and the complexity of their relationships with suppliers, a central code would not be flexible enough. They argued that each supplier should form its own code of practice and be responsible for their relationship with TPIs. One respondent would like to have a body to oversee relations and assist businesses in legal cases.

1.89. A consumer group commented that despite one trade association's best efforts in introducing a code of practice, coverage is still far too sparse across the sector. They suggested a range of alternatives to our proposals, including: blacklists for TPIs that mis-sell; introducing cooling-off periods; and a licence condition governing commissions. The respondent noted that TPIs put contractual terms onto supplier contracts that prevent commission information being disclosed. The respondent proposed that to support suppliers, there should be a licence requirement that any supplier engaging in a commercial contract with a TPI must ensure there is commission disclosure to both supplier and customer as part of the sales paperwork. They contended that this would create a level playing field for all suppliers. One trade association suggested that the code of practice should require TPIs to explain to customers how they are funded; which suppliers are covered by their broking services; and to demonstrate that they have robust and transparent business practices.

#### *Other issues*

1.90. One consumer group suggested that there was insufficient assistance available to small businesses in legal disputes with energy companies. It argued that a dedicated body should be established, and suggested a number of practical safeguards to even up the balance between small businesses and energy companies.

**Chapter 6: Promoting market transparency**

1.91. Overall, 16 respondents commented on this proposal, with most indicating a general acceptance and understanding of the need for some form of separate financial reporting requirements for both supply and generation businesses, in some form. Among the Big 6, there was reluctant, although clear preference, for option 1. The majority of other respondents considered either option 2 or 4 more favourably.

*Big 6*

1.92. Three of the Big 6 agreed that there was scope for the proposal to improve market transparency but highlighted the need to ensure that any information requested is proportionate and comparable, that costs of compliance are minimised and that publication adheres to non-disclosure principles. They accepted some form of financial information reporting in principle.

1.93. These three respondents all expressed a preference for option 1 (one was supportive and two reluctantly agreed), albeit with some suggesting minor variations. One respondent provided further evidence for their preference for option 1 based on an assessment of estimated costs under each option.

1.94. Two of the Big 6 expressed significant concerns about all of the options in their current form. While they agreed that transparency was important, their fundamental arguments against the proposal emphasised that: (a) they do not run their supply and generation businesses separately, and that the need to report accounts as such would, in their opinion, require arbitrary allocations (of costs and revenues); and (b) the proposal would not achieve Ofgem's objective. One of these respondents indicated that they were prepared to consider an approach similar to option 1, but with certain alterations.

1.95. One of these respondents also argued that the proposal should be extended beyond the Big 6 to include other large non-integrated generators and suppliers, as well as requiring the publication of similar information on the wholesale upstream/downstream gas market.

1.96. The final respondent from the Big 6, although indicating a willingness to be open about its business and agreeing in principle to increased market transparency, felt unable to express an opinion as to which of the four options presented the best approach without first seeking further discussions with Ofgem.

*Small suppliers*

1.97. Two smaller domestic suppliers and three non-domestic suppliers also commented directly on the proposal in their consultation responses. There was a general consensus of support for the initiative to improve market transparency as a step towards "ensuring a level playing field between the Big 6 integrated players and smaller suppliers".

1.98. In general these respondents agreed that separate published accounts to a prescribed content and format would serve to improve visibility and transparency of the value chain and of the treatment of wholesale costs within a vertically-integrated business. One felt that the proposal was only a "small step towards increasing transparency", while another saw a clear link between this remedy and efforts to improve wholesale market liquidity. It was also expressed that Ofgem should ensure that smaller suppliers are exempted from this requirement, given that, in their opinion, their inclusion would provide no additional benefit while imposing a disproportionate burden.

#### *Consumer groups*

1.99. Two consumer groups also responded to this proposed remedy. Both welcomed the proposal in the context of providing greater consumer confidence by tackling the "lack of separation of information" between supply and generation. They shared the view that the information would also build consumer trust in energy companies and their charges to customers, by distinguishing transactions between affiliates and the open market. Both expressed the need to develop a standardised but "comprehensive" approach, which allows easy evaluation of transfer pricing arrangements. For this reason, both respondents expressed support for option 4.

#### *Other industry*

1.100. Three replies from other industry participants also commented on Ofgem's proposal to improve market transparency. While one of these respondents argued that any forced separation of business streams was "unnecessary, excessive regulation and an impediment to the free market", the other respondents expressed their support for greater transparency between supply and generation businesses.

1.101. Small suppliers, consumer groups and other industry participants tended to favour options 2 or 4 on the grounds that they provided greater cost detail to Ofgem and therefore a greater potential level of confidence to the market.

#### **Other issues**

1.102. Three small suppliers expressed concerns on wholesale market liquidity. One argued that the lack of liquidity at settlement level granularity in forward markets and the significant levels of collateral required to cover market volatility represent a serious impediment to new entrants' ability to gain retail market share. They considered that a possible solution was the creation of a regulated market maker. Two others similarly argued that improving market liquidity was vital to encourage suppliers to enter and compete in the market.

1.103. One small supplier suggested that there was a need to reform industry credit arrangements to encourage market entry.

## Appendix 2 - Responses to Open Letter on Contract Rollover

1.1. Ofgem published an open letter in June 2009 setting out an amendment to our proposal to eliminate suppliers' ability to automatically rollover fixed term contracts.<sup>24</sup> Our amended proposal was to not eliminate suppliers' ability to automatically roll over customer contracts but instead to limit the conditions under which suppliers could do this. The measures would also require that consumers are given clear information about their rights and responsibilities near the end of their contract, and provide consumers with ample time to act on this information and engage with the market.

1.2. We received 16 responses in total, including from large and small suppliers, some third party intermediaries and one consumer group. A brief summary of the views expressed is given below.

1.3. The majority of the Big 6 suppliers supported our alternative proposal concerning automatic contract rollover, noting that it constituted a more proportionate response to problems identified. Some broadly supported the measure, but expressed reservations about some of the details we had outlined.

1.4. The reaction from smaller suppliers was more mixed. Most respondents were either in favour of the alternative proposal outright or supported it with some questions about specific points of detail. One supplier felt that such protections were not needed in this market, while another noted that the alternative proposal did not go far enough to protect consumers and supported the proposals in the April consultation over the new ones.

1.5. The TPIs and consumer groups that responded expressed a strong preference for our original proposal to ban automatic rollover and for this to be enforced through the objections process.

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<sup>24</sup> *Amendment to proposals outlined in the Energy Supply Probe – proposed retail market remedies relating to automatic contract rollovers for micro business consumers (68/09), 22 June 2009.*

**Appendix 3 - Statutory Notice: Electricity Supply**

**To: All holders of an electricity supply licence who are in respect of any one or more modification relevant licence holders for the purposes of section 11A(10) of the Electricity Act 1989.**

**NOTICE OF MODIFICATION OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCE UNDER SECTION 11A OF THE ELECTRICITY ACT 1989.**

WHEREAS:

1. Each of the companies to whom this notice is addressed holds an electricity supply licence granted, or treated as granted, pursuant to section 6(1)(d) of the Electricity Act 1989 (the "Act").
2. In accordance with section 11A(3) and (4) of the Act, the Gas and Electricity Markets Authority (the "Authority") gives notice ("Notice") that it proposes to modify the standard conditions of the electricity supply licence by:
  - a. Amending standard condition 1 ('Definitions for standard conditions')
  - b. Inserting new standard condition 7A ('Supply to micro business consumers')
  - c. Amending standard condition 14 ('Customer transfer blocking')
  - d. Inserting new standard condition 19A ('Financial information reporting')
  - e. Amending standard condition 23 ('Notification of Domestic Supply Contract terms')
  - f. Replacing standard condition 25 ('Marketing electricity to Domestic Customers')
  - g. Inserting new standard condition 31A ('Information about electricity consumption')
3. Subject to responses, it is intended that the dates on which the modifications take effect will be:
  - a. 1 October 2009, for standard conditions 1, 19A and 25
  - b. 1 January 2010, for standard conditions 7A, 14 and 23
  - c. 1 April 2010, for standard condition 31A
4. The reasons why the Authority proposes these modifications have been published by the Authority in the following documents:

- a. Energy Supply Probe - Proposed Retail Market Remedies (99/09), 7 August 2009;
  - b. Amendment to Energy Supply Probe proposals relating to automatic contract rollover for micro business consumers (68/09), 22 June 2009;
  - c. Energy Supply Probe – proposed retail market remedies (41/09), 15 April 2009;
  - d. Energy Supply Probe – Initial Findings Report (140/08), 6 October 2008. These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003) or from the Ofgem website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk).
5. In summary, the proposed licence modifications aim to ensure that the standard conditions of the electricity supply licence are requisite and appropriate to promote effective competition in the retail energy market and to protect the interests of consumers, in particular those who are vulnerable.
  6. The proposed modifications are set out in the schedules to this notice.
  7. Any representations or objections to the proposed modifications may be made before 15 September 2009 and sent to:  
  
Neil Barnes  
Senior Economist, GB Markets  
Ofgem  
9 Millbank  
London SW1P 3GE  
  
Or by email to [energysupplymarketsp@ofgem.gov.uk](mailto:energysupplymarketsp@ofgem.gov.uk)
  8. Although any person may make representations, only those licensees who are “relevant licence holders” under paragraph section 11A(10) of the Act may register a formal objection to any proposed modification.

**Andrew Wright**  
**Managing Director, Markets**  
**Ofgem**  
**Authorised on behalf of the Authority**

**7 August 2009**



## SCHEDULE 1

### **MODIFICATION OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCE UNDER SECTION 11A OF THE ELECTRICITY ACT 1989**

The table in this Schedule must be read in conjunction with the existing standard conditions and the proposed new standard conditions (which can be found in Schedules 2 to 8).

The first column of the table indicates the number of each proposed modification.

The second column sets out the proposed modification.

The third column sets out which Schedule to this document contains the modified standard condition.

For the three new standard conditions clean text is provided in the Schedules. We also provide clean text for standard condition 25 because the amendments to it are sufficiently substantive that we consider a change-marked version would impede, rather than aid, review.

For the proposed amendments to standard conditions 14 and 23 change-marked text is provided in the Schedules.

For the proposed amendments to standard condition 1, the individual definitions that are to be inserted or amended are set out in tables.

Modification Number	Proposed Modification	Schedule
1.	Amend standard condition 1, 'Definitions for standard conditions'	2
2.	Insert new standard condition 7A, 'Supply to micro business consumers'	3
3.	Amend standard condition 14, 'Customer transfer blocking'	4
4.	Amend standard condition 23, 'Notification of Domestic Supply Contract terms'	5
5.	Replace standard condition 25, 'Marketing electricity to Domestic Customers'	6
6.	Insert new standard condition 19B, 'Financial information reporting'	7
7.	Insert new standard condition 31A, 'Information about electricity consumption'	8

**SCHEDULE 2****CONDITION 1. DEFINITIONS FOR STANDARD CONDITIONS**

The following terms are to be added to the list of definitions in standard condition 1:

<b>Affiliate</b>	in relation to the licensee means any holding company or subsidiary of a holding company of the licensee, in each case within the meaning of sections 736, 736A and 736B of the Companies Act 1985
<b>Annual Statement</b>	means the information to be provided by the licensee to a Domestic Customer in accordance with standard condition 31.A.4
<b>Consolidated Segmental Statement</b>	means a statement as described in the Guidelines
<b>Disputed Amount</b>	means a genuine dispute between the licensee and a Domestic Customer as to whether that Domestic Customer is liable to pay certain Charges for the Supply of Electricity which have been demanded of that Domestic Customer by the licensee
<b>Exact Tariff Name</b>	means the full and exact name of the tariff that is used to calculate Charges for the Supply of Electricity under the relevant Domestic Supply Contract
<b>Guidelines</b>	mean the document prepared by the Authority pursuant to standard condition 19A.7 setting out the nature of the information required and the template for the presentation of the financial information
<b>Micro Business Consumer</b>	has the meaning given to "relevant consumer" (in respect of premises other than domestic premises) in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268)
<b>Objective</b>	has the meaning given in [and is to be interpreted in accordance with] standard condition 25.1 (Marketing electricity to Domestic Customers)
<b>Offered Domestic Supply Contract</b>	means any offer to contract, including the terms of such offer, which the licensee or a Representative makes to a Domestic Customer concerning a supply of electricity to that Domestic Customer at Domestic Premises

