

## Supply Licence Review - Initial Policy Proposals

**Document Type:** Consultation

**Ref:** 113/06

**Date of Publication:** July 2006

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**Overview:**

This review is a key part of Ofgem's drive towards better regulation. Our proposals are designed to remove unnecessary red tape and to ensure that obligations placed on gas and electricity suppliers are targeted and proportionate for a highly competitive market and do not discourage new suppliers from entering the market or stifle innovation in the range and types of contracts and services offered.

We propose to remove and simplify licence obligations wherever possible. We also identify where self-regulation can replace formal regulation. We do, however, recognise the need to maintain appropriate protection for vulnerable customers given that energy is an essential service but propose to adopt clearer and simpler obligations on suppliers.

Our proposals would see the current supply licence cut from around 160 to 80 pages. We are asking for views on our proposals and plan to introduce the new licenses in June 2007.

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**Deadline for Response:** 15 September 2006

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

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## Context

This consultation forms part of our comprehensive review of supply standard licence conditions aimed at ensuring that they are fit for purpose and meet the principles of Better Regulation. This document invites views on our initial policy proposals to modify the existing supply standard licence conditions.

Ofgem's Corporate Plan 2006-2011 references the Supply Licence Review as being consistent with our duties in respect of Better Regulation through identifying those parts of the licence that are no longer necessary in a competitive market and ensuring that those which are needed are simple, effective and enforceable.

## Associated Documents

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

[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10280\\_5105.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10280_5105.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr)

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

[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/12156\\_187\\_05.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/12156_187_05.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr)

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

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

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

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

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

[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/14157\\_4206.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/14157_4206.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr)

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## Summary

Ofgem is undertaking a major review of the gas and electricity supply standard licence conditions (SLCs). This is a key project in our drive towards better regulation.

The SLCs have not changed significantly since the domestic energy market was opened to competition in the late 1990s. Competition is now firmly established and we continue to publish research showing that the market remains highly competitive<sup>1</sup>. Competition has improved customer service and dramatically changed the way customers think about how they buy gas and electricity and who they buy it from. The ability of customers to switch means that suppliers have had to react to the demands of consumers by offering better service and new services. Customers can now buy their gas and electricity from a single supplier, manage their accounts and provide meter readings over the internet, and, if they are worried about rising energy bills, fix or cap their energy prices for a number of years.

This review aims to bring the regulatory rules for gas and electricity suppliers up-to-date given that competition is now firmly established and that developments in consumer and competition law make some rules redundant.

This document sets out our initial proposals for shorter, simpler licences. We have developed them following public consultation on the form of the review in August 2005, and detailed discussions with industry and consumer representatives across six focussed workgroups. We thank those who have contributed to the debate.

We are determined to ensure that SLCs are retained only where there is a clear need for protection for customers over and above that provided by the market itself and general consumer protection legislation or competition law.

The key themes of our proposals are:

***Removal and simplification of licence conditions*** - these proposals will remove around half of the existing conditions. We also identify where clearer drafting can simplify obligations and result in better targeted regulation.

***Striking the balance between competition and regulation*** - these proposals remove licence obligations where competition can provide more effective protection for consumers than regulation.

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

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<sup>1</sup> Domestic Retail Market Report - March 2006  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15610\\_DRMR\\_March\\_2006.pdf?wtfrom=/ofgem/index.jsp](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15610_DRMR_March_2006.pdf?wtfrom=/ofgem/index.jsp)

***Opportunity for self-regulation*** - our proposals recognise that self-regulation can provide proportionate and effective customer protection. We consider that the establishment of the Energy Services Ombudsman scheme offers significant advantages to consumers over licence obligations in getting speedy resolution and redress to problems that may occur. We have also initiated a review which considers the scope for self-governance of industry codes and agreements and what, if any, role the licence should play in ensuring compliance.

***Promotion of innovation*** - we have sought to identify and remove licence conditions that could stifle innovation or the development of competition. For example, we propose removing constraints on the design of domestic supply contracts and clearing away barriers to the introduction of smarter metering for domestic consumers.

We would welcome views on these proposals, in particular from:

***Suppliers or potential new entrants*** - are there any licence conditions that we propose to retain that are a significant impediment to the development of competition or innovation?

***Customer representatives*** - do these proposals continue to provide effective and proportionate protection for energy consumers, in particular vulnerable customers?

### **Next Steps**

The next stage of the project is to prepare draft modifications to the SLCs based upon the proposals set out in this document, taking into account the views of respondents. We aim to consult on the draft modifications in November 2006 and issue our final decision document on the proposed modifications in March 2007. If the necessary majority of licensees accept our proposals, we plan to introduce the new licence from June 2007. If they do not, it is open to us to refer the matter to the Competition Commission.

## 1. Overview

**Chapter Summary:** This chapter explains the background to the Supply Licence Review, and the next steps for the remainder of the project.

**Question 1.1:** Do you agree with the detailed proposals for modifying gas and electricity supply standard licence conditions set out in Appendix 7 and 8?

**Question 1.2:** Do you have any general comments on the issues raised in this document?

1.1. Companies supplying gas and electricity to domestic and non-domestic consumers in Great Britain are licensed by Ofgem unless they are exempt. Electricity and gas supply licences contain approximately 60 SLCs, each comprising around 350 separate obligations that suppliers must comply with and are enforceable by Ofgem. Ofgem consulted on the original proposal to review the SLCs in February 2005<sup>2</sup>. Our proposals aim to meet the principles that we identified in our August 2005 SLR Way Forward document<sup>3</sup> for assessing the SLCs<sup>4</sup>.

1.2. In preparing these proposals, we have considered the on-going requirements within the gas and electricity markets for sector specific rules over and above the general competition and consumer protection law. In particular we have considered the differing technical demands of supplying gas and electricity, the circumstances of domestic and non-domestic customers and the requirements for additional protection for vulnerable customers given the essential nature of energy supplies for domestic customers.

1.3. Our view is that retail competition is effective and sufficiently established to enable the removal of many of the regulations set out in the supply licences<sup>5</sup>.

### Overview of the proposals

#### Protection for vulnerable customers

1.4. Gas and electricity is an essential service -particularly for vulnerable customers. Ofgem has important legal duties to protect the interests of vulnerable customers. In the light of this, we have decided that it remains appropriate to retain key

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<sup>2</sup> Reviewing the gas and electricity supply standard licence conditions (February 2005)  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10280\\_5105.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10280_5105.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr)

<sup>3</sup> Gas and Electricity Supply Licence Review - Way Forward (August 2005)  
<http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/supplylr>

<sup>4</sup> Two specific issues have been excluded from the SLR. Those SLCs dealing with marketing (SLC 48) and theft of energy (relevant parts of SLC 16) have been subject to other concurrent work streams, and Ofgem considered that they were better managed outside of the SLR given the timetables for each piece of work.

<sup>5</sup> Ofgem publishes periodic information on the state of competition in the domestic retail market. The most recent Domestic Retail Competition Review was published in July 2006:  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15610\\_DRMR\\_March\\_2006.pdf?wtfrom=/ofgem/index.jsp](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15610_DRMR_March_2006.pdf?wtfrom=/ofgem/index.jsp)

obligations on suppliers to protect vulnerable customers rather than relying solely on the market and/or self-regulation in these areas. We have tried to make these obligations clear, focused and targeted. In March 2006<sup>6</sup> Ofgem consulted on the requirement to maintain obligations in SLCs in respect of services to vulnerable customers. In Chapter 5 we discuss the provision of services to domestic consumers with particular physical needs and the role of the Priority Services Register. There was broad agreement with the proposals presented in our March 2005 document to better target the services and rationalise the administrative requirements set out in the current licence for a supplier to prepare seven separate detailed codes of practice that must each be approved, complied with, monitored and reported upon.