<b>Outstanding Charges</b>	means the amount of any Charges for the Supply of Electricity which are due to the licensee from a Domestic Customer, have been demanded of that Domestic Customer by the licensee in Writing at least 28 days previously and remain unpaid
<b>Relevant Date</b>	means a date which is at least 30 days, and no longer than 90 days, before the date any fixed term period of a Micro Business Consumer contract is due to end
<b>Relevant Principal Terms</b>	<p>means, in respect of any form of Contract or Deemed Contract, the terms that relate to:</p> <ul style="list-style-type: none"> <li>(a) Charges for the Supply of Electricity;</li> <li>(b) the duration of the Contract or Deemed Contract;</li> <li>(c) the rights to end the Contract (including any obligation to pay a Termination Fee) or the circumstances in which a Deemed Contract will end; and</li> <li>(d) any other terms that may reasonably be considered to significantly affect the evaluation by the Customer whether to change their Electricity Supplier.</li> </ul>
<b>Supplier Error Amount</b>	means the amount of any Charges for the Supply of Electricity which are not Disputed Amounts and which have accumulated as a result of an error on the part of the licensee, its equipment or its systems
<b>Telesales Activities</b>	<p>means any activities of the licensee that are:</p> <ul style="list-style-type: none"> <li>(a) conducted by telephone; and</li> <li>(b) directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the</li> </ul>

	licensee's Domestic Supply Contracts to them and includes entering into such contracts with such customers.
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The following term is to be amended in the list of definitions in standard condition 1 (the new text to be added is shown as underlined):

<b>Writing</b>	includes writing sent or received by Electronic Communication <u>and "Written" shall be construed accordingly.</u>
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**SCHEDULE 3****CONDITION 7A. SUPPLY TO MICRO BUSINESS CONSUMERS****Identification and treatment of Micro Business Consumers**

7A.1 If the licensee intends to:

- (a) enter into a Non-Domestic Supply Contract with a Customer; or
- (b) extend the duration of a Non-Domestic Supply Contract (including the duration of any fixed term period which may form part of a Contract of an indefinite length)

the licensee must either take all reasonable steps to identify whether that Non-Domestic Customer is a Micro Business Consumer, or deem that Non-Domestic Customer to be a Micro Business Consumer.

7A.2 Where any Contract or Contract extension as described in paragraph 7A.1 is entered into with a Non-Domestic Customer that has been identified as, or deemed to be, a Micro Business Consumer, that Contract shall be a "Micro Business Consumer Contract" for the purposes of this Condition.

7A.3 The licensee must not include a term in a Micro Business Consumer Contract which enables it to terminate the Contract or apply different terms and conditions to that Contract during a fixed term period on the grounds that the Customer no longer satisfies the definition of Micro Business Consumer.

**Notification of Micro Business Consumer Contract terms and other information**

7A.4 Before the licensee enters into a Micro Business Consumer Contract, it must take all reasonable steps to bring the following information to the attention of the Micro Business Customer and ensure that the information is communicated in plain and intelligible language:

- (a) a statement to the effect that the licensee is seeking to enter into a legally binding Contract with the Micro Business Consumer; and
- (b) the Principal Terms of the proposed Contract.

7A.5 The licensee must ensure that all the express terms and conditions of a Micro Business Consumer Contract are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

7A.6 Where the licensee enters into, or extends the duration of, a Micro Business Consumer Contract for a fixed term period, it must prepare a statement (hereafter referred to as a "Statement of Renewal Terms") which:

- (a) is set out in Writing;
- (b) is drafted in plain and intelligible language;
- (c) displays the following information in a prominent manner:
  - (i) the date the fixed term period is due to end, or if that date is not the duration of the fixed term period;
  - (ii) the Relevant Date, or if not known at the time of providing the Statement of Renewal Terms, a description of how the Relevant Date will be calculated by reference to the end of the fixed term period;
  - (iii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee at any time before the Relevant Date in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period;
  - (iv) a postal and Electronic Communication address to which the Customer may send a notification in Writing for that purpose; and
  - (v) a statement explaining the consequences of the Micro Business Consumer not renewing the Micro Business Consumer Contract or agreeing a new Contract before the Relevant Date.

7A.7 Where the licensee enters into or extends the duration (including the duration of any fixed term period) of a Micro Business Consumer Contract, it must take all reasonable steps to provide the Micro Business Consumer with the following information within 10 days, or do so as soon as reasonably practicable thereafter:

- (a) a copy of all the express terms and conditions of the Micro Business Consumer Contract; and
- (b) if the Micro Business Consumer Contract contains a fixed term period, the Statement of Renewal Terms.

7A.8 On or about 30 days before the Relevant Date, the licensee must provide the Micro Business Consumer with:

- (a) the Statement of Renewal Terms (unless the licensee has already prevented the Micro Business Consumer from extending the duration of the Micro Business Consumer Contract);
- (b) a copy of any relevant Principal Terms that might apply to the Micro Business Consumer after the fixed term period of the Micro Business Consumer Contract ends, including:

- (i) terms that would apply in the event the Customer does nothing;
- (ii) terms that would apply if the Customer sends (or has already sent) a notification in Writing before the Relevant Date to prevent renewal of the Micro Business Consumer Contract but does not appoint another supplier.

7A.9 Where pursuant to paragraph 7A.8 the licensee is required to provide a Micro Business Consumer with any relevant Principal Terms, it must ensure that the Principal Terms are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

7A.10 Where pursuant to sub-paragraph 7A.8(b) the licensee provides a Micro Business Consumer with any offers of terms that relate to Charges for the Supply of Electricity, it must ensure that at least one offer is made in Writing which may be accepted at any time before the Relevant Date.

#### **Length of notice periods in Micro Business Consumer Contracts**

7A.11 The notice period for termination of a Micro Business Consumer Contract must be no longer than 90 days.

7A.12 Paragraph 7A.11 is without prejudice to the licensee's ability to enter into a Micro Business Consumer Contract with a Customer for a fixed term period which is longer than 90 days.

#### **Extending the duration of Micro Business Consumer Contracts**

7A.13 Where the licensee has entered into a Micro Business Consumer Contract for a fixed term period, it may only extend the duration of that Contract for a further fixed term period if:

- (a) it has complied with paragraphs 7A.7 and 7A.8;
- (b) the Micro Business Consumer has not sent the licensee a notification in Writing before the Relevant Date in order to prevent it from extending the duration of the Micro Business Consumer Contract for a further fixed term period; and
- (c) the duration of the further fixed term period is 12 months or less.

#### **Definitions for Condition**

7A.14 In this condition:

"Micro Business Consumer"	has the meaning given to "relevant consumer" (in respect of premises other
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“Relevant Date”

than domestic premises) in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268);

means the date which is at least 30 days, and no longer than 90 days, before the date any fixed term period of a Micro Business Consumer Contract is due to end.



**SCHEDULE 4****CONDITION 14. CUSTOMER TRANSFER BLOCKING****General prohibition**

14.1 The licensee must not make a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer except in accordance with the provisions of this condition.

**Non-Domestic Customer transfer blocking**

14.2 The licensee may make a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer in relation to a Non-Domestic Customer at any Non-Domestic Premises at which the licensee is the Relevant Electricity Supplier in any of the following circumstances:

(a) at the time the licensee receives Notice under the Master Registration Agreement that another Electricity Supplier has applied under the requirements of the Master Registration Agreement to supply the premises, the licensee's Contract with that customer for the supply of electricity to the premises includes a term which:

(i) allows the licensee to prevent the Proposed Supplier Transfer; and

(ii) may be relied upon in the circumstances arising at that time;

(b) the Electricity Supplier that initiated the Proposed Supplier Transfer has agreed with the licensee that the transfer was initiated in error; or

(c) the Proposed Supplier Transfer relates to a Related Metering Point and the proposed new Electricity Supplier has not applied to transfer all the Related Metering Points on the same Working Day for the same Supply Start Date.

14.3 If the licensee makes a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer of a Non-Domestic Customer, it must give a Notice to that customer to inform him:

(a) that it has made a request to prevent the transfer;

(b) of the grounds for the request; and

(c) how the customer may dispute or resolve such grounds,

as soon as reasonably practicable after making the request.

### Domestic Customer transfer blocking

- 14.4 The licensee may make a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer in relation to a Domestic Customer at a Domestic Premises at which the licensee is the Relevant Electricity Supplier in any of the following circumstances:
- ~~(a) the customer has not paid Charges for the Supply of Electricity to the premises or any other premises previously owned or occupied by him which are due to the licensee, have been demanded in writing, have not been paid within 28 days after the demand was made and continue to be unpaid;~~
  - (a) subject to paragraphs 14.5 and 14.7, if at the time the request is made Outstanding Charges are due to the licensee from that Domestic Customer;
  - (b) the Electricity Supplier that initiated the Proposed Supplier Transfer has agreed with the licensee that the transfer was initiated in error;
  - (c) the customer informs the licensee that he has not entered into a Contract with the proposed new Electricity Supplier and asks the licensee to prevent the Proposed Supplier Transfer from taking place;
  - (d) the customer is bound by the provisions of a Contract with the licensee for the supply of electricity to the premises which will not end on or before the date of the Proposed Supplier Transfer and that Contract is of a kind specified in a direction issued by the Authority; or
  - (e) the Proposed Supply Transfer relates to a Related Metering Point and the proposed new Electricity Supplier has not applied to transfer all the Related Metering Points on the same Working Day for the same Supply Start Date.
- 14.5 ~~Sub-paragraph 14.4(a) does not apply if the~~ The licensee may not make a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer in relation to a Domestic Customer at a Domestic Premises at which the licensee is the Relevant Electricity Supplier if the relevant Domestic Customer's Domestic Premises is being supplied with electricity through a prepayment meter and:
- (a) the Domestic Customer has agreed with the proposed new Electricity Supplier that any ~~outstanding~~ Outstanding Charges ~~for the Supply of Electricity to the premises~~ may be assigned by the licensee in accordance with the Protocol; or
  - (b) the licensee, having increased the Charges for the Supply of Electricity to the ~~premises~~ relevant Domestic Premises, has not taken all reasonable steps to reset the relevant prepayment meter within a reasonable period of time after that increase has effect to take account of the increase and ~~the charges that have not been paid~~ Outstanding Charges (which may

have accumulated over time) relate only to the increase and are equal to all or part of it.

14.6 The licensee shall ensure that Outstanding Charges of amounts equal to or less than £200 are capable of being assigned by the licensee to a new Electricity Supplier in accordance with the Protocol.

14.7 The licensee may not make a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer in relation to a Domestic Customer at a Domestic Premises in accordance with sub-paragraph 14.4(a) if the licensee knows or has reason to believe that the relevant Outstanding Charges are made up in their entirety of a Disputed Amount and/or a Supplier Error Amount and the operational functioning or management of the licensee's business is such that it is reasonably practicable for the licensee not to make the request in these circumstances.

14.8 If the licensee makes a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer in relation to a Domestic Customer at a Domestic Premises in accordance with sub-paragraph 14.4(a) and the licensee subsequently becomes aware that the Outstanding Charges which are relevant to that Domestic Customer are made up in their entirety of a Disputed Amount and/or a Supplier Error Amount, the licensee must, save where the relevant Domestic Customer makes a request in Writing that it should not do so, take such steps as are necessary and within its reasonable control to facilitate the Proposed Supplier Transfer.

14.9 If the licensee makes a request in accordance with the Master Registration Agreement to prevent a Proposed Supplier Transfer of a Domestic Customer, it must give a Notice to that customer ~~to inform him~~ as soon as reasonably practicable after making the request:

(a) to inform him or her:

(i) that it has made a request to prevent the transfer;

(ii) of the grounds for the request; and

(iii) how the customer may dispute or resolve such grounds; ~~and~~

~~as soon as reasonably practicable after making the request.~~

(b) to offer him or her advice (or to give them information on how and where advice may be obtained) concerning:

(i) energy efficiency;

(ii) debt management; and

(iii) alternative Domestic Supply Contracts offered by the licensee which would be available to that Domestic Customer and which may be preferable to their existing Domestic Supply Contract; and

(c) to inform him or her they have 30 Working Days after they receive the Notice to pay any Outstanding Charges where -:

(i) the Domestic Customer notified the licensee of their intention to end the Domestic Supply Contract following Notice of a unilateral variation from the licensee under paragraph 3 of standard condition 23, and

(ii) the Notice of unilateral variation was given either less than 5 working days in advance of the date on which the variation has effect or after the date on which the variation has effect.