1.5. In Chapter 5 we also propose that, for those who have difficulty in paying bills, the protection against disconnection, including the requirement for suppliers to offer a prepayment meter will be simplified and retained. The moratorium on disconnection for pensioner household during the winter months will also be retained.

1.6. We discuss (in Chapter 2) obligations for suppliers to provide a range of payments methods. The option to pay by, for example, making regular cash payments, is the preferred method for many households with low incomes who carefully budget to avoid building up debt. We are proposing to keep this obligation but would welcome views on whether this may prevent suppliers entering the market who only want to offer certain payment types such as direct debit whether there is any real risk of suppliers ceasing to offer such services. We would also welcome views more generally on whether we have struck the right balance between retaining protection for vulnerable customers via the licence seeking to remove barriers to entry and unnecessary obligations, and pursuing self-regulatory solutions wherever possible.

### **Self-regulation**

1.7. In developing our proposals we have set out the scope for increased industry self-regulation. We welcome the establishment of the Energy Services Ombudsman<sup>7</sup> by the ERA following Ofgem's response to the energywatch billing super complaint. The scope of the Energy Services Ombudsman will include consumer complaints about billing or switching supplier. The proposals also include limitations on back billing<sup>8</sup> - an important protection for consumers and an incentive for suppliers to send accurate bills on time. We think the Ombudsman scheme<sup>9</sup> will be more effective than licence conditions and formal regulation at resolving individual consumer complaints, providing adequate compensation in the small number of cases where things go wrong for customers and provide clear financial incentives for suppliers to improve their service. Once we have more experience of the Ombudsman's

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<sup>6</sup> Implications for Vulnerable Customers (consultation document) Ref 42/06  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/14157\\_4206.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/14157_4206.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/supplylr)

<sup>7</sup> The DTI has indicated in a consultation document on consumer representation ("Strengthen and Streamline Consumer Advocacy - Consultation on consumer representation and redress") that the Ombudsman approach is likely to be the way forward. A proposed outcome of this is that utilities will be required to set up Ombudsman schemes approved by the sectoral regulator.

effectiveness, we expect to be able to then remove some more licence obligations relating to domestic billing, for example the conditions on determining disputes on the value of security deposits and termination fees.

1.8. During the SLR, the industry raised concerns about Ofgem's present role in enforcement of the industry codes and agreements. They argued that a greater degree of self-regulation would be more appropriate, given the uncertainty as to how and when Ofgem will exercise the powers that it currently has. In response, we have initiated a wide-ranging review (the Industry Codes Compliance Review) across gas and electricity licences to determine Ofgem's role in enforcement of industry codes and agreements<sup>10</sup>.

### **Removing regulation**

1.9. We think that competition is now well established and we can remove elements of the detailed prescription of the relationship between a supplier and energy customer. Domestic consumers should determine the services they require from their supplier at the prices they are prepared to pay. We are proposing to remove obligations and restrictions on: contracts being terminable on 28-days notice, termination fees, publication of supply terms, enforcement of complaint handling procedures and the provision of energy efficiency advice to non-domestic consumers.

### **Meeting the needs of gas and electricity markets**

1.10. We think that some basic protection for consumers must be retained, reflecting specific characteristics of supplying gas and electricity. For example, provisions for appointing a supplier of last resort when a customer's supplier fails (as customers will continue to use gas and electricity and may not be aware that their supplier has failed) and maintaining the rights of suppliers to deem a contract where a consumer takes a supply of energy (for example on moving into a new house if they have not contacted the supplier and agreed terms) or rights of suppliers to enter a customer's premises (for example if they think a meter has been tampered with). Nonetheless, we think these obligations can be simplified and made clearer.

1.11. We will retain general obligations to ensure that market participants work together to maintain the safety and security of supplies, together with market arrangements that permit consumers to switch supplier, facilitate access to networks and settlement of energy. Where these obligations relate to industry codes, the role for self regulation will be considered as part of the ICCR review.

1.12. Ofgem published a document 'Domestic Metering Innovation - Next Steps'<sup>11</sup> in June 2006. Metering innovation, specifically the provision of 'smarter' meters for the domestic market has been an active issue during the period of the SLR. The proposals in Chapter 6 in respect of the provision of meters and the removal of the obligation to inspect meters every two years are designed to support, in part, the

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<sup>10</sup> Industry codes Compliance Review consultation:

[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15594\\_ICCR\\_Condoc\\_FINAL.pdf?wtfrom=/ofgem/index.jsp](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15594_ICCR_Condoc_FINAL.pdf?wtfrom=/ofgem/index.jsp)

<sup>11</sup>[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15591\\_Metering\\_Innovation\\_Decision\\_document\\_final.pdf?wtfrom=/ofgem/index.jsp](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15591_Metering_Innovation_Decision_document_final.pdf?wtfrom=/ofgem/index.jsp)

introduction of smarter metering. Ofgem will be considering obligations in the licence in respect of Prepayment Meter Infrastructure Providers (PPMIPs) discussed in Chapter 9 in more depth in the coming months, in particular whether common industry arrangements for the exchange of data are needed. We welcome views on our proposed approach.

## **Developing our proposals**

1.13. Since September 2005 Ofgem has chaired the SLR Steering Group, with a membership drawn from suppliers, customer representative groups, the Health and Safety Executive (HSE) and others. The SLR Steering Group established and managed 6 workgroups, each looking at a particular theme. Minutes of meetings and reports from these groups are available on the Ofgem website.

1.14. There was broad agreement amongst group members on the majority of the issues that the SLR has considered, although there were inevitably some where views differed. The proposals set out in this document are Ofgem's, although they have been informed and improved through the work of the SLR Steering Group. Copies of the meeting papers and reports from the SLR Steering Group to Ofgem can be found on the Ofgem website. These papers and in particular the final reports submitted by the SLR Steering Group to Ofgem should be referred to as a summary of the views of the industry and customer representatives to date.

1.15. The next stage of the project is to prepare a draft of the modified SLCs based upon the proposals set out in this document, taking into account the views of respondents to it. Ofgem aims to consult on the draft modifications in November 2006. Appendix 6 sets out the modification procedure. To help prepare that drafting we will establish a new workgroup (the Legal workgroup), reporting to the SLR Steering Group. Legal workgroup meeting papers will be placed on the Ofgem website and circulated to the existing contact list for the SLR.

1.16. A detailed timetable is shown in Appendix 5 to this document.

## **Structure of the document and responses requested**

1.17. The document is structured along the themes reviewed by each of the workgroups. Appendix 7 presents a table detailing the proposals against each SLC for the electricity market and Appendix 8 for the gas market. These appendices provide detail and explanation on each provision and obligation in the original supply SLCs along with our proposals on whether they should be retained, removed or amended. These appendices should be referred to as the detailed guide to our proposals. The body of this document provides an overview of the main issues only.

1.18. We are asking respondents to provide views on the detailed proposals for each of the current SLCs set out in Appendices 7 and 8. To assist this process we are able to provide a proforma for responses on request. We note that this approach may be too time consuming for some respondents and therefore also welcome general views on the issues raised in this document.

1.19. A glossary of terms used in this document can be found in Appendix 4.

## 2. Duty to Supply

**Chapter Summary:** This chapter sets out the case for maintaining a streamlined requirement on suppliers to make an offer of terms for supply to domestic customers and providing a supply if this offer is accepted. Equivalent provisions do not exist and are not being proposed for suppliers to non-domestic premises.

We are requesting further views on the continued need to require all suppliers to offer methods and frequencies of payment to customers, particularly those who have difficulties in paying for their energy charges. We propose to remove restrictions on the use of security deposits whilst maintaining the role (where an alternative is not available) for Ofgem in determining disputes over when and how much can be requested. Finally, we propose to remove requirements on suppliers to publish their principal terms for domestic supply contracts.