14.10 If sub-paragraph 14.4(c) applies and the licensee has agreed to prevent a Proposed Supplier Transfer at the Domestic Customer's request, the licensee must:

(a) keep evidence of that request and of the reasons for it for at least 12 months after the request is made; and

(b) inform the proposed new Electricity Supplier:

(i) that the objection has been raised at the customer's request; and

(ii) of the reason given by the customer for making the request,

as soon as reasonably practicable after the licensee makes the request to prevent the transfer.

14.11 Sub-paragraph 14.4(d) will stop having effect on and from 1 April 2008 unless, before that date, the Authority issues a direction providing that the sub-paragraph will continue to have effect for a further period of time.

**SCHEDULE 5****CONDITION 23. NOTIFICATION OF DOMESTIC SUPPLY CONTRACT TERMS****Notification of Principal Terms**

23.1 Before it enters into a Domestic Supply Contract with a Domestic Customer, the licensee must take all reasonable steps to bring the Principal Terms of that contract to the attention of that customer.

**Notification before Domestic Supply Contract ends**

23.2 On or about 30 Working Days before a Domestic Supply Contract is due to end, the licensee must inform the Domestic Customer (who is party to that contract) in Writing of the Principal Terms of the Deemed Contract that will apply after the Domestic Supply Contract ends if he does not enter into a new Domestic Supply Contract.

**Notification of unilateral variation**

23.3 If, in accordance with the terms of a Domestic Supply Contract with a Domestic Customer, the licensee unilaterally varies a term of the contract:

- (a) to increase the Charges for the Supply of Electricity to a Domestic Premises; or
- (b) in any other way that is to the significant disadvantage of the customer,

the licensee must give Notice of that variation to the customer in accordance with paragraph 23.4.

23.4 The Notice referred to in paragraph 23.3 must:

- (a) have been be given either in advance of the date on which the variation has effect or no later than before the end of 65 Working Days after the date on which the variation has effect;
- (b) inform the Domestic Customer that he may end the Domestic Supply Contract if the variation is unacceptable to him;
- (c) inform the Domestic Customer where he may obtain impartial advice and information about changing his Electricity Supplier; and
- (d) inform the Domestic Customer that where he has any Outstanding Charges, his Electricity Supplier may be able to prevent a Proposed Supply Transfer; and
- (e) explain the effect of paragraph ~~23.5-23.6.~~

23.5 The licensee must present the information required in paragraph 23.4 in a form that is clear and easy to understand and must place the information

required in sub-paragraphs 23.4(b) and (c) in a prominent position on the Notice.

23.6 The licensee must treat the variation as ineffective and neither enforce nor take advantage of it where –

(a) the Domestic Customer notifies the licensee after he becomes aware (by any means) of the variation but no later than 20 Working Days after the date on which he receives Notice given under paragraph 23.3 that he is ending the Domestic Supply Contract; and

(b) no later than 15 Working Days after the Domestic Customer has notified the licensee in accordance with sub-paragraph 23.6(a), the licensee receives Notice under the Master Registration Agreement that another Electricity Supplier will begin to supply the Domestic Customer's Domestic Premises within a reasonable period of time after the date on which that Notice has been given; or

(c) where the Notice of variation referred to in paragraph 23.3 is given either less than 5 Working Days in advance of the date on which the variation has effect or after the date on which the variation has effect; and

(i) the conditions in sub-paragraphs 23.6(a) and (b) are met; and

(ii) the Domestic Customer has paid any Outstanding Charges within 30 Working Days after the Domestic Customer receives notice that the licensee intends blocking the Domestic Customer's Proposed Supplier Transfer.

~~23.5 If the Domestic Customer notifies the licensee after he becomes aware (by any means) of the variation but no later than 10 Working Days after the date on which he receives Notice given under paragraph 23.3 that he is ending the Domestic Supply Contract, the licensee must treat that variation as ineffective and neither enforce nor take advantage of it.~~

~~23.6 Paragraph 23.5 only binds the licensee if, no later than 15 Working Days after the Domestic Customer has notified the licensee in accordance with that paragraph, the licensee receives Notice under the Master Registration Agreement that another Electricity Supplier will begin to supply the customer's Domestic Premises within a reasonable period of time after the date on which that Notice has been given.~~

23.7 The licensee is not required to comply with paragraph 23.3 to such extent as the Authority may direct.

**SCHEDULE 6****CONDITION 25. MARKETING ELECTRICITY TO DOMESTIC CUSTOMERS****Objective and obligation to achieve it**

- 25.1 The objective of this licence condition (the "Objective") is to ensure that:
- (a) all information which the licensee or any Representative provides (whether in Writing, by electronic display or orally) to Domestic Customers in the course of the licensee's Marketing Activities and/or its Telesales Activities is complete and accurate, is capable of being easily understood by Domestic Customers, does not relate to products which are inappropriate to the Domestic Customer to whom it is directed, does not mislead the Domestic Customer to whom it is directed and is otherwise fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence); and
  - (b) the licensee's Marketing Activities and Telesales Activities and all contact by the licensee or a Representative with, and the behaviour of the licensee and any Representative towards, a Domestic Customer in the course of the licensee's Marketing Activities and/or Telesales Activities are conducted in a fair, transparent, appropriate and professional manner.
- 25.2 The licensee shall take all reasonable steps:
- (a) to secure the achievement of the Objective; and
  - (b) to avoid doing anything which jeopardises its ability to achieve the Objective.
- 25.3 The steps which the licensee shall take to secure the achievement of the Objective in respect of its Marketing Activities shall include, without limitation, the steps which are detailed at paragraphs 25.5 to 25.16 of this licence condition.
- 25.4 The licensee shall:
- (a) subject to sub-paragraph 25.4(b), comply with paragraph 25.2 with immediate effect; and
  - (b) comply with paragraph 25.3 as soon as reasonably practicable and in any event not later than 1 January 2010.

**Selection and training**

- 25.5 The licensee shall:
- (a) put in place and follow procedures which are appropriate for the selection of staff or other Representatives who are employed or engaged in roles

which involve, might involve or will involve communication with Domestic Customers for the purpose of its Marketing Activities;

- (b) provide or procure appropriate training for all staff or other Representatives who communicate with Domestic Customers for the purposes of the licensee's Marketing Activities, which training should include, but not be limited to, training about the licensee's obligations insofar as they affect Domestic Customers, including its obligations under this licence condition;
- (c) take all reasonable steps to ensure that:
  - (i) a Domestic Customer may readily identify the licensee whenever that Domestic Customer is contacted by the licensee or a Representative;
  - (ii) if the Domestic Customer enters into a Domestic Supply Contract with the licensee, that Domestic Customer will readily understand that they have done so; and
  - (iii) any unsolicited contact made by the licensee or a Representative with any Domestic Customer takes place at a reasonable time.

### **Pre-contract obligations**

25.6 Where the licensee offers to enter into a Domestic Supply Contract with a Domestic Customer in the course of its Marketing Activities, the licensee must at the time it makes the offer and before entering into a Domestic Supply Contract with that Domestic Customer:

- (a) provide to that Domestic Customer, in Writing or by means of electronic display, an estimate of the total annual Charges for the Supply of Electricity which would be payable by that Domestic Customer under the Offered Domestic Supply Contract; and
- (b) where:
  - (i) the Domestic Customer is, at the time the offer is made, being supplied with electricity through a prepayment meter; or
  - (ii) the licensee or a Representative has indicated to a Domestic Customer that the Charges for the Supply of Electricity that would be payable under the Offered Domestic Supply Contract are lower than the Charges for the Supply of Electricity that are payable under the Domestic Supply Contract pursuant to which the relevant Domestic Customer receives its supply of electricity at the time the offer is made,

provide to that Domestic Customer, in Writing or by means of electronic display, a comparison of the Charges for the Supply of Electricity that would be payable under the Offered Domestic Supply Contract and the Charges for the Supply of Electricity that are payable under the Domestic Supply Contract



pursuant to which the relevant Domestic Customer receives their supply of electricity at the time the offer is made. Where a Domestic Customer who falls within the scope of sub-paragraph 25.6(b)(i) is unable or unwilling to provide details of the Charges for Supply of Electricity that are payable under their existing Domestic Supply Contract, the licensee shall base any comparison which it is required to provide in accordance with this sub-paragraph on its best estimate of those Charges for the Supply of Electricity having regard to any relevant information that is available to the licensee at the time the comparison is prepared.

- 25.7 Any estimate provided in accordance with sub-paragraph 25.6(a) must:
- (a) take account of the relevant Domestic Customer's annual consumption or, where the relevant Domestic Customer's annual consumption is not known to, and cannot reasonably be ascertained by, the licensee, be based on the licensee's best estimate of the relevant Domestic Customer's annual consumption having regard to any relevant information that is available to the licensee at the time the estimate is prepared;
  - (b) where it is based on an estimate of the relevant Domestic Customer's annual consumption, clearly set out, in Writing or by means of electronic display, the basis for any such estimated annual consumption; and
  - (c) where the licensee or a Representative, when discussing an Offered Domestic Supply Contract with a Domestic Customer, makes any representation concerning the amount of any regular direct debit payment that is to be made in accordance with the Offered Domestic Supply Contract, include a clear explanation of how the proposed regular direct debit payment amounts have been calculated and how those amounts relate to the total annual Charges for the Supply of Electricity which the licensee estimates will be payable under the Offered Domestic Supply Contract.
- 25.8 Any comparison of Charges for the Supply of Electricity undertaken in accordance with sub-paragraph 25.6(b) must:
- (a) be undertaken (and explained to the relevant Domestic Customer) on a like for like basis. For these purposes, this will mean that the comparison of Charges for the Supply of Electricity must be based on the same time period (which will usually be one year) and the same consumption level (whether based on the relevant Domestic Customer's actual consumption or the licensee's best estimate of that consumption); and
  - (b) itemise clearly and explain any other relevant differences between the Offered Domestic Supply Contract and, subject to sub-paragraph 25.6(b), the relevant Domestic Customer's existing Domestic Supply Contract, including any discounts and/or differences in charges associated with different payment methods.
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- 25.9 Where the licensee provides to a Domestic Customer an estimate and/or a comparison in accordance with paragraph 25.6, the licensee must, either at the time that it provides the estimate and/or comparison or as soon as reasonably practicable thereafter, provide to the relevant Domestic Customer a Written copy of that estimate and/or comparison, as appropriate, which the Domestic Customer can retain for their records. This obligation does not apply where the Domestic Customer does not subsequently accept or enter into the Domestic Supply Contract to which the estimate and/or comparison relate(s).
- 25.10 Where a Domestic Customer to whom the licensee has provided an estimate or a comparison in accordance with this licence condition enters into a Domestic Supply Contract with the licensee, the licensee must maintain a record of the information which it provided to that Domestic Customer concerning that Domestic Supply Contract in accordance with this licence condition for a period of 2 years.

### **Obligations at time of contract**

- 25.11 Where the licensee enters into a Domestic Supply Contract with a Domestic Customer, the licensee shall, either at the time that the Domestic Supply Contract is entered into or as soon as reasonably practicable thereafter, provide to that Domestic Customer all the information which the licensee reasonably considers the Domestic Customer would need having regard to the Objective and the licensee's obligation to secure compliance with the same.
- 25.12 The information which the licensee shall provide in accordance with paragraph 25.11 shall include but not be limited to:
- (a) a copy of the Domestic Supply Contract (which shall be consistent in all respects with the Offered Domestic Supply Contract) which the licensee and that Domestic Customer have entered into;
  - (b) an explanation of what happens next now that the Domestic Customer has entered into a Domestic Supply Contract;
  - (c) a reminder to that Domestic Customer to check that the product they have signed up to is appropriate for them, including details of where to find impartial advice and information;
  - (d) information about any right for the Domestic Customer to cancel the Domestic Supply Contract; and
  - (e) information about what the Domestic Customer can do if they have any concerns, including details of how Consumer Direct can be contacted.

### **Contact with Domestic Customers after Contract**

- 25.13 The licensee must comply with the requirements of paragraphs 25.14 and 25.15 where a Domestic Supply Contract has been entered into by a Domestic Customer in the course of:
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- (a) a visit to that Domestic Customer's premises by a Representative; or
  - (b) a conversation, in a place to which the public have access, between a Representative and a Domestic Customer.
- 25.14 Where a Domestic Supply Contract is entered into in the circumstances described in paragraph 25.13, the licensee must, within a period of 14 days after entering into the Domestic Supply Contract, take all reasonable steps to contact the Domestic Customer, through a Representative of the licensee who is not engaged in activities leading to the making of Domestic Supply Contracts between the licensee and Domestic Customers, by telephone or in Writing to seek confirmation that the Domestic Customer:
- (a) understands that he or she has entered into a Domestic Supply Contract;
  - (b) understands the Principal Terms of that Domestic Supply Contract;
  - (c) is content to have entered into that Domestic Supply Contract;
  - (d) has received the estimate and, where appropriate, the comparison required by paragraph 25.6; and
  - (e) is content with the information provided by the licensee and/or, as appropriate, a Representative and is otherwise content with the way in which the Marketing Activities of the licensee were conducted.
- 25.15 Where, in the course of contact as required by paragraph 25.14, the Domestic Customer indicates that he or she is not content to have entered into the Domestic Supply Contract and wishes to end it, the licensee must take all reasonable steps to ensure:
- (a) that the Domestic Supply Contract is ended; and
  - (b) where reasonably practicable, that the licensee does not begin a supply of electricity to the relevant Domestic Customer.

### **Management arrangements**

- 25.16 The licensee must take all reasonable steps to establish management arrangements that facilitate the licensee's compliance with its obligations under this condition, including, as appropriate, steps to ensure that any agents and subcontractors of the licensee establish equivalent arrangements.

**SCHEDULE 7****CONDITION 19A. FINANCIAL INFORMATION REPORTING**

- 19A.1 The relevant licensee must prepare and publish on its Website a Consolidated Segmental Statement in respect of information relating to the revenues, costs and profits of the licensee's activities in the generation and supply of electricity and the supply of gas to any premises taking account of the Guidelines.
- 19A.2 Where applicable, the relevant licensee must prepare and publish the Consolidated Segmental Statement referred to in paragraph 19A.1 in conjunction with any affiliates ("the relevant affiliates") which hold any or all of the following:
- (a) a supply licence granted or treated as granted under section 6(1)(d) of the Act;
  - (b) a generation licence granted or treated as granted under section 6(1)(a) of the Act;
  - (c) a supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986 ("the 1986 Act").
- 19A.3 The relevant licensee must in conjunction with the relevant affiliates prepare and publish a Consolidated Segmental Statement no later than six months after the end of the licensee's financial year.
- 19A.4 The relevant licensee may for the purpose of preparing the statement referred to in paragraph 19A.3 prepare and compile the information according to the licensee's annual accounting procedures. The licensee must include in every such statement an explanation:
- (a) of how the licensee defines the terms revenues, cost and profits;
  - (b) of how the revenues, costs, and profits can be reconciled with the licensee's UK statutory accounts and where applicable the consolidated group accounts; and
  - (c) of the licensee's transfer pricing methodology and how this relates to the revenues, costs and profit information published.
- 19A.5 The relevant licensee must ensure that all the information prepared and made public is in all material respects consistent with the information prepared pursuant to paragraph 19A.4 and the information is presented with a clear and full explanation.
- 19A.6 The Authority shall prepare Guidelines in relation to the requirements of this condition and may modify, in whole or in part, the Guidelines following consultation with the relevant licensees.
-

19A.7 For the purposes of this condition:

"Affiliate" in relation to the licensee means any holding company or subsidiary of a holding company of the licensee, in each case within the meaning of sections 736, 736A and 736B of the Companies Act 1985.

"Consolidated Segmental Statement" means a statement as described in the Guidelines.

"Guidelines" mean the document prepared by the Authority pursuant to standard condition 19A.6 setting out the nature of the information required and the template for the presentation of the financial information.

"Relevant licensee" means the holder of a supply licence granted or treated as granted under section 6(1)(d) of the Act if:

- (a) any of the licensee's affiliates holds a generation licence granted or treated as granted under section 6(1)(a) of the Act; and
- (b) the licensee, together with any of its affiliates, jointly supplies electricity to more than 50,000 customers.

**SCHEDULE 8****CONDITION 31A. INFORMATION ABOUT ELECTRICITY CONSUMPTION**

31A.1 The licensee must provide the information contained in paragraph 31A.2 –

- (a) on every Bill or statement of account sent to a Domestic Customer; and
- (b) where there is an increase to the Charges for the Supply of Electricity, to every Domestic Customer who does not receive a Bill or statement of account at least once in every three months, within 65 Working Days of the date of the Notice of each increase.

31A.2 The information provided for in paragraph 31A.1 is –

- (a) subject to paragraph 31A.3, a comparison of the Domestic Customer's electricity consumption for the period covered by the Bill or statement of account, with the Domestic Customer's electricity consumption for the corresponding period in the previous year (for the purposes of this condition, the "corresponding period");
- (b) the Domestic Customer's Exact Tariff Name;
- (c) except where a Domestic Customer has held their Domestic Supply Contract for less than 12 months –
  - (i) the quantity of Electricity Supplied to the Domestic Customer's Domestic Premises during the previous 12 months; and
  - (ii) an illustrative projection of the cost in pounds sterling of the quantity of Electricity Supplied to the Domestic Customer's Domestic Premises for the forthcoming 12 months assuming those premises are supplied with the same quantity of electricity as during the previous 12 months.

31A.3 The requirement in sub-paragraph 31A.2(a) only applies if the licensee has been contracted to supply electricity to the same Domestic Customer at the same Domestic Premises throughout the period:

- (a) commencing with the start of the corresponding period; and
- (b) ending with the end of the period to which the Bill or statement of account relates.

31A.4 The licensee must provide the following information to every Domestic Customer once in every 12 month period –

- (a) the Domestic Customer's Exact Tariff Name;
- (b) except where the Domestic Customer has held their Domestic Supply Contract for less than 12 months –

- (i) the quantity of Electricity Supplied to the Domestic Customer's Domestic Premises during the previous 12 months;
- (ii) an illustrative projection of the cost in pounds sterling of the quantity of Electricity Supplied to the Domestic Customer's Domestic Premises for the forthcoming 12 months assuming those premises are supplied with the same quantity of electricity as during the previous 12 months;
- (c) details of any premium or discount that applies to the Domestic Customer's tariff as compared to the Electricity Supplier's standard tariff where payment is by direct debit;
- (d) details of the Relevant Principal Terms of the Domestic Customer's Domestic Supply Contract;
- (e) a reminder in a prominent position that the Domestic Customer may change their Electricity Supplier; and
- (f) information about where the Domestic Customer may obtain impartial advice and information about changing their Electricity Supplier.

31A.5 The licensee must:

- (a) present the information in a form that is clear and easy to understand which does not mislead the Domestic Customer to whom it is directed and is otherwise fair both in terms of its content and in terms of how it is presented;
- (b) when providing information about the quantity of electricity supplied or to be supplied in accordance with paragraphs 31A.2 or 4, include details of any time of use tariffs which may apply to the Domestic Supply Contract;
- (c) make it clear on the Bill, statement of account or Notice whether any estimates of the Domestic Customer's electricity consumption have been used in producing the information; and
- (d) when providing an illustrative projection of costs under paragraphs 31A.2 or 4, to set out the Charges for the Supply of Electricity that have been used.

31A.6 The licensee must send the first Annual Statement on or before 31 December 2010 to every existing Domestic Customer who has held their Domestic Supply Contract with the licensee for at least 12 months on 1 April 2010.

## Appendix 4 - Statutory Notice: Gas Supply

**To: All holders of an gas supply licence who are in respect of any one or more modification relevant licence holders for the purposes of section 23(12) of the Gas Act 1986.**

### **NOTICE OF MODIFICATION OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCE UNDER SECTION 23 OF THE GAS ACT 1986.**

WHEREAS:

1. Each of the companies to whom this notice is addressed holds an gas supply licence granted, or treated as granted, pursuant to section 7A(1) of the Gas Act 1986 (the "Act").
2. In accordance with section 23(3) and (4) of the Act, the Gas and Electricity Markets Authority (the "Authority") gives notice ("Notice") that it proposes to modify the standard conditions of the gas supply licence by:
  - a. Amending standard condition 1 ('Definitions for standard conditions')
  - b. Inserting new standard condition 7A ('Supply to micro business consumers')
  - c. Amending standard condition 14 ('Customer transfer blocking')
  - d. Inserting new standard condition 19A ('Financial information reporting')
  - e. Amending standard condition 23 ('Notification of Domestic Supply Contract terms')
  - f. Replacing standard condition 25 ('Marketing gas to Domestic Customers')
  - g. Inserting new standard condition 31A ('Information about gas consumption')
3. Subject to responses, it is intended that the dates on which the modifications take effect will be:
  - a. 1 October 2009, for standard conditions 1, 19A and 25
  - b. 1 January 2010, for standard conditions 7A, 14 and 23
  - c. 1 April 2010, for standard condition 31A
4. The reasons why the Authority proposes these modifications have been published by the Authority in the following documents:
  - a. Energy Supply Probe - Proposed Retail Market Remedies (99/09), 7 August 2009;
  - b. Amendment to Energy Supply Probe proposals relating to automatic contract rollover for micro business consumers (68/09), 22 June 2009;



c. Energy Supply Probe – proposed retail market remedies (41/09), 15 April 2009;

d. Energy Supply Probe – Initial Findings Report (140/08), 6 October 2008.

These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003) or from the Ofgem website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

5. In summary, the proposed licence modifications aim to ensure that the standard conditions of the gas supply licence are requisite and appropriate to promote effective competition in the retail energy market and to protect the interests of consumers, in particular those who are vulnerable.
6. The proposed modifications are set out in the schedules to this notice.
7. Any representations or objections to the proposed modifications may be made before 15 September 2009 and sent to:

Neil Barnes  
Senior Economist, GB Markets  
Ofgem  
9 Millbank  
London SW1P 3GE

Or by email to [energysupplymarketsp@ofgem.gov.uk](mailto:energysupplymarketsp@ofgem.gov.uk)

8. Although any person may make representations, only those licensees who are “relevant licence holders” under paragraph section 11A(10) of the Act may register a formal objection to any proposed modification.

**Andrew Wright**  
**Managing Director, Markets**  
**Ofgem**  
**Authorised on behalf of the Authority**

**7 August 2009**

## SCHEDULE 1

### **MODIFICATION OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCE UNDER SECTION 23 OF THE GAS ACT 1986**

The table in this Schedule must be read in conjunction with the existing standard conditions and the proposed new standard conditions (which can be found in Schedules 2 to 8).

The first column of the table indicates the number of each proposed modification.

The second column sets out the proposed modification.

The third column sets out which Schedule to this document contains the modified standard condition.

For the three new standard conditions clean text is provided in the Schedules. We also provide clean text for standard condition 25 because the amendments to it are sufficiently substantive that we consider a change-marked version would impede, rather than aid, review.

For the proposed amendments to standard conditions 14 and 23 change-marked text is provided in the Schedules.

For the proposed amendments to standard condition 1, the individual definitions that are to be inserted or amended are set out in tables.