**Question 2.1:** Should the obligation to offer terms (SLC 32) to domestic customers be retained?

**Question 2.2:** Do the current obligations to offer defined methods of payment and frequency (SLC 43) present a significant barrier to entry?

**Question 2.2:** Would suppliers cease to offer the defined methods of payment and frequency (SLC 43) if this obligation was removed?

### Duty to supply (SLC 32)

2.1. SLC 32 requires suppliers (with specified exceptions<sup>12</sup>) to offer terms for supply to all domestic customers who make a valid request. This SLC also requires a supplier to provide a supply of gas or electricity to premises where the customer accepts the terms offered.

2.2. Energy supplies are an essential service. We propose to retain an obligation for a domestic supplier to make an offer of terms to a domestic customer and provide a supply if this is accepted. In general we would expect the market to deliver reasonable requests from customers for a supply. However, gas and electricity are essential services and retaining this obligation will ensure that all domestic customers (including in particular vulnerable customers and customers with new connections) will be offered terms for supply. This obligation does not restrict suppliers determining the level of charges on which they would be prepared to supply customers.

### Methods and frequency of payment (SLC 43)

2.3. The supply licences require suppliers to offer domestic customers a range of payment methods including prepayment meter and weekly/fortnightly cash payments. We have concerns that such a prescriptive obligation could act as a barrier to entry, in particular for new entrants wanting to offer, for example, innovative web based services. In a competitive market one would expect to see a

<sup>12</sup> As listed in SLC 32(2) (electricity) and SLC 32(3) (gas)

range of payment methods being offered to meet customer needs, although not necessarily by all suppliers. Given the principle that we would look to rely on the market where possible we have considered carefully whether this obligation is required. We have also taken into account the need to protect vulnerable customers. As the focus of the obligation is protecting vulnerable customers; we considered whether eligibility should be limited to those on low incomes. This was universally viewed as creating additional bureaucracy and unnecessary as those looking to pay frequently by cash were likely to have a tight cash budget.

2.4. Certain of the payment methods, especially weekly/fortnightly cash, are very important to customers with low incomes, managing on a weekly budget linked to the benefit cycle. Around 600,000 customers pay weekly, fortnightly or by a flexible payment scheme. Research on financial inclusion<sup>13</sup> shows that two million households operate without a bank account. Responses to the consultation confirmed the importance of this obligation to consumer groups to ensure that these payment methods continue to be offered as an entitlement for customers. Responses from consumer groups to the March consultation indicated that these options should be promoted more widely and that withdrawal of a requirement to offer a frequent payment option could result in increases in consumers using prepayment meters.

2.5. Having considered these issues in the vulnerable customers working group and as part of the consultation, we are minded to retain the obligation, focusing it on payment methods used by low income customers and with the ability for the Authority to give derogations. The cases where we might expect to give derogations would be where the obligation to offer a full range of payment methods would undermine a supplier's business model and/or deter entry. Ofgem would consider such applications on a case by case basis against its principal objectives and duties. We would not rule out applications from large players who have identified alternative ways of meeting the needs of this customer group linked to the government's wider financial inclusion agenda.

2.6. However, before taking a final decision on the obligation, we wish to better understand:

- the extent to which this obligation is a potential barrier to entry. The views of potential new market entrants would be particularly welcome.
- the risk that existing suppliers would cease to offer the full range of payment methods if the obligation were removed. Would suppliers seek to offer cash payment to attract these customers or transfer them to alternative payment methods?

### **Publication of terms (SLC 43)**

2.7. We consider that the obligation under SLC 43(6) and (7) to publish principal terms<sup>14</sup> should be removed. It is in suppliers' commercial interests to promote awareness of the offerings that they wish to make to customers. Given the requirement to provide terms and conditions of domestic supply contracts on request under SLC 43(5)(a) and to provide principal terms to customers before entering into

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<sup>13</sup> Promoting Financial Inclusion - HM Treasury

<sup>14</sup> "Principal terms" is a defined term in SLC 1 (Definitions and Interpretation).

a domestic supply contract under SLC 41(1), we view the requirement to publish terms to be unnecessary.

### **Security deposits (SLC 45)**

2.8. SLC 45<sup>15</sup> sets out restrictions on security deposits which limit the length of time that a security deposit can be held and require it to be paid back with interest once certain conditions have been met. These obligations should be removed from the licence. We consider that in this instance, where a deposit is being held by a supplier against a potential credit risk, the gas and electricity industry is not sufficiently different from other markets to warrant sector specific legislation and that therefore these restrictions should be removed from the licence.

2.9. We propose to retain our role in resolving disputes over the reasonableness of making a demand for a security deposit and the value of the demand for the time being. It is in customers' interests for them to have access to a timely and effective dispute resolution mechanism. We consider that the role of determining the reasonableness of security deposits could be dealt with through the proposed Energy Services Ombudsman scheme, although consideration would need to be given to the speed at which cases could be resolved. We propose to remove prescriptive restrictions on the level of the security deposit that can be demanded but to facilitate our role in dispute resolution we propose to replace this with a requirement for the supplier to act reasonably.

2.10. Finally, we consider that a security deposit should not be required where the customer is prepared to be supplied through a prepayment meter (and it is reasonably practicable in all the circumstances to provide such a meter) or where it is otherwise unreasonable to require a deposit. This would allow customers who are unable to afford the security deposit demanded the opportunity, in normal circumstances, to access the supply market through a prepayment meter.

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<sup>15</sup> Security deposits must not be required where the domestic customer is prepared to take a supply through a prepayment meter or where it is otherwise unreasonable in all the circumstances to do so (SLC 45(1)). Individual security deposits should not be more than one and a half times the value of the average quarterly consumption of supply reasonably expected at the relevant premises or more if that is reasonable (SLC 45(2)). SLC 45 also limits the length of time that a deposit can be held (SLC 45(5) and (6)) and requires it to be paid back with interest where the deposit has been held for more than a month (SLC 45(4)).

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### 3. Domestic Supply Contracts, Deemed Contracts and Objections

**Chapter Summary:** All gas and electricity is supplied to domestic consumers under domestic supply contracts or deemed contracts. We propose to retain only those obligations that are necessary for inclusion in domestic supply contracts and deemed contracts to reflect the particular nature of the gas and electricity sector. Where possible we propose to rely on general customer protection legislation and contract law. In particular, we consider that the nature of deemed contracts which are not a product of agreement between customers and suppliers should continue to be regulated. We propose to retain existing rules on objections for domestic and non-domestic customers. Detailed licence obligations relating to the assignment of debt for PPM customers should be moved into industry agreements.

**Question 3.1:** Should the rules for unilateral variation of terms and/or charges (SLC 44(6) and (7)) be amended? If so, how?

**Question 3.2:** Should the governance of the rules for when objections can be made in electricity be removed from the MRA and placed in the electricity supply licence?

#### Domestic Supply Contracts

##### Defined terms for inclusion in domestic supply contracts

3.1. The supply licence should only require defined terms and conditions to be included in domestic supply contracts where there is a demonstrable and significant need for these over and above the requirements of the law generally, including consumer and contract law.

3.2. SLC 42(1) and (2) establish the two types of contracts, a domestic supply contract or a deemed contract (deemed contracts are discussed below), under which energy may be supplied to domestic consumers. We consider that this should be retained as a simple structure to which obligations in the rest of the licence can be attached. All terms and conditions (including price) should continue to be included in a written contract (SLC 42(3)(b)). Without this obligation there is a risk of uncertainty, for example where terms have been agreed orally and the customer and supplier differ as to what was agreed.

3.3. We consider that the requirement for a domestic supply contract to be in a standard form (SLC 42(3)(a)) is unnecessary and should be removed. Suppliers should be free to design contracts that they believe meet customer needs in this respect. We propose that the linked provision under SLC 42(4)(a) for suppliers to be able to define different contractual terms for different cases and classes of cases or for different areas should also be removed.

3.4. We propose that the licence should prescribe that the following terms and features are included in domestic supply contracts:

- Termination arrangements SLC 42(3)(c): The supply licences should require contracts to specify certain termination arrangements. Domestic customers are supplied at premises by one supplier at a time through a single metering point. One supply contract must be terminated before another can commence.
- Charges for energy part of contract to be clearly distinguishable SLC 42(5): It is important that charges relating to the energy part of any contract are clearly distinguishable from any other goods or services provided as part of that contract. It should be clear that any powers granted to suppliers under the Gas Act, Electricity Act and supply licences, for example on rights of entry and disconnection for debt, should be exercised in relation to energy charges only.
- Transportation adjustments SLC 42(4)(b) - Gas only: We consider that the provisions for transparency on the likely charges applying to customer premises connected to an IGT Network should be retained.

3.5. We propose that the following obligations relating to domestic supply contract terms be removed from the licence:

- Estimating consumption SLC 42(4)(c) - gas, SLC 44(4)(b) electricity: This provision allows suppliers to estimate meter reads at the start of a domestic supply contract. We propose to remove this obligation as it is in suppliers' commercial interests to include such terms in contracts to mitigate disputes with customers about the use of estimated meter reads and consumption.
- Termination arrangements for fixed term domestic supply contract of greater than 12 months SLC 47(3): The supply licence requires that fixed term domestic supply contracts of a period greater than 12 months or that contain an initial fixed term period (where the principal terms do not vary) of more than 12 months may be terminated within 5 days of the date of the contract. We believe that customers should have this right but consider it to be adequately covered by existing customer protection legislation<sup>16</sup>.

### **Providing information to customers on domestic supply contracts**

3.6. Customers require clear, accurate and timely information to be able to assess the options offered to them by the market. We consider that the following requirements to provide contract information to domestic customers should be maintained in the licence:

- Provide copies of domestic supply contract to any person on request SLC 43(5)(a): This will enable customers to understand the nature of the terms and conditions being offered by a supplier as well as ensuring that energywatch and Ofgem will be provided with this information. We propose to remove the requirement under SLC 43(5)(b) to provide Ofgem and energywatch with copies of contracts as a matter of course.
- Draw attention to principal terms before entering into contract SLC 44(1): This requirement allows customers to make an informed choice about a prospective new domestic supply contract.

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<sup>16</sup> Consumer Protection (Distance Selling) Regulations 2000 and Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987 (the "Doorstep Selling Regulations"). Except in particular circumstances, the Regulations provide that the minimum period during which a consumer may cancel a contract is seven working days from the day the contract is concluded. The Regulations provide for longer periods to be given to a consumer to cancel a contract in certain circumstances.

- Provide copies of domestic supply contract within five days of entering into contract SLC 44(3): Contracts are the basis for suppliers and customers to understand the terms and conditions of supply. The requirement should be retained as current legal requirements in general law do not require suppliers to give customers a copy of their contracts.
- Information provided on domestic supply contract expiry SLC 44(4): If the domestic supply contract does not make provision for it to continue following the expiry of a fixed term period then a deemed contract is likely to have effect and supply will continue, probably on deemed contract terms. We consider that suppliers should provide customers, at least 30 days before expiry of the contract, with the terms upon which supply will continue to be made.

### **Termination of domestic supply contracts on notice (SLC 46(2))**

3.7. There has been considerable debate over whether to continue to allow customers to terminate domestic supply contracts by providing 28 days' notice. Most suppliers have argued that this is an impediment to them providing new and innovative contracts as they risk not recouping investment costs if the customer moves to another supplier shortly after the supplier begins supplying them. We agree and are proposing to remove the restrictions about termination notice in the licence.

3.8. The law is likely to require that a reasonable period of notice be given to terminate a contract. What is reasonable notice will depend on the circumstances of each case. In some cases a period of notice longer than 28 days may be reasonable.

### **Limit on value of termination fees (SLC 46(6) - gas, SLC 46(5) - electricity)**

3.9. Under the supply licences, where a termination fee may currently be charged<sup>17</sup>, it must be an amount that the supplier may in all the circumstances reasonably require. We propose that the restrictions in the licence be removed. The protection given by the law generally, particularly by the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs), provides sufficient protection to customers when termination fees are provided for in fixed term contracts<sup>18</sup>.

### **Instances where termination fees may not be demanded**

3.10. The licence sets out instances where a termination fee cannot be demanded. We propose to amend these restrictions as follows:

- Customer ceasing to own/ occupy premises SLC 46(5)(a) – gas, SLC 46(6)(a) - electricity: Suppliers should not be prevented from seeking termination charges from customers on fixed term contracts who cease to own or occupy premises. We therefore propose to remove this unnecessary restriction.

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<sup>17</sup> Termination fees are currently only permitted for domestic supply contracts that are terminated within an initial fixed term period (a specified period greater than 12 months where the principal terms will not vary other than by agreement)

<sup>18</sup> The UTCCRs set out that if a customer terminates their contract and the supplier charges a termination fee in accordance with a term of that contract that is disproportionately high, the term may be unfair.

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- Indefinite term contracts SLC 46(5)(b) – gas, and SLC 46(6)(b) – electricity: We propose that the interests of consumers would be best protected by continuing to prohibit termination fees for contracts of an indefinite term. There is a lack of certainty about when a termination fee would be disproportionately high under the UTCCRs for a contract of an indefinite term. In our view it would be appropriate to include in the licence drafting that would permit the charging of termination fees on contracts with an indefinite term in certain circumstances defined and designated by the Authority. A potential example of this could be where the contract specifies that any dispute over the circumstances in which a termination fee may be payable and/or the amount of the fee will be determinable by the Energy Services Ombudsman scheme, if it establishes an effective framework for assessing these matters.
- Unilateral variation (SLC 46(5)(c) – (gas), and SLC 46(6)(c) –(electricity): We consider that it would be inappropriate for suppliers to be able to levy termination fees following a unilateral variation of terms or increase in charges where the customer has provided termination notice. This restriction should be retained.
- Fixed term and informed of right of cancellation SLC 46(6)(d): The definition of a fixed term contract should be relaxed to allow suppliers and customers to agree fixed contract terms of less than 12 months to which termination fees could be applied. In line with the proposed removal of SLC 47(3) the supply licence should no longer prohibit termination fees where a contract was for a specified period of greater than 12 months or a “fixed term period” and the customer was not informed of their right to cancel with immediate effect within 5 days of the start date of the contract.

## Deemed contracts (SLC 28)

3.11. We propose that regulation of deemed contracts is maintained as the terms and conditions of a deemed contract have not been agreed by suppliers and customers but that the drafting of the obligations be simplified. Deemed contracts play a vital role in the energy market. They provide a sound and binding basis upon which electricity and gas is supplied. A deemed contract also provides suppliers with a clear basis upon which to charge for that supply.

- Deemed contract charges SLC 28(2), (3) and (4): We propose to retain the protection for consumers that deemed contract charges should not be “unduly onerous”. The definition of “unduly onerous” should be amended to exclude costs associated with promotional, marketing and advertising activities as this is unnecessarily prescriptive.
- Access to deemed contract terms and conditions SLC 28(5) and (6): We propose to retain the obligation on suppliers to supply a copy of their deemed contracts to any person on request. Transparency and access to terms and conditions is necessary so that customers can make informed choices. However, we propose to remove the requirement to send copies to the Authority. The Authority would however still be able to receive this information on request.
- Information for customers on deemed contracts SLC 28(8): We propose to retain the requirement to inform customers of the principal terms of their deemed contract, that other forms of contracts are available and how to get information about those terms. We propose to remove the obligation to provide customers with an accurate summary of the principal terms of all other

domestic supply contracts available to them. The market has developed a wide range of contract types. Such an obligation places a disproportionate burden on suppliers.