Modification Number	Proposed Modification	Schedule
1.	Amend standard condition 1, 'Definitions for standard conditions'	2
2.	Insert new standard condition 7A, 'Supply to micro business consumers'	3
3.	Amend standard condition 14, 'Customer transfer blocking'	4
4.	Amend standard condition 23, 'Notification of Domestic Supply Contract terms'	5
5.	Replace standard condition 25, 'Marketing gas to Domestic Customers'	6
6.	Insert new standard condition 19B, 'Financial information reporting'	7
7.	Insert new standard condition 31A, 'Information about gas consumption'	8

**SCHEDULE 2****CONDITION 1. DEFINITIONS FOR STANDARD CONDITIONS**

The following terms are to be added to the list of definitions in standard condition 1:

<b>Affiliate</b>	in relation to the licensee means any holding company or subsidiary of a holding company of the licensee, in each case within the meaning of sections 736, 736A and 736B of the Companies Act 1985
<b>Annual Statement</b>	means the information to be provided by the licensee to a Domestic Customer in accordance with standard condition 31.A.4
<b>Consolidated Segmental Statement</b>	means a statement as described in the Guidelines
<b>Disputed Amount</b>	means a genuine dispute between the licensee and a Domestic Customer as to whether that Domestic Customer is liable to pay certain Charges for the Supply of Gas which have been demanded of that Domestic Customer by the licensee
<b>Exact Tariff Name</b>	means the full and exact name of the tariff that is used to calculate Charges for the Supply of Gas under the relevant Domestic Supply Contract
<b>Guidelines</b>	mean the document prepared by the Authority pursuant to standard condition 19A.7 setting out the nature of the information required and the template for the presentation of the financial information
<b>Micro Business Consumer</b>	has the meaning given to "relevant consumer" (in respect of premises other than domestic premises) in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268)
<b>Objective</b>	has the meaning given in [and is to be interpreted in accordance with] standard condition 25.1 (Marketing gas to Domestic Customers)
<b>Offered Domestic Supply Contract</b>	means any offer to contract, including the terms of such offer, which the licensee or a Representative makes to a Domestic Customer concerning a supply of gas to that Domestic Customer at Domestic Premises

<b>Outstanding Charges</b>	means the amount of any Charges for the Supply of Gas which are due to the licensee from a Domestic Customer, have been demanded of that Domestic Customer by the licensee in Writing at least 28 days previously and remain unpaid
<b>Relevant Date</b>	means a date which is at least 30 days, and no longer than 90 days, before the date any fixed term period of a Micro Business Consumer contract is due to end
<b>Relevant Principal Terms</b>	<p>means, in respect of any form of Contract or Deemed Contract, the terms that relate to:</p> <ul style="list-style-type: none"> <li>(e) Charges for the Supply of Gas;</li> <li>(f) the duration of the Contract or Deemed Contract;</li> <li>(g) the rights to end the Contract (including any obligation to pay a Termination Fee) or the circumstances in which a Deemed Contract will end; and</li> <li>(h) any other terms that may reasonably be considered to significantly affect the evaluation by the Customer whether to change their Gas Supplier.</li> </ul>
<b>Supplier Error Amount</b>	means the amount of any Charges for the Supply of Gas which are not Disputed Amounts and which have accumulated as a result of an error on the part of the licensee, its equipment or its systems
<b>Telesales Activities</b>	<p>means any activities of the licensee that are:</p> <ul style="list-style-type: none"> <li>(c) conducted by telephone; and</li> <li>(d) directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the licensee's Domestic Supply</li> </ul>

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	Contracts to them and includes entering into such contracts with such customers.
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The following term is to be amended in the list of definitions in standard condition 1 (the new text to be added is shown as underlined):

<b>Writing</b>	includes writing sent or received by Electronic Communication <u>and</u> <b><u>"Written" shall be construed accordingly.</u></b>
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**SCHEDULE 3****CONDITION 7A SUPPLY TO MICRO BUSINESS CONSUMERS****Identification and treatment of Micro Business Consumers**

7A.1 If the licensee intends to:

- (a) enter into a Non-Domestic Supply Contract with a Customer; or
- (b) extend the duration of a Non-Domestic Supply Contract (including the duration of any fixed term period which may form part of a Contract of an indefinite length)

the licensee must either take all reasonable steps to identify whether that Non-Domestic Customer is a Micro Business Consumer, or deem that Non-Domestic Customer to be a Micro Business Consumer.

7A.2 Where any Contract or Contract extension as described in paragraph 7A.1 is entered into with a Non-Domestic Customer that has been identified as, or deemed to be, a Micro Business Consumer, that Contract shall be a "Micro Business Consumer Contract" for the purposes of this Condition.

7A.3 The licensee must not include a term in a Micro Business Consumer Contract which enables it to terminate the Contract or apply different terms and conditions to that Contract during a fixed term period on the grounds that the Customer no longer satisfies the definition of Micro Business Consumer.

**Notification of Micro Business Consumer Contract terms and other information**

7A.4 Before the licensee enters into a Micro Business Consumer Contract, it must take all reasonable steps to bring the following information to the attention of the Micro Business Customer and ensure that the information is communicated in plain and intelligible language:

- (a) a statement to the effect that the licensee is seeking to enter into a legally binding Contract with the Micro Business Consumer; and
- (b) the Principal Terms of the proposed Contract.

7A.5 The licensee must ensure that all the express terms and conditions of a Micro Business Consumer Contract are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

7A.6 Where the licensee enters into, or extends the duration of, a Micro Business Consumer Contract for a fixed term period, it must prepare a statement (hereafter referred to as a "Statement of Renewal Terms") which:

- (a) is set out in Writing;
- (b) is drafted in plain and intelligible language;
- (c) displays the following information in a prominent manner:
  - (i) the date the fixed term period is due to end, or if that date is not ascertainable the duration of the fixed term period;
  - (ii) the Relevant Date, or if not known at the time of providing the Statement of Renewal Terms, a description of how the Relevant Date will be calculated by reference to the end of the fixed term period;
  - (iii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee at any time before the Relevant Date in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period;
  - (iv) a postal and Electronic Communication address to which the Customer may send a notification in Writing for that purpose; and
  - (v) a statement explaining the consequences of the Micro Business Consumer not renewing the Micro Business Consumer Contract or agreeing a new Contract before the Relevant Date.

7A.7 Where the licensee enters into or extends the duration (including the duration of any fixed term period) of a Micro Business Consumer Contract, it must take all reasonable steps to provide the Micro Business Consumer with the following information within 10 days, or do so as soon as reasonably practicable thereafter:

- (a) a copy of all the express terms and conditions of the Micro Business Consumer Contract; and
- (b) if the Micro Business Consumer Contract contains a fixed term period, the Statement of Renewal Terms.

7A.8 On or about 30 days before the Relevant Date, the licensee must provide the Micro Business Consumer with:

- (a) the Statement of Renewal Terms (unless the licensee has already prevented the Micro Business Consumer from extending the duration of the Micro Business Consumer Contract);
- (b) a copy of any relevant Principal Terms that might apply to the Micro Business Consumer after the fixed term period of the Micro Business Consumer Contract ends, including:

- (i) terms that would apply in the event the Customer does nothing;
- (ii) terms that would apply if the Customer sends (or has already sent) a notification in Writing before the Relevant Date to prevent renewal of the Micro Business Consumer Contract but does not appoint another supplier.

7A.9 Where pursuant to paragraph 7A.8 the licensee is required to provide a Micro Business Consumer with any relevant Principal Terms, it must ensure that the Principal Terms are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

7A.10 Where pursuant to paragraph 7A.8(b) the licensee provides a Micro Business Consumer with any offers of terms that relate to Charges for the Supply of Gas, it must ensure that at least one offer is made in Writing which may be accepted at any time before the Relevant Date.

#### **Length of notice periods in Micro Business Consumer Contracts**

7A.11 The notice period for termination of a Micro Business Consumer Contract must be no longer than 90 days.

7A.12 Paragraph 7A.11 is without prejudice to the licensee's ability to enter into a Micro Business Consumer Contract with a Customer for a fixed term period which is longer than 90 days.

#### **Extending the duration of Micro Business Consumer Contracts**

7A.13 Where the licensee has entered into a Micro Business Consumer Contract for a fixed term period, it may only extend the duration of that Contract for a further fixed term period if:

- (a) it has complied with paragraphs 7A.7 and 7A.8;
- (b) the Micro Business Consumer has not sent the licensee a notification in Writing before the Relevant Date in order to prevent it from extending the duration of the Micro Business Consumer Contract for a further fixed term period; and
- (c) the duration of the further fixed term period is 12 months or less.

#### **Definitions for Condition**

7A.14 In this condition:



"Micro Business Consumer"	has the meaning given to "relevant consumer" (in respect of premises other than domestic premises) in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268);
"Relevant Date"	means the date which is at least 30 days, and no longer than 90 days, before the date any fixed term period of a Micro Business Consumer Contract is due to end.

**SCHEDULE 4****CONDITION 14. CUSTOMER TRANSFER BLOCKING****General prohibition**

- 14.1 The licensee must not ask or allow a Relevant Gas Shipper to prevent a Proposed Supplier Transfer except in accordance with the provisions of this condition.

**Non-Domestic Customer transfer blocking**

- 14.2 The licensee may ask or allow the Relevant Gas Shipper to prevent a Proposed Supplier Transfer in relation to a Non-Domestic Customer at any Non-Domestic Premises at which the licensee is the Relevant Gas Supplier in any of the following circumstances:
- (a) at the time the licensee receives Notice under the Network Code by way of the Relevant Gas Shipper that another Gas Supplier has applied under the requirements of the Network Code to supply the premises, the licensee's Contract with that customer for the supply of gas to the premises includes a term which:
    - (i) allows the licensee to prevent the Proposed Supplier Transfer;  
and
    - (ii) may be relied upon in the circumstances arising at that time;
  - (b) the Gas Supplier that initiated the Proposed Supplier Transfer has agreed with the licensee that the transfer was initiated in error; or
  - (c) in relation to a Contract entered into between the licensee and that customer before 5 January 2004 for the supply of gas to the premises which does not allow the licensee to prevent a Proposed Supplier Transfer:
    - (i) the customer has not paid Charges for the Supply of Gas to the premises or any other premises previously occupied by him which are due to the licensee, have been demanded in writing, have not been paid within 28 days after the demand was made and continue to be unpaid; or
    - (ii) the customer is bound by the provisions of that Contract and it will not end on or before the date of the Proposed Supplier Transfer.
- 14.3 If the licensee asks the Relevant Gas Shipper to prevent a Proposed Supplier Transfer of a Non-Domestic Customer, it must give a Notice to that customer to inform him:
- (a) that it has made a request to prevent the transfer;

- (b) of the grounds for the request; and
  - (c) how the customer may dispute or resolve such grounds,
- as soon as reasonably practicable after making the request.

### **Domestic Customer transfer blocking**

14.4 The licensee may ask or allow the Relevant Gas Shipper to prevent a Proposed Supplier Transfer in relation to a Domestic Customer at a Domestic Premises at which the licensee is the Relevant Gas Supplier in any of the following circumstances:

~~(a) the customer has not paid Charges for the Supply of Gas to the premises or any other premises previously owned or occupied by him which are due to the licensee, have been demanded in writing, have not been paid within 28 days after the demand was made and continue to be unpaid;~~

(a) subject to paragraphs 14.5 and 14.7, if at the time the request is made Outstanding Charges are due to the licensee from that Domestic Customer;

(b) the Gas Supplier that initiated the Proposed Supplier Transfer has agreed with the licensee that the transfer was initiated in error;

(c) the customer informs the licensee that he has not entered into a Contract with the proposed new Gas Supplier and asks the licensee to prevent the Proposed Supplier Transfer from taking place; or

(d) the customer is bound by the provisions of a Contract with the licensee for the supply of gas to the premises which will not end on or before the date of the Proposed Supplier Transfer and that Contract is of a kind specified in a direction issued by the Authority.

14.5 ~~Sub-paragraph 14.4(a) does not apply if~~ The licensee may not make a request in accordance with the Relevant Gas Shipper to prevent a Proposed Supplier Transfer in relation to a Domestic Customer at a Domestic Premises at which the licensee is the Relevant Gas Supplier if the relevant Domestic Customer's Domestic Premises is being supplied with gas through a prepayment meter and:

(a) the Domestic Customer has agreed with the proposed new Gas Supplier that any ~~Outstanding Charges for the Supply of Gas to the premises~~ may be assigned by the licensee in accordance with the Protocol; or

(b) the licensee, having increased the Charges for the Supply of Gas to the ~~relevant Domestic P~~remises, has not taken all reasonable steps to reset the relevant prepayment meter within a reasonable period of time after that increase has effect to take account of the increase and the Outstanding Charges ~~charges that have not been paid~~ (which may have

accumulated over time) relate only to the increase and are equal to all or part of it.

- 14.6 The licensee shall ensure that Outstanding Charges of amounts equal to or less than £200 are capable of being assigned by the licensee to a new Gas Supplier in accordance with the Protocol.
- 14.7 The licensee may not make a request in accordance with the Relevant Gas Shipper to prevent a Proposed Supplier Transfer in relation to a Domestic Customer at a Domestic Premises in accordance with sub-paragraph 14.4(a) if the licensee knows or has reason to believe that the relevant Outstanding Charges are made up in their entirety of a Disputed Amount and/or a Supplier Error Amount and the operational functioning or management of the licensee's business is such that it is reasonably practicable for the licensee not to make the request in these circumstances.
- 14.8 If the licensee makes a request in accordance with the Relevant Gas Shipper to prevent a Proposed Supplier Transfer in relation to a Domestic Customer at a Domestic Premises in accordance with sub-paragraph 14.4(a) and the licensee subsequently becomes aware that the Outstanding Charges which are relevant to that Domestic Customer are made up in their entirety of a Disputed Amount and/or a Supplier Error Amount, the licensee must, save where the relevant Domestic Customer makes a request in Writing that it should not do so, take such steps as are necessary and within its reasonable control to facilitate the Proposed Supplier Transfer.
- ~~14.6-14.9~~ If the licensee asks the Relevant Gas Shipper to prevent a Proposed Supplier Transfer of a Domestic Customer, it must give a Notice to that customer to inform him as soon as reasonably practicable after making the request:
- (a) to inform him or her:
- (i) ~~(a)~~-that it has made a request to prevent the transfer;
  - (ii) ~~(b)~~-of the grounds for the request; and
  - (iii) ~~(c)~~-how the customer may dispute or resolve such grounds; and
- ~~as soon as reasonably practicable after making the request.~~
- (b) to offer him or her advice (or to give them information on how and where advice may obtained) concerning:
- (i) energy efficiency;
  - (ii) debt management; and
  - (iii) alternative Domestic Supply Contracts offered by the licensee which would be available to that Domestic Customer and which may be preferable to their existing Domestic Supply Contract; and

(c) to inform him or her they have 30 Working Days after they receive the Notice to pay any Outstanding Charges where -:

(i) the Domestic Customer notified the licensee of their intention to end the Domestic Supply Contract following Notice of a unilateral variation from the licensee under paragraph 23.3 of standard condition 23, and

(ii) the Notice of unilateral variation was given either less than 5 working days in advance of the date on which the variation has effect or after the date on which the variation has effect.