- Required terms for deemed contracts SLC 28(9) and (10): We propose that the requirements to include particular terms in deemed contracts as set out in SLC 28(9)<sup>19</sup> should be retained. SLC 28(10) should be removed as it provides only a 'for the avoidance of doubt' message that a supplier can include additional terms in a deemed contract.
- Termination fees and termination notice: We propose to make it explicit that a termination fee may not be charged for ending a deemed contract. Currently, the licence is silent on this matter. Consumers supplied on deemed contracts have not expressly agreed to enter into a contract and therefore have not agreed to a termination fee. Suppliers should have a reasonable expectation, reflected in their charges that deemed contracts will be a temporary feature of their relationship with a customer. Given that deemed contracts are not expressly agreed by customers we also propose to clarify in the licence that suppliers should not be able to require notice of termination.

### **Contract terms incompatible with standard conditions (SLC 41)**

3.12. SLC 41 provides that suppliers must not enter into or offer to enter into a variation of a domestic supply contract or deemed contract otherwise than on terms which comply with the licensee's obligations under their licence. It also requires suppliers not to enforce or take advantage of the inclusion or omission of terms in a contract which are incompatible with obligations under the licence.

3.13. We propose to remove SLC 41 from the licence. We have the power to take enforcement action where it appears to the Authority that a supplier is contravening, or is likely to contravene, any licence condition or a relevant requirement. However, when drafting licence obligations relating to the terms in domestic supply contracts and deemed contracts, we will make it clear that the effect of the wording is such that suppliers should not take advantage of the inclusion or omission of terms in a contract which are incompatible with obligations or rights under the licence.

## **Objections**

### **Governance of objections**

3.14. There are significant commercial advantages for a supplier in preventing customers transferring. Industry self-governance of those rules may not provide sufficient deterrence from the temptation to abuse those rules.

3.15. The circumstances in which a supplier may prevent a customer transferring to a new supplier (usually referred to as an objection) are governed differently in gas and electricity. For the gas market they are set out in the gas supply licence. For the

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<sup>19</sup> These are: (a) security and emergency arrangements (gas only), (b) contracts to be terminable on appointment of a SoLR, (c) security deposits, (d) termination where a customer ceases to own or occupy a premise, and (e) termination of deemed contracts when a supply is taken under contract from the incumbent or a new supplier.

electricity market they are in the Master Registration Agreement (MRA). Objections have a direct impact on consumers. We therefore consider that permission to object does not sit comfortably in an industry agreement such as the MRA. Some suppliers have indicated that the MRA compliance arrangements do not provide sufficient deterrence to prevent suppliers from misusing the objection processes.

3.16. Our view is therefore that careful consideration should be given to removing the rules governing objections from the MRA and placing them in the SLCs of the electricity supply licence. We would welcome views on this proposal; in particular, whether the question should be dealt within the ICCR.

### **Non domestic transfer objections (SLC 30 – gas only)**

3.17. Consultation<sup>20</sup> with the industry and customers in 2003 delivered a deregulatory change to the objection arrangements. Non-domestic customers can now negotiate the objections provisions within their supply contracts. We do not propose to further amend this provision.

### **Domestic transfer objections (SLC 46 – gas only)**

3.18. We propose to retain the existing provisions detailing the circumstances in which a supplier may object to the transfer of a domestic customer. We will keep these arrangements under review to ensure that they are operating in the best interests of consumers.

### **PPM debt assignment (SLC 46 – gas only)**

3.19. Ofgem has worked with suppliers to allow customers in debt who are being supplied through a PPM meter to switch supplier. The principle behind PPM debt assignment is that suppliers cannot object to a proposed transfer when the new supplier and the customer agree to accept the transfer of the debt. The provisions are set out in SLC 46 of the gas supply licence and section 16 of the MRA.

3.20. In practice, very few PPM customers have taken the opportunity to transfer their debt to an alternative supplier during the 2 years that this facility has been available. We note the lack of take-up by customers and we therefore propose that this provision can be removed from the licence. There may, however, be merit in suppliers retaining rules for how PPM debt assignment could take place on a bi-lateral basis within industry codes and agreements.

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<sup>20</sup> Transfer objections: stronger rights for industrial and commercial customers - A decision document 80/03.

[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/4127\\_IC\\_Objections\\_decision\\_document\\_Aug03.pdf?wtfrom=/ofgem/whats-new/archive.jsp](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/4127_IC_Objections_decision_document_Aug03.pdf?wtfrom=/ofgem/whats-new/archive.jsp)

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## 4. Customer Information

**Chapter Summary:** The chapter sets out requirements for both domestic and non-domestic suppliers to provide customers with the information that they require. We propose to retain obligations on suppliers to provide information on security and safety of supplies (SLC 15), on the reference numbers for their metering points (SLC 21), on the mix of fuels used to generate the electricity that they consume (SLC 30A) and on how to contact energywatch (SLC40). We are proposing to remove obligations on suppliers to provide consumption data and the last meter read on request (SLC 40). On the provision of energy efficiency advice we are proposing to retain and simplify obligations in relation to domestic customers but to remove them for non-domestic customers.

**Question 4.1:** Should domestic suppliers continue to have an obligation to provide energy efficiency advice?

**Question 4.2:** Should domestic suppliers continue to have an obligation to provide individual notification to consumers where they are implementing a price rise?

### Security and safety of supplies (SLC15)

4.1. Gas suppliers must keep customers informed that an escape or suspected escape should be reported immediately and provide a telephone number to be used for that purpose. The electricity condition is also concerned with security of the network and the supplier must keep the customer informed of the postal address and telephone number provided by the DNO for receiving reports and offering information, guidance or advice about certain matters or incidents<sup>21</sup>.

4.2. We propose to retain these obligations. They are a proportionate response to the safety and security of supply issues for customers. There is scope for some redrafting, for example in requiring gas suppliers to provide the emergency telephone numbers on all bills and statements rather than quarterly bills and statements as is currently required.

### Publication of information to customers (SLC 21)

4.3. We propose that obligations to provide the relevant Supply Numbers (electricity) and Meter Point Numbers (gas) should be retained. This information is important where the customer is changing supplier. Provision to the new supplier reduces the likelihood of error. The obligation on gas suppliers in this condition to provide customers with information on the name and address of their gas transporter should be revised to an obligation to provide this information on request. It is our view that there is not a clearly identifiable need for suppliers to provide the name and address of the transporter with bills or statements.

<sup>21</sup> The defined matters or incidents are those that are likely to:

- cause danger or require urgent attention in relation to the supply and distribution of electricity
- affect the maintenance of the security, availability and quality of service of the DNO system.

**Efficient use of electricity / gas (SLC 25)**

4.4. We propose that the requirements of SLC 25 should not apply to the non-domestic market. These customers require targeted advice which can be better provided by specialist companies, public bodies or organisations such as the Carbon Trust which has been established to provide advice and assistance on energy efficiency. Some suppliers have gone beyond the minimum licence requirements, using services such as personalised energy audits as customer retention/ attraction tools. Four of the major suppliers are participating in a domestic energy efficiency code of practice developed by the Energy Saving Trust, which is designed to promote minimum standards across all advice providers, e.g. local authorities and installers of energy saving equipment.

4.5. We propose to retain a simpler obligation for suppliers to provide advice and guidance to domestic consumers on the efficient use of energy, including contact information for specialist advice services. This information should be available on a supplier's website and a copy should be sent free of charge to customers who request it. Such information should also be provided to customers with payment difficulties. We do not consider it necessary, as now, for Ofgem to approve a supplier's code of practice, the form of a statement on the energy efficiency advice to be given to customers, or for the supplier to report annually on their performance as required by SLC 26.

**Fuel Mix disclosure (SLC 30A - electricity only)**

4.6. We propose that the requirements of SLC 30A<sup>22</sup>, to inform customers of the energy source of electricity and its environmental impact should be retained, subject to some technical redrafting. This condition was inserted through regulations under the European Communities Act by the DTI in order for the UK to comply with the fuel mix disclosure provisions of IMED (Directive 2003/54/EC) to comply with the provisions of the IMED.

**Information given to domestic customers (SLC 40)**

4.7. SLC 40 requires suppliers to keep domestic customers informed of the amount (electricity) or quantity (gas) of energy registered by a meter or, where no meter read is available, estimated as having been supplied to the customer. This information must be provided on or with each bill or statement or annually where the customer does not receive such a bill or statement. SLC 40 also requires suppliers to inform domestic customers of the most recent meter read if requested.

4.8. We propose to remove these obligations. Whilst accurate billing and metering information is important for customers, SLC 40 does not ensure that they receive it. Suppliers have commercial incentives to provide customers with this information and these incentives will be reinforced by the introduction of the Energy Services Ombudsman scheme and a prohibition on back-billing. The Ombudsman scheme will

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<sup>22</sup> This condition has effect in the electricity supply licence only and was inserted through regulations under the European Communities Act by the DTI in order for the UK to comply with the fuel mix disclosure provisions of IMED (Directive 2003/54/EC).

send commercial signals back to suppliers to improve performance through compensation payments, case handling charges and information provision. We do not consider it necessary to include obligations related to billing in the licence at this stage. However, Ofgem will monitor the Ombudsman scheme, will reconsider the approach if it is not effective, and will propose licence conditions if suppliers do not deliver in these key areas.

4.9. SLC 40 in the gas supply licence requires suppliers to inform customers in writing of how the amount of gas is calculated from the quantity of gas supplied and how temperature and correction adjustments are made. We propose that this obligation should be retained.

4.10. SLC 40 requires suppliers to inform customers that energywatch can provide assistance on resolving complaints not resolved by the supplier to the customer's satisfaction, and how energywatch can be contacted on or with each bill/statement and annually to each customer that does not receive a bill/statement. We consider that the obligation should be retained.

#### **Unilateral variation of domestic supply contract terms and/or charges (SLC 44(6) and (7))**

4.11. Customers require information to make decisions about their energy supply needs. One of the key determinants of customer decision making on energy supply is price. We consider that customers should be informed individually and within a reasonable timescale of a unilateral variation of a contract term where it raises the price or otherwise varies the contract to the significant disadvantage of the customer. Without this information a customer would not be able to easily understand the implications of a varied term or price rise for their particular circumstance.

4.12. In discussion, this view has not been shared by the ERA whose members consider individual notification to be unnecessary and costly. As an alternative they proposed that the licence should allow them to choose either individual notification or the use of mass-media messages. This proposal was not supported by Ofgem and energywatch. We consider that consumers should each receive notification of adverse price increases and other adverse changes to their domestic supply contracts.

4.13. We also consider that customers should have sufficient notice of a price rise to enable them to take prompt action to switch to a new supplier and avoid a price increase. We would welcome views on how licence obligations should be written to avoid potential operational issues that may arise from these requirements.

## 5. Vulnerable Customers and Codes of Practice

**Chapter Summary:** The current licence framework provides for a series of codes of practice that are subject to SLC 26 and 27 requiring the codes to be approved, complied with, monitored and reported upon. We aim to simplify these arrangements, so that all necessary obligations are on the face of the licence. We intend to retain important protection around debt and disconnection, and the Priority Service register, but to simplify the obligations and target them better.

This chapter takes into account views from the initial consultation on the implications for vulnerable customers (dated 7 March 2006)<sup>23</sup> and from the workgroup's final report to the Steering Group of the SLR, which can be referred to for further background.

**Question 5.1:** What is the appropriate scope and format for customer information on the advantages, disadvantages and removal of PPMs?

**Question 5.2:** Are there any differences between the way that suppliers notify customers who are electricity dependent and the way that distributors notify all customers of an interruption to supply?

**Question 5.3:** What is the appropriate scope and format for information to all customers on: the safe use of gas appliances, the benefits of gas safety checks, the dangers of carbon monoxide poisoning and the benefits of carbon monoxide alarms, and where to seek assistance if gas appliances are condemned?

### Structure of requirements, communication, compliance and reporting

#### The preparation, review of and compliance with codes (SLC 27)

*Requirement for codes, their approval, review and compliance*

5.1. SLC27 sets out detailed arrangements for the preparation, approval, review and communication of a number of codes of practice. It also requires suppliers to comply with these codes. We consider that these requirements are administratively burdensome and do not protect consumers. We propose to remove these requirements and associated references in other licence conditions. Suppliers' obligations would be limited to requirements set out on the face of the licence. This removes the current potential disincentive on suppliers to include in their codes anything beyond what is in their licence.

*Communication to customers*

5.2. We propose to include an obligation on suppliers to publish a statement setting out, in plain English, their licence obligations in respect of vulnerable customers and

<sup>23</sup> [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/14157\\_4206.pdf?wtfrom=/ofgem/whats-new/archive.jsp](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/14157_4206.pdf?wtfrom=/ofgem/whats-new/archive.jsp)

customers in debt. This statement must be prominently published on the supplier's website and suppliers must draw customers' attention to it once a year, and provide a copy free of charge to anyone who requests it.

### **Record of and report on performance (SLC 26)**

5.3. SLC 26 requires the supplier to keep records on performance in respect of the required codes; to provide such information as Ofgem may request; to provide an annual report to Ofgem and energywatch, to publicise it and provide a copy to anyone who requests it. We consider that this obligation can be simplified considerably but that an enforceable information gathering power equivalent to SLC 26(3) should be retained so that we can monitor performance.

## **Debt and disconnection obligations**

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

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

5.4. SLC 35(2) requires suppliers to include procedures in their code to distinguish between customers in difficulty and others in default. Ofgem proposes that this requirement is removed, because it is impractical and it seems reasonable to start with the assumption that all customers are "can't pays" unless there is evidence to the contrary.

#### *Energy efficiency information*

5.5. SLC 35(2)(a) includes an obligation to provide general information on how customers with payment difficulties might reduce their bills through energy efficiency. To avoid duplication we will consider whether SLC25, which covers energy efficiency information, can be redrafted to include this more proactive requirement for domestic customers with payment difficulties.

#### *Fuel Direct*

5.6. SLC 35(2)(b) imposes a requirement to accept payment which is deducted at source from social security benefits. This relates to the Fuel Direct scheme. This obligation, when read with 35(3) requiring that a supplier shall avoid disconnection when Fuel Direct is available as a payment mechanism, provides essential protection for customers. We propose to retain this obligation.

#### *Detecting failures by customers to maintain repayment arrangements*

5.7. SLC 35(2)(c) requires suppliers to detect failures by customers to maintain repayment arrangements. On balance, we recommend that this requirement can be removed as we consider that suppliers have an adequate commercial incentive to be pro-active in avoiding the build up of debt.

*Ability to pay*

5.8. SLC 35(2)(d) requires debt repayment arrangements to take into account the customer's ability to pay. SLC 35(2)(e) also requires suppliers to ascertain the position with the assistance of other organisations. We propose to retain these obligations. There were differing views on whether our guidance on maximum repayment levels for customers on benefits should be included in the licence. On balance, we prefer to continue to provide guidance on how a customer's ability to pay should be assessed rather than to formally set a repayment rate in the licence.