~~14.7~~14.10 If sub-paragraph 14.4(c) applies and the licensee has agreed to prevent a Proposed Supplier Transfer at the Domestic Customer's request, the licensee must:

(a) keep evidence of that request and of the reasons for it for at least 12 months after the request is made; and

(b) inform the proposed new Gas Supplier:

(i) that the objection has been raised at the customer's request; and

(ii) of the reason given by the customer for making the request, as soon as reasonably practicable after the licensee asks the Relevant Gas Shipper to prevent the transfer.

~~14.8~~14.11 Sub-paragraph 14.4(d) will stop having effect on and from 1 April 2008 unless, before that date, the Authority issues a direction providing that the sub-paragraph will continue to have effect for a further period of time.

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## SCHEDULE 5

### CONDITION 23. NOTIFICATION OF DOMESTIC SUPPLY CONTRACT TERMS

#### Notification of Principal Terms

23.1 Before it enters into a Domestic Supply Contract with a Domestic Customer, the licensee must take all reasonable steps to bring the Principal Terms of that contract to the attention of that customer.

#### Notification before Domestic Supply Contract ends

23.2 On or about 30 Working Days before a Domestic Supply Contract is due to end, the licensee must inform the Domestic Customer (who is party to that contract) in Writing of the Principal Terms of the Deemed Contract that will apply after the Domestic Supply Contract ends if he does not enter into a new Domestic Supply Contract.

#### Notification of unilateral variation

23.3 If, in accordance with the terms of a Domestic Supply Contract with a Domestic Customer, the licensee unilaterally varies a term of the contract:

- (a) to increase the Charges for the Supply of Gas to a Domestic Premises; or
- (b) in any other way that is to the significant disadvantage of the customer,

the licensee must give Notice of that variation to the customer in accordance with paragraph 23.4.

23.4 The Notice referred to in paragraph 23.3 must:

- (a) ~~have been~~ be given either in advance of the date on which the variation has effect or no later than before the end of 65 Working Days after the date on which the variation has effect;
- (b) inform the Domestic Customer that he may end the Domestic Supply Contract if the variation is unacceptable to him;
- (c) inform the Domestic Customer where he may obtain impartial advice and information about changing his Gas Supplier; and
- (d) inform the Domestic Customer that where he has any Outstanding Charges, his Gas Supplier may be able to prevent a Proposed Supply Transfer; and
- (e) explain the effect of paragraph ~~23.5-23.6.~~

23.5 The licensee must present the information required in paragraph 23.4 in a form that is clear and easy to understand and must place the information

required in sub-paragraphs 23.4(b) and (c) in a prominent position on the Notice.

23.6 The licensee must treat the variation as ineffective and neither enforce nor take advantage of it where –

(a) the Domestic Customer notifies the licensee after he becomes aware (by any means) of the variation but no later than 20 Working Days after the date on which he receives Notice given under paragraph 23.3 that he is ending the Domestic Supply Contract; and

(b) no later than 15 Working Days after the Domestic Customer has notified the licensee in accordance with sub-paragraph 23.6(a), the licensee receives Notice under the Master Registration Agreement that another Gas Supplier will begin to supply the Domestic Customer's Domestic Premises within a reasonable period of time after the date on which that Notice has been given; or

(c) where the Notice of variation referred to in paragraph 23.3 is given either less than 5 Working Days in advance of the date on which the variation has effect or after the date on which the variation has effect; and

(i) the conditions in sub-paragraphs 23.6(a) and (b) are met; and

(ii) the Domestic Customer has paid any Outstanding Charges within 30 Working Days after the Domestic Customer receives notice that the licensee intends blocking the Domestic Customer's Proposed Supplier Transfer.

~~23.5 If the Domestic Customer notifies the licensee after he becomes aware (by any means) of the variation but no later than 10 Working Days after the date on which he receives Notice given under paragraph 23.3 that he is ending the Domestic Supply Contract, the licensee must treat that variation as ineffective and neither enforce nor take advantage of it.~~

~~23.6 Paragraph 23.5 only binds the licensee if, no later than 15 Working Days after the Domestic Customer has notified the licensee in accordance with that paragraph, the licensee receives Notice under the Network Code by way of the relevant Gas Shipper that another Gas Supplier will begin to supply the customer's Domestic Premises within a reasonable period of time after the date on which that Notice has been given.~~

23.7 The licensee is not required to comply with paragraph 23.3 to such extent as the Authority may direct.

**SCHEDULE 6****CONDITION 25. MARKETING GAS TO DOMESTIC CUSTOMERS****Objective and obligation to achieve it**

25.1 The objective of this licence condition (the "Objective") is to ensure that:

- (b) all information which the licensee or any Representative provides (whether in Writing, by electronic display or orally) to Domestic Customers in the course of the licensee's Marketing Activities and/or its Telesales Activities is complete and accurate, is capable of being easily understood by Domestic Customers, does not relate to products which are inappropriate to the Domestic Customer to whom it is directed, does not mislead the Domestic Customer to whom it is directed and is otherwise fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence); and
- (b) the licensee's Marketing Activities and Telesales Activities and all contact by the licensee or a Representative with, and the behaviour of the licensee and any Representative towards, a Domestic Customer in the course of the licensee's Marketing Activities and/or Telesales Activities are conducted in a fair, transparent, appropriate and professional manner.

25.2 The licensee shall take all reasonable steps:

- (c) to secure the achievement of the Objective; and
- (d) to avoid doing anything which jeopardises its ability to achieve the Objective.

25.3 The steps which the licensee shall take to secure the achievement of the Objective in respect of its Marketing Activities shall include, without limitation, the steps which are detailed at paragraphs 25.5 to 25.16 of this licence condition.

25.4 The licensee shall:

- (c) subject to sub-paragraph 25.4(b), comply with paragraph 25.2 with immediate effect; and
- (d) comply with paragraph 25.3 as soon as reasonably practicable and in any event not later than 1 January 2010.

**Selection and training**

25.5 The licensee shall:

- (d) put in place and follow procedures which are appropriate for the selection of staff or other Representatives who are employed or engaged in roles



which involve, might involve or will involve communication with Domestic Customers for the purpose of its Marketing Activities;

- (e) provide or procure appropriate training for all staff or other Representatives who communicate with Domestic Customers for the purposes of the licensee's Marketing Activities, which training should include, but not be limited to, training about the licensee's obligations insofar as they affect Domestic Customers, including its obligations under this licence condition;
- (f) take all reasonable steps to ensure that:
  - (i) a Domestic Customer may readily identify the licensee whenever that Domestic Customer is contacted by the licensee or a Representative;
  - (ii) if the Domestic Customer enters into a Domestic Supply Contract with the licensee, that Domestic Customer will readily understand that they have done so; and
  - (iii) any unsolicited contact made by the licensee or a Representative with any Domestic Customer takes place at a reasonable time.

### **Pre-contract obligations**

25.6 Where the licensee offers to enter into a Domestic Supply Contract with a Domestic Customer in the course of its Marketing Activities, the licensee must at the time it makes the offer and before entering into a Domestic Supply Contract with that Domestic Customer:

- (a) provide to that Domestic Customer, in Writing or by means of electronic display, an estimate of the total annual Charges for the Supply of Gas which would be payable by that Domestic Customer under the Offered Domestic Supply Contract; and
- (b) where:
  - (i) the Domestic Customer is, at the time the offer is made, being supplied with gas through a prepayment meter; or
  - (ii) the licensee or a Representative has indicated to a Domestic Customer that the Charges for the Supply of Gas that would be payable under the Offered Domestic Supply Contract are lower than the Charges for the Supply of Gas that are payable under the Domestic Supply Contract pursuant to which the relevant Domestic Customer receives its supply of gas at the time the offer is made,

provide to that Domestic Customer, in Writing or by means of electronic display, a comparison of the Charges for the Supply of Gas that would be payable under the Offered Domestic Supply Contract and the Charges for the Supply of Gas that are payable under the Domestic Supply Contract pursuant to which the relevant Domestic Customer receives their supply of gas at the

time the offer is made. Where a Domestic Customer who falls within the scope of sub-paragraph 25.6(b)(i) is unable or unwilling to provide details of the Charges for Supply of Gas that are payable under their existing Domestic Supply Contract, the licensee shall base any comparison which it is required to provide in accordance with this sub-paragraph on its best estimate of those Charges for the Supply of Gas having regard to any relevant information that is available to the licensee at the time the comparison is prepared.

- 25.7 Any estimate provided in accordance with sub-paragraph 25.6(a) must:
- (a) take account of the relevant Domestic Customer's annual consumption or, where the relevant Domestic Customer's annual consumption is not known to, and cannot reasonably be ascertained by, the licensee, be based on the licensee's best estimate of the relevant Domestic Customer's annual consumption having regard to any relevant information that is available to the licensee at the time the estimate is prepared;
  - (b) where it is based on an estimate of the relevant Domestic Customer's annual consumption, clearly set out, in Writing or by means of electronic display, the basis for any such estimated annual consumption; and
  - (c) where the licensee or a Representative, when discussing an Offered Domestic Supply Contract with a Domestic Customer, makes any representation concerning the amount of any regular direct debit payment that is to be made in accordance with the Offered Domestic Supply Contract, include a clear explanation of how the proposed regular direct debit payment amounts have been calculated and how those amounts relate to the total annual Charges for the Supply of Gas which the licensee estimates will be payable under the Offered Domestic Supply Contract.
- 25.8 Any comparison of Charges for the Supply of Gas undertaken in accordance with sub-paragraph 25.6(b) must:
- (a) be undertaken (and explained to the relevant Domestic Customer) on a like for like basis. For these purposes, this will mean that the comparison of Charges for the Supply of Gas must be based on the same time period (which will usually be one year) and the same consumption level (whether based on the relevant Domestic Customer's actual consumption or the licensee's best estimate of that consumption); and
  - (b) itemise clearly and explain any other relevant differences between the Offered Domestic Supply Contract and, subject to sub-paragraph 25.6(b), the relevant Domestic Customer's existing Domestic Supply Contract, including any discounts and/or differences in charges associated with different payment methods.
- 25.9 Where the licensee provides to a Domestic Customer an estimate and/or a comparison in accordance with paragraph 25.6, the licensee must, either at the time that it provides the estimate and/or comparison or as soon as

reasonably practicable thereafter, provide to the relevant Domestic Customer a Written copy of that estimate and/or comparison, as appropriate, which the Domestic Customer can retain for their records. This obligation does not apply where the Domestic Customer does not subsequently accept or enter into the Domestic Supply Contract to which the estimate and/or comparison relate(s).

- 25.10 Where a Domestic Customer to whom the licensee has provided an estimate or a comparison in accordance with this licence condition enters into a Domestic Supply Contract with the licensee, the licensee must maintain a record of the information which it provided to that Domestic Customer concerning that Domestic Supply Contract in accordance with this licence condition for a period of 2 years.

### **Obligations at time of contract**

- 25.11 Where the licensee enters into a Domestic Supply Contract with a Domestic Customer, the licensee shall, either at the time that the Domestic Supply Contract is entered into or as soon as reasonably practicable thereafter, provide to that Domestic Customer all the information which the licensee reasonably considers the Domestic Customer would need having regard to the Objective and the licensee's obligation to secure compliance with the same.

- 25.12 The information which the licensee shall provide in accordance with paragraph 25.11 shall include but not be limited to:

- (a) a copy of the Domestic Supply Contract (which shall be consistent in all respects with the Offered Domestic Supply Contract) which the licensee and that Domestic Customer have entered into;
- (b) an explanation of what happens next now that the Domestic Customer has entered into a Domestic Supply Contract;
- (c) a reminder to that Domestic Customer to check that the product they have signed up to is appropriate for them, including details of where to find impartial advice and information;
- (d) information about any right for the Domestic Customer to cancel the Domestic Supply Contract; and
- (e) information about what the Domestic Customer can do if they have any concerns, including details of how Consumer Direct can be contacted.

### **Contact with Domestic Customers after Contract**

- 25.13 The licensee must comply with the requirements of paragraphs 25.14 and 25.15 where a Domestic Supply Contract has been entered into by a Domestic Customer in the course of:

- (a) a visit to that Domestic Customer's premises by a Representative; or

- (b) a conversation, in a place to which the public have access, between a Representative and a Domestic Customer.
- 25.14 Where a Domestic Supply Contract is entered into in the circumstances described in paragraph 25.13, the licensee must, within a period of 14 days after entering into the Domestic Supply Contract, take all reasonable steps to contact the Domestic Customer, through a Representative of the licensee who is not engaged in activities leading to the making of Domestic Supply Contracts between the licensee and Domestic Customers, by telephone or in Writing to seek confirmation that the Domestic Customer:
- (a) understands that he or she has entered into a Domestic Supply Contract;
  - (b) understands the Principal Terms of that Domestic Supply Contract;
  - (c) is content to have entered into that Domestic Supply Contract;
  - (d) has received the estimate and, where appropriate, the comparison required by paragraph 25.6; and
  - (e) is content with the information provided by the licensee and/or, as appropriate, a Representative and is otherwise content with the way in which the Marketing Activities of the licensee were conducted.
- 25.15 Where, in the course of contact as required by paragraph 25.14, the Domestic Customer indicates that he or she is not content to have entered into the Domestic Supply Contract and wishes to end it, the licensee must take all reasonable steps to ensure:
- (a) that the Domestic Supply Contract is ended; and
  - (b) where reasonably practicable, that the licensee does not begin a supply of gas to the relevant Domestic Customer.

### **Management arrangements**

- 25.16 The licensee must take all reasonable steps to establish management arrangements that facilitate the licensee's compliance with its obligations under this condition, including, as appropriate, steps to ensure that any agents and subcontractors of the licensee establish equivalent arrangements.

**SCHEDULE 7****CONDITION 19A. FINANCIAL INFORMATION REPORTING**

- 19A.1 The relevant licensee must prepare and publish on its Website a Consolidated Segmental Statement in respect of information relating to the revenues, costs and profits of the licensee's activities in the generation and supply of electricity and the supply of gas to any premises taking account of the Guidelines.
- 19A.2 Where applicable, the relevant licensee must prepare and publish the Consolidated Segmental Statement referred to in paragraph 19A.1 in conjunction with any affiliates ("the relevant affiliates") which hold any or all of the following:
- (a) a supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989;
  - (b) a generation licence granted or treated as granted under section 6(1)(a) of the Electricity Act 1989;
  - (c) a supply licence granted or treated as granted under section 7A(1) of the Act.
- 19A.3 The relevant licensee must in conjunction with the relevant affiliates prepare and publish a Consolidated Segmental Statement no later than six months after the end of the licensee's financial year.
- 19A.4 The relevant licensee may for the purpose of preparing the statement referred to in paragraph 19A.3 prepare and compile the information according to the licensee's annual accounting procedures. The licensee must include in every such statement an explanation:
- (a) of how the licensee defines the terms revenues, cost and profits;
  - (b) of how the revenues, costs, and profits can be reconciled with the licensee's UK statutory accounts and where applicable the consolidated group accounts; and
  - (c) of the licensee's transfer pricing methodology and how this relates to the revenues, costs and profit information published.
- 19A.5 The relevant licensee must ensure that all the information prepared and made public is in all material respects consistent with the information prepared pursuant to paragraph 19A.4 and the information is presented with a clear and full explanation.
- 19A.6 The Authority shall prepare Guidelines in relation to the requirements of this condition and may modify, in whole or in part, the Guidelines following consultation with the relevant licensees.
-

19A.7 For the purposes of this condition:

"Affiliate" in relation to the licensee means any holding company or subsidiary of a holding company of the licensee, in each case within the meaning of sections 736, 736A and 736B of the Companies Act 1985.

"Consolidated Segmental Statement" means a statement as described in the Guidelines.

"Guidelines" mean the document prepared by the Authority pursuant to standard condition 19A.6 setting out the nature of the information required and the template for the presentation of the financial information.

"Relevant licensee" means the holder of a gas supply licence granted or treated as granted under section 7A(1) of the Act if:

- (a) any of the licensee's affiliates holds a generation licence granted or treated as granted under section 6(1)(a) of the Electricity Act 1989; and
- (b) the licensee, together with any of its affiliates, jointly supplies gas to more than 50,000 customers.

**SCHEDULE 8****CONDITION 31A. INFORMATION ABOUT GAS CONSUMPTION**

31A.1 The licensee must provide the information contained in paragraph 31A.2 –

- (a) on every Bill or statement of account sent to a Domestic Customer; and
- (b) where there is an increase to the Charges for the Supply of Gas, to every Domestic Customer who does not receive a Bill or statement of account at least once in every three months, within 65 Working Days of the date of the Notice of each increase.

31A.2 The information provided for in paragraph 31A.1 is –

- (a) subject to paragraph 31A.3, a comparison of the Domestic Customer's gas consumption for the period covered by the Bill or statement of account, with the Domestic Customer's gas consumption for the corresponding period in the previous year (for the purposes of this condition, the "corresponding period");
- (b) the Domestic Customer's Exact Tariff Name;
- (c) except where a Domestic Customer has held their Domestic Supply Contract for less than 12 months –
  - (i) the quantity of Gas Supplied to the Domestic Customer's Domestic Premises during the previous 12 months; and
  - (ii) an illustrative projection of the cost in pounds sterling of the quantity of Gas Supplied to the Domestic Customer's Domestic Premises for the forthcoming 12 months assuming those premises are supplied with the same quantity of gas as during the previous 12 months.

31A.3 The requirement in sub-paragraph 31A.2(a) only applies if the licensee has been contracted to supply gas to the same Domestic Customer at the same Domestic Premises throughout the period:

- (a) commencing with the start of the corresponding period; and
- (b) ending with the end of the period to which the Bill or statement of account relates.

31A.4 The licensee must provide the following information to every Domestic Customer once in every 12 month period –

- (a) the Domestic Customer's Exact Tariff Name;
- (b) except where the Domestic Customer has held their Domestic Supply Contract for less than 12 months –

- (i) the quantity of Gas Supplied to the Domestic Customer's Domestic Premises during the previous 12 months;
- (ii) an illustrative projection of the cost in pounds sterling of the quantity of Gas Supplied to the Domestic Customer's Domestic Premises for the forthcoming 12 months assuming those premises are supplied with the same quantity of gas as during the previous 12 months;
- (c) details of any premium or discount that applies to the Domestic Customer's tariff as compared to the Gas Supplier's standard tariff where payment is by direct debit;
- (d) details of the Relevant Principal Terms of the Domestic Customer's Domestic Supply Contract;
- (e) a reminder in a prominent position that the Domestic Customer may change their Gas Supplier; and
- (f) information about where the Domestic Customer may obtain impartial advice and information about changing their Gas Supplier.

31A.5 The licensee must:

- (a) present the information in a form that is clear and easy to understand which does not mislead the Domestic Customer to whom it is directed and is otherwise fair both in terms of its content and in terms of how it is presented;
- (b) when providing information about the quantity of gas supplied or to be supplied in accordance with paragraphs 31A.2 or 4, include details of any time of use tariffs which may apply to the Domestic Supply Contract;
- (c) make it clear on the Bill, statement of account or Notice whether any estimates of the Domestic Customer's gas consumption have been used in producing the information; and
- (d) when providing an illustrative projection of costs under paragraphs 31A.2 or 4, to set out the Charges for the Supply of Gas that have been used.

31A.6 The licensee must send the first Annual Statement on or before 31 December 2010 to every existing Domestic Customer who has held their Domestic Supply Contract with the licensee for at least 12 months on 1 April 2010.



**Appendix 5 - Statutory Notice: Electricity Generation****To: All holders of an electricity generation licence****NOTICE OF MODIFICATION OF THE STANDARD CONDITIONS OF THE ELECTRICITY GENERATION LICENCE UNDER SECTION 11A OF THE ELECTRICITY ACT 1989**

WHEREAS:

1. Each of the companies to whom this Notice is addressed holds an electricity generation licence granted, or treated as granted, pursuant to section 6(1)(a) of the Electricity Act 1989 (the "Act").
2. In accordance with section 11A(3) and (4) of the Act, the Gas and Electricity Markets Authority (the "Authority") gives notice ("Notice") that it proposes to modify the standard conditions of the electricity generation licences by making the modifications to standard condition 16B set out in the Schedules to this notice.
3. The dates on which the modifications shall take effect will be 1 October 2009.
4. The reasons why the Authority proposes to make these modifications have been published by the Authority in the following documents:
  - a. Energy Supply Probe - Proposed Retail Market Remedies (99/09), 7 August 2009;
  - b. Energy Supply Probe – proposed retail market remedies (41/09), 15 April 2009;
  - c. Energy Supply Probe – Initial Findings Report (140/08), 6 October 2008.

These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003) or from the Ofgem website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

5. In summary, the proposed licence modifications aim to ensure greater transparency on the relationship between the generation and supply activities of the large, vertically-integrated energy companies.
6. The proposed modifications are set out in the Schedules to this notice.

7. Any representations or objections to the proposed modifications may be made before 15 September 2009 and sent to:

Neil Barnes  
Senior Economist, GB Markets  
Ofgem  
9 Millbank  
London SW1P 3GE

Or by email to [energysupplymarketsp@ofgem.gov.uk](mailto:energysupplymarketsp@ofgem.gov.uk)

8. Although any person may make representations, only those licensees who are "relevant licence holders" under paragraph section 11A(10) of the Act may register a formal objection to any proposed modification.

**Andrew Wright**  
**Managing Director, Markets**  
**Ofgem**  
**Authorised on behalf of the Authority**

**7 August 2009**

**SCHEDULE 1****MODIFICATION OF THE STANDARD CONDITIONS OF THE ELECTRICITY GENERATION LICENCE UNDER SECTION 11A OF THE ELECTRICITY ACT 1989**

The table in this Schedule must be read in conjunction with the existing standard conditions and the proposed new standard conditions (which can be found in Schedules 2 and 3 to this Notice).

The first column of the table indicates the number of each proposed modification.

The second column sets out the proposed modification.

The third column sets out which Schedule to this document contains the modified standard condition.

Modification Number	Proposed Modification	Schedule
1.	Insert new standard condition 16B, 'Financial information reporting'	2

**SCHEDULE 2****CONDITION 16B FINANCIAL INFORMATION REPORTING**

1. The relevant licensee must prepare and publish on its Website a Consolidated Segmental Statement in respect of information relating to the revenues, costs and profits of the licensee's activities in the generation and supply of electricity and the supply of gas to any premises taking account of the Guidelines.
2. Where applicable, the relevant licensee must prepare and publish the Consolidated Segmental Statement referred to in paragraph 1 in conjunction with any affiliates ("the relevant affiliates") which hold any or all of the following:
  - (a) a supply licence granted or treated as granted under section 6(1)(d) of the Act;
  - (b) a generation licence granted or treated as granted under section 6(1)(a) of the Act;
  - (c) a supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
3. The relevant licensee must in conjunction with the relevant affiliates prepare and publish a Consolidated Segmental Statement no later than six months after the end of the licensee's financial year.
4. The relevant licensee may for the purpose of preparing the statement referred to in paragraph 3 prepare and compile the information according to the licensee's annual accounting procedures. The licensee must include in every such statement an explanation:
  - (a) of how the licensee defines the terms revenues, cost and profits;
  - (b) of how the revenues, costs and profits can be reconciled with the licensee's UK statutory accounts and where applicable the consolidated group accounts; and
  - (c) of the licensee's transfer pricing methodology and how this relates to the revenues, costs and profit information published.
5. The relevant licensee must ensure that all the information prepared and made public is in all material respects consistent with the information prepared pursuant to paragraph 4 and the information is presented with a clear and full explanation.
6. The Authority shall prepare Guidelines in relation to the requirements of this condition and may modify, in whole or in part, the Guidelines following consultation with the relevant licensees.