*Provision of PPMs in preference to disconnection*

5.9. SLC35(2)(f) requires the provision of a PPM for customers with payment difficulties "where safe and practicable to do so". This obligation, when read with 35(3) requiring that a supplier shall avoid disconnections where a PPM is appropriate, provides essential protection for customers. We propose to retain this obligation.

5.10. We intend to provide further guidance to suppliers on what factors apply to the caveat "where safe and practicable to do so", and make explicit the status of such guidance. We also intend to provide further guidance relating to an ongoing need to reassess whether a PPM is appropriate, given that a customer's circumstances can change.

*Moratorium on disconnection in winter months*

5.11. SLC 35(3)(b) (electricity) and SLC 35(4)(b) (gas) effectively require suppliers to avoid, so far as practicable, disconnecting in winter premises occupied by elderly, disabled or chronically ill customers who have payment difficulties. SLC 37A (gas) places a stronger obligation in terms of not disconnecting "all-pensioner households"<sup>24</sup> during the winter months. Ofgem proposes to retain these obligations, with modification to the electricity condition to bring it into line with gas. Most consumer organisations wanted to see the licence moratorium extended to all year round. In addition, a number commented that the ERA's year round voluntary safety net, which is working well, should be incorporated into the licence. We agree with suppliers that the incentive to apply self-regulatory principles would be lost if the ERA safety net on disconnection was to become a regulatory requirement.

**SLC36: Code of practice on the use of prepayment meters (PPMs)***Provision of information on PPMs*

5.12. SLC 36(2)(a) and (d) cover the provision of information on the operation of PPMs, including the advantages and disadvantages of PPMs, details of token outlets or charging facilities, actions where the PPM malfunctions, performance standards, and arrangements for removing PPMs.

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<sup>24</sup> SLC 37A(1)(a) applies to a domestic customer who, to the knowledge and reasonable belief of the licensee, "is of pensionable age and lives alone or with other persons all of whom are also of pensionable age or under 18 years of age".

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5.13. We propose to redraft this requirement as suppliers can be expected to provide basic information on PPMs as part of their customer service. However, suppliers will not normally have the commercial incentive to provide information on the relative disadvantages of PPMs or their removal. We want to consider further the appropriate scope and format of information for PPM customers and would welcome views.

#### *Calibration of PPMs to recover debt and price changes*

5.14. SLC 36(2)(b) covers the calibration of the PPM to recover any debt, taking into account ability to pay. We propose to retain this obligation.

5.15. SLC 36(2)(c) requires the supplier to arrange for the recalibration of a PPM at the conclusion of any repayment arrangement and generally following price changes. For electricity, we are minded to amend SLC 36(2)(c), for example to include a requirement "to take all reasonable steps to recalibrate PPMs in a timely manner", to address issues raised by consumer groups about the build-up of debt by PPM customers who, not unreasonably, expect that paying by PPM means that they cannot get into debt. However, we will first consider information provided by suppliers and energywatch on the numbers of electricity token meters requiring manual recalibration and planned timescales for their removal.

## **Priority Service Register and Services for the Blind and Deaf**

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

5.16. The high level issues in this area are:

- the overall focus of the PSR and who should be registered on it, and
- which additional services should be specified in the licence and who should be eligible for them.

#### **Overall focus of the PSR**

##### *Obligation to maintain a PSR*

5.17. SLC 37(3)(a) requires the supplier to establish a list of domestic customers who by virtue of being of pensionable age, disabled or chronically sick, require information or advice on the PSR services or have special communication needs or depend on electricity for medical reasons and thus require advance notice of planned interruptions of electricity. We intend to retain this definition of customers eligible for the PSR.

5.18. There were wide ranging views on eligibility for the PSR. Suppliers and distributors wanted the definition narrowed to include only those customers with physical vulnerability in the event of loss of supply. Some consumer groups supported the status quo, others wanted the definition broadened to include those with financial vulnerability. On balance, we consider that the focus of the PSR should remain on customers with access, safety and communication needs, and that additional measures to protect vulnerable customers more generally or to address

fuel poverty should be dealt with through other measures, including suppliers' corporate social responsibility (CSR) work.

5.19. energywatch suggested an additional obligation of "mobile" registration on the PSR, to deal with customers transferring suppliers. We can see the benefit of this but it is necessary to consider the costs, systems and practical implications. An alternative solution might be for suppliers to remind PSR customers who switch of the need to re-register for the PSR. We do not propose any licence obligation in this area (unless it would be useful in answering data protection issues) but will continue to explore the practicalities with suppliers.

5.20. Outside of this review we will also continue to work with suppliers to develop best practice on fuel poverty initiatives, including the targeting of CSR offerings. We will also continue to consider whether there is a case for an obligation to provide information on sources of help for customers with payment difficulties.

*Obligation to notify customers annually as to the existence of the PSR*

5.21. SLC 37(3)(b) requires the supplier to notify its customers at least once a year of the existence of the PSR and how to be included on it. SLC 37(3)(c) requires the supplier to maintain the PSR and provide relevant customers with information about the services available. We propose to retain these obligations, with some amendments. We consider that whilst it is not necessary to be prescriptive as to how suppliers market them, prominence must be afforded for PSR services as well as the other obligations discussed in this report. Accordingly, this obligation should fit in with the requirement to publish a statement (see paragraph 5.2 above).

*Interruptions of electricity supply*

5.22. SLC 37(3)(c)(ii) (electricity) requires the supplier to provide PSR customers with information on planned interruptions to supply, subject to using all reasonable endeavours to obtain such information from the relevant distributor. We are minded to remove this obligation as there are obligations on distributors to provide notice of supply interruption to all customers under Regulation 29 of the Electricity Safety, Quality and Continuity Regulations 2002. But before we do so we would like to check whether there are any differences between the way that suppliers notify those customers who are electricity dependent and the way that distributors notify all customers of an interruption to supply.

*Obligation to provide the distributor with information on the PSR*

5.23. SLC 37(3)(d) requires the supplier to provide the distributor with information in the PSR relating to those customers needing special adaptors, passwords and advance notification of supply interruptions on electricity (or more generally in gas) in an appropriate form and at appropriate intervals. Given the need for distributors to comply with parallel requirements, we propose to retain this obligation.

**Special services for customers eligible for the PSR***Overlap with the Disability Discrimination Act 1995*

5.24. There were a number of potential overlaps between the special services for PSR customers which are specified in the licence and the Disability Discrimination Act 1995 ("the DDA"). We have taken into consideration concerns from consumer groups about the different enforcement mechanisms under the DDA (i.e. it would be for individuals to pursue cases through the courts). Given our statutory duties to have regard to interests of disabled and chronically sick consumers, we do not consider that it would be appropriate to rely, in all instances, on the broad provisions of the DDA for the supplier to make "reasonable adjustments". That said, there are certain issues such as the provision of special controls, adaptors and meter moves for PPMs, where the DDA's approach of considering the specific circumstances of each case offers a proportionate solution.

5.25. Ofgem is also aware of its forthcoming duties as a public body to take account of the "Disability Equality Duty" created under the Disability Discrimination Act 2005. These duties will come into effect on 5 December 2006 and Ofgem will be considering further the extent to which any further action may be required by Ofgem as a result of these new responsibilities.

*Free gas safety checks*

5.26. SLC 37(2)(a) (gas) requires free gas safety checks to be carried out on request and at intervals of not less than 12 months, for people of pensionable age or disabled people living alone (or with others who qualify for the PSR) where a landlord inspection is not required under Health and Safety at Work Etc Act 1974. It should be noted that this service is not dependent on these qualifying customers being registered on the PSR. We are minded to amend this obligation so checks are only free for those qualifying customers who are in receipt of certain listed benefits. This would mean that help would be better targeted on those who really need it and may remove the disincentive on suppliers to promote the PSR.