7. For the purposes of this condition:

“Consolidated Segmental Statement” means a statement as described in the Guidelines.

“Guidelines” mean the document prepared by the Authority pursuant to standard condition 16B.6 setting out the nature of the information required and the template for the presentation of the financial information.

“Relevant licensee” means the holder of an electricity generation licence granted or treated as granted under section 6(1)(a) of the Act if any of the licensee’s relevant affiliates jointly supply electricity to more than 50,000 customers or gas to more than 50,000 customers respectively.

“Website” means a website controlled and used by the licensee for the purposes of providing information and communication.

## Appendix 6 - Guidance on Financial Reporting Requirements

### **The Guidelines**

1.1. These Guidelines relate to Standard Licence Condition 19A of the Gas and Electricity Licences and Standard Licence Condition 16B of the Electricity Generation Licence (collectively referred to as "the condition" for the purposes of these guidelines), which came into effect on [X] 2009. These Guidelines have been prepared by the Office of the Gas and Electricity Markets ("Ofgem") following consultation with relevant licensees and interested stakeholders. These Guidelines are intended to assist the reader in understanding the requirements of the condition.

### **Completing the Consolidated Segmental Statement**

1.2. The guidelines for completing the Consolidated Segmental Statement referred to in the condition should be taken to mean completing Table 1 overleaf. The Notes to the table provide further details.

### **Scope and Application of the Licence Condition**

1.3. The condition only applies to entities that hold both supply and generation licences, and who supply electricity to more than 50,000 customers or gas to more than 50,000 customers.

### **Financial Year**

1.4. Under paragraph 3 of the condition, the financial year should be taken to mean the licensee's current financial reporting year. For the avoidance of doubt, this may differ between companies.

### **Interpreting the Financial Information**

1.5. Under paragraph 4(a) of the condition a clear and full explanation of "reconciliation" should be set out so as to enable an industry stakeholder to understand what the information provided pursuant to paragraph 1 does and does not represent. Where issues pertaining to the data are unexpected or unusually complex these issues should be set out in full.

1.6. Under paragraph 4(b) of the condition the explanation of reconciliation should be clear and full so as to enable an industry stakeholder to understand as much as can be reasonably expected as to how revenues, costs and profits reconcile (or do not reconcile as a result of complexities in the group's financial reporting structure) to the licensee's UK statutory or consolidated group accounts. This explanation would be expected to take the form of a numerical table and a written statement.

1.7. Paragraph 5 of the condition provides for further information pertaining to the interpretation of the financial information provided required pursuant to paragraph 1. This further information should be sufficient to inform an industry stakeholder of the financial data's proper interpretation and context.

**Table 1: Template for the Consolidated Segmental Statement**

	Generation		Supply - Electricity				Supply - Gas			
	2009	2010	2009		2010		2009		2010	
			Dom <sup>4</sup>	Non	Dom <sup>4</sup>	Non	Dom <sup>4</sup>	Non	Dom <sup>4</sup>	Non
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m
<b>Total Revenues</b>										
Revenues from sales of electricity and gas <sup>1</sup>										
Other Revenues <sup>2</sup>										
<b>Total Operating Costs</b>										
Direct Costs										
WACO(E)/(G) <sup>3</sup>										
Volume (TWh)										
Other Costs										
Indirect Costs										
<b>EBIT<sup>5</sup></b>										
Adjustment for D&A										
<b>EBITDA<sup>5</sup></b>										

**Notes:**

<sup>1</sup> This means: revenue from sales of electricity output generated for the generation business segment; and electricity and gas sales for the respective supply segments.

<sup>2</sup> This means other respective segmental revenues not covered in footnote 1. For example, for the generation segment this would include capacity payments, other physical options and ancillary services.

<sup>3</sup> Weighted average input cost of fuel for generation and weighted average cost of electricity or gas ("WACO(E)" or "WACO(G)") respectively for supply companies.

<sup>4</sup> The table includes a domestic and non domestic market breakdown. The split between the two must be made on a reasonable endeavours basis. For example, the split may be made on the basis of customer numbers, revenue, or metering profile classes. The methodology used should be explained.

<sup>5</sup> EBIT means earnings before interest and tax. EBITDA means earnings before interest, tax, depreciation and amortisation. Companies may elect to use their own equivalent descriptions of these items to achieve consistency with their own financial reporting standards.

**Transfer Pricing Methodology**

1.8. Under paragraph 4(c) of the condition the explanation of the licensee's and affiliates' transfer pricing methodology should set out with a clear and full explanation so as to enable an industry stakeholder to understand as much as can be reasonably expected about the transfer pricing methodology. This explanation should include:

- how the methodology relates to open market prices and/or a cost plus methodology;
- the treatment of allocated costs and corporate charges (e.g. head office charges); and
- the allocation of financial risk between group companies and or business segments.



## Appendix 7 - The Authority's Powers and Duties

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

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.<sup>25</sup>

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly.<sup>26</sup>

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

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

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them<sup>27</sup>;
- the need to contribute to the achievement of sustainable development; and
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.<sup>28</sup>

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

<sup>25</sup> Entitled "Gas Supply" and "Electricity Supply" respectively.

<sup>26</sup> 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.

<sup>27</sup> 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.

<sup>28</sup> The Authority may have regard to other descriptions of consumers.

- promote efficiency and economy on the part of those licensed<sup>29</sup> 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; and
- secure a diverse and viable long-term energy supply.

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

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

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation<sup>30</sup> 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.

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<sup>29</sup> Or persons authorised by exemptions to carry on any activity.

<sup>30</sup> Council Regulation (EC) 1/2003

## Appendix 8 - Glossary

### A

#### Annual bill

The amount that a customer would have to pay for gas and/or electricity over one whole year.

### B

#### Barrier to entry

A factor that may limit a firm's ability to enter the market.

#### Barrier to expansion

A factor that may limit a firm's ability to increase in size.

#### BERR

The Department for Business, Enterprise & Regulatory Reform.

#### Big 6

The name collectively given to the six companies that supply most of the energy to domestic households in the GB market. They are: Centrica plc (three retail brands, British Gas, Scottish Gas and Nwy Prydain in England, Scotland and Wales respectively), E.ON UK, Scottish and Southern Energy (SSE), RWE npower, EDF Energy and ScottishPower.

### C

#### Capped price tariffs

Guarantees that the price paid per kWh for gas or electricity will not rise beyond a set level for a given period of time.

#### Consumer Focus

Consumer Focus is a statutory organisation, created through the merger of three organisations – energywatch, Postwatch and the National Consumer Council (including the Scottish and Welsh Consumer Councils) – by the Consumers, Estate Agents and Redress Act 2007. It is an independent watchdog tasked with protecting and promoting the interests of all gas and electricity consumers.

### Consumer Panel

Ofgem's Consumer Panel consists of 100 everyday domestic customers, recruited from five locations across Great Britain. The Panel meets at least three times a year to discuss key issues impacting on their participation in the energy market, as well as other key issues related to energy.

### Cross-subsidisation

The part financing of one product or activity by another.

## D

### Debt blocking

This is when the transfer of a customer to a new supplier is prevented because of outstanding debt with the existing supplier.

### Direct costs

In this document, wholesale energy purchase costs, network access and environmental costs.

### Direct debit (DD)

A method of payment where a fixed or variable amount is taken from a bank account each month, quarter or year.

### Domestic energy suppliers

Companies who sell energy to and bill residential customers in Great Britain.

### Dual Fuel

A type of energy contract where a customer takes gas and electricity from the same supplier.

## E

### Energy Retail Association (ERA)

The ERA is the body that represents the Big 6 domestic electricity and gas suppliers in Great Britain.

### energywatch

The independent gas and electricity watchdog, set up in November 2000 through the Utility Act, to protect and promote the interests of all gas and electricity consumers. From the 1 October 2008, energywatch merged with Postwatch and the National Consumer Council (including the Scottish and Welsh Consumer Councils) to form Consumer Focus, the new champion for consumers' interests in England, Scotland, Wales and, for post, Northern Ireland.

### Evergreen offers

These are tariffs where prices may fluctuate but a customer can switch supplier at any time.

### Ex-PES

The previous Public Electricity Supplier for one of the 14 electricity regions in England, Wales and Scotland. From privatisation in 1990 until 1998 the ex-PES had a monopoly of electricity supply and distribution in their designated areas. Local distribution is still a monopoly regulated by Ofgem, however, competition has been introduced in supply, and so these 14 suppliers (consolidated now into five) are known as ex-PES suppliers. The 14 regions are detailed below, together with the name of today's ex-PES company for each region.

REGION	SUPPLIER GROUP
London	EDF Energy
Seeboard	
SWEB	
East Midlands	E.ON UK
Eastern	
Norweb	
Midlands	RWE npower
Northern	
Yorkshire	
Scottish Hydro	Scottish and Southern Energy
Southern	
Swalec	
Manweb	ScottishPower
Scottish Power	

## F

### Fixed price tariff

A tariff that guarantees that the price paid per unit of gas or electricity used will not change for a given period of time.

### Former electricity incumbent

The previous Public Electricity Supplier for one of the 14 electricity regions in England, Wales and Scotland (see Ex-PES).

### Fuel poor

Those households who need to spend more than 10% of their annual income on fuel to maintain an adequately heated home.

## **G**

### Green tariffs

An energy tariff which is marketed as having environmental credentials.

## **H**

### Hedging

Deals based on the future price of a good or service instead of dealings based on the daily price of a good or service. This enables those purchasing a good or service to reduce the risk of short term price movements.

## **K**

### kWh

Kilowatt-hour is a unit used to measure energy consumption in both electricity and gas.

## **M**

### Market share

In this report, this refers to the proportion of total customers (usually as proxied by the number of meter points) within a market that are registered to a particular supply group.

### Market liquidity

The ease with which new entrants or small suppliers are able to secure wholesale gas and electricity supplies, for on-sale to retail customers

### Market power

The ability of a company to influence (for example) prices in the market.

## **N**

### New entrant

An entrant that does not have an incumbent customer base.

### Non-switcher

A customer who has never switched from their incumbent supplier.

## **O**

### Objection clauses

These are specific clauses within a contract between a customer and their energy supplier that legally allow a customer's current supplier to object and block the transfer of a customer to another supplier.

## **P**

### Prepayment meter (PPM)

These are meters that require payment for energy to be made in advance of use or they will prevent the supply of gas or electricity. A PPM customer pays for energy by inserting electronic tokens, keys or cards into the meter.

### Price differential

The difference between two sets of prices. For example, the difference in the price charged by one electricity supplier to customers using different payment methods.

### Price discrimination

Occurs when different prices are set for different consumers or groups of consumers for the same good or service for reasons not associated with the costs of production.

### Proactive consumers

Consumers who have either switched supplier as a result of their own enquiries during the last twelve months or who regularly check relative prices.

**R****Reactive customers**

Consumers who have switched supplier at least once, but do not regularly research the market and typically only switch in response to a call from a sales person.

**S****Small suppliers**

Suppliers which operate in the gas and electricity market but do not hold significant market share.

**Small and medium enterprises (SME) sector**

The SME sector includes a wide range of non-domestic consumers, from relatively large businesses for whom energy is a major cost to much smaller businesses that may closely resemble domestic consumers in their approach to energy procurement.

**Smart meter**

A generic term for innovative forms of metering that provide increased levels of functionality above that of a basic meter. It usually includes at a minimum the ability to read the meter remotely via a communication channel.

**Standard Credit (SC)**

A payment method where customers pay on receipt of the bill. This typically covers a wide range of payment mechanisms, including cash, cheque, credit card and standing order.

**T****Third Party Intermediaries (TPIs)**

TPIs help SME consumers to compare alternative offers available in the market, in much the same way that a consumer might use, for example, an insurance broker.

**V****Vertical integration**

Where one supply group owns two or more parts of the energy supply chain. For example, where the same supply group owns generation capacity and also supplies energy to the retail market.



## Appendix 9 - Feedback Questionnaire

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

- Does the report adequately reflect your views? If not, why not?
- Does the report offer a clear explanation as to why not all the views offered had been taken forward?
- Did the report offer a clear explanation and justification for the decision? If not, how could this information have been better presented?
- Do you have any comments about the overall tone and content of the report?
- Was the report easy to read and understand, could it have been better written?
- Do you have any further comments?

1.2. Please send your comments to:

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