5.27. There were a range of views on the current obligation, with suppliers suggesting that it should be removed and consumer groups suggesting that the obligation should be maintained or modified. We note that a number of consumer organisations and the HSE were not opposed to suppliers making a charge to 'able to pay' customers. A number of consumer groups suggested that free checks should be extended to all low income households. We will continue to consider issues in this area taking into account further research planned by HSE.

5.28. At the same time we propose to broaden the requirement under SLC 37(2)(b)(v) so that suppliers are required to provide information to all customers (not just those on the PSR) on the dangers of carbon monoxide poisoning and the benefits in fitting carbon monoxide alarms, and on where to seek assistance if appliances are condemned following a safety check. We will consider further the appropriate format of such information. Overall the aim is to achieve a higher level of awareness of gas safety issues and take-up of gas safety checks.

**SLC 37(2)(b)(i) (gas) and SLC 37(2) (electricity): services to be provided on request and free of charge where reasonably practicable and appropriate.***Special controls and adaptors for appliances and meters (including PPMs)*

5.29. On balance, we are minded to remove this obligation. There may be a residual number of cases where the supplier should provide help, such as adaptors for PPMs, but, as noted above, the DDA should provide a proportionate obligation to cover the individual circumstances of the customer. However, before we reach our final decision we will be seeking further information on what special controls and adaptors are currently being provided by suppliers, which we requested as part of the initial consultation on vulnerable customers.

*Repositioning of meters*

5.30. We are minded to remove this obligation. We consider that generally, special quarterly reads would appear to be a satisfactory compromise for most qualifying customers. Remote display units may also provide a reasonable alternative. A supplier's responsibilities under the DDA include an obligation to make "reasonable adjustments" to allow the disabled customer to have access to the supply of gas or electricity. Suppliers (or the courts) may in some instances consider that the moving of a meter is a "reasonable adjustment" to make. Furthermore, where a meter is to be moved to meet the needs of a disabled person the Gas and Electricity Acts already provide that such a meter move will be without charge (although we note that this is a reactive restriction rather than the proactive requirement to provide a meter move on request). We consider that the above measures provide a sufficient and proportionate response in this area. However, before we reach our final decision to remove this obligation, we will be seeking further information on the cost of meter moves and the circumstances in which they are provided, which we requested as part of the initial consultation on vulnerable customers.

*Password scheme*

5.31. We propose to retain this obligation in view of demand for this service, and to provide reassurance to vulnerable customers (particularly the elderly). However, we will give further consideration to the legal drafting and whether this obligation should fall under SLC37, or more generally under SLC24, concerning entry to premises.

*Sending bills to a third party*

5.32. We consider that this is a valued service and should be retained as a licence obligation which can help prevent vulnerable customers from being disconnected for non-payment.

*Special quarterly meter reads*

5.33. We see this service as an important and more cost-effective alternative to meter moves, and recommend that it be retained as a licence obligation. This

service is valued by many elderly people who may have difficulties reading their own meters but want to monitor their consumption.

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

5.34. SLC 38(2) requires the provision, on request and free of charge:

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

5.35. We propose to retain these obligations, even though this is an area where there is a clear overlap with the DDA. The majority of consumer organisations, including a number who specialise in supporting hearing or sight impaired consumers, do not support the removal of licence protection. We believe that on balance, there is benefit in having a clear and enforceable licence obligation.

### **SLC 39: Complaint handling procedures**

5.36. SLC 39(2) requires the supplier to have procedures which specify the periods within which it is intended that different descriptions of complaints shall be processed and resolved. We propose to modify this requirement. While the competitive market places strong incentives on suppliers to deal with complaints efficiently, European Directives (2003/55/EC) and (2003/54/EC) require that customers shall "benefit from transparent, simple and inexpensive procedures for dealing with complaints". We consider that a proportionate response would be to simplify SLC39 so it just requires suppliers to publish their complaint handling procedure prominently on their website, and to send a copy of this procedure free of charge to anyone who requests it.

## 6. Metering

**Chapter Summary:** This Chapter deals with obligations relating to the provision, inspection, maintenance and reading of meters. We propose that the existing arrangements for site access should be simplified and harmonised as between gas and electricity. We consider that the requirements to read and inspect meters every two years may be removed provided that satisfactory alternative arrangements are adopted for ensuring the safety and integrity of meters and protection for domestic customers as regards billing.

**Question 6.1:** Are licence obligations required to ensure the provision of a meter at domestic premises?

**Question 6.2:** Should the requirements of SLC 17 to inspect and read meters at least every two years be removed subject to arrangements being made with regard to safety, theft of energy and domestic customer billing?

### Metering Provision

6.1. The Electricity Act<sup>25</sup> and the Gas Act<sup>26</sup> require that the supply of energy must be taken through a meter. The SLCs contained in the gas supply licence are different from those in the electricity supply licence as discussed below.

6.2. SLC 34 (gas only) requires the current gas supplier to arrange for the provision of a meter to a domestic customer on request. SLC 34(7) provides that the supplier must not refuse to accept a meter which does not contravene section 17 of the Gas Act 1986 and which is fit for purpose except on the ground that:

- the domestic customer is to be supplied by a prepayment meter and the meter installed is not appropriate; or
- the meter does not offer the facilities requisite for the purposes of the contract

6.3. On change of supplier the onus is arguably therefore on the incoming supplier to make a reasonable offer to use the meter in situ. SLC 47(5), which is present in both gas and electricity licences, adds that where a domestic customer ceases to take a supply of gas, the supplier must not remove any meter owned by it prior to a change of supply if another supplier undertakes, prior to the termination of the old contract, to make reasonable arrangements with the supplier.

6.4. SLC 7 (electricity only) applies to both domestic and non-domestic suppliers. SLC 7(1) provides that where the supplier is the owner of any relevant metering equipment, it shall, on an application made by any person, offer to enter into an agreement for the provision of such equipment (whether by sale, hire or loan). SLC 7(6) requires that the supplier must not enter into any agreement in relation to the provision of metering equipment (either with the customer or with persons providing meters) that is intended or is likely to restrict, distort or prevent competition in the supply of electricity.

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<sup>25</sup> Electricity Act 1989 Schedule 7 paragraph 1

<sup>26</sup> Gas Act 1986 Schedule 2B paragraph 2

**Next steps**

6.5. Ofgem is committed to competition in metering services. In this light, the current conditions on meter provision are in part intended to address concerns about how the relationship between customers, suppliers and their meter operators could operate to the detriment of customers as regard the customer's meter provision (notably in terms of impacting the customer's ability to switch supplier).

6.6. However, there is no consistency in what the gas and electricity licences currently seek to achieve in this regard. Moreover, it is unclear why the commercial incentives of suppliers and meter operators are not adequate to meet any concerns, given that first, the outgoing supplier is unlikely to want to take away the meter when the customer switches. Even if it does, it cannot take away its meter before the new supplier installs a replacement. Second, the incoming supplier is likely to want to continue to use the existing meter, unless its product to the customer is based on new metering. Thirdly, the incumbent metering provider has an interest in the new supplier continuing to pay a rental on the meter as part of its supply.

6.7. In other words, the relevant parties will all frequently have an interest in reaching an arrangement that leads to the customer continuing to use the existing meter. Where this is not the case (for example, where the new supplier installs a smart meter), it is not clear why any regulatory rule is required. The new supplier may not in that case agree to take over the rental of the old meter, and the customer will need a meter change. But this is a voluntary commercial arrangement freely entered into by the customer and the supplier and it is our current view that regulation ought not to be seeking to require any of the parties involved to make "reasonable offers" unless there are clear grounds to do so.

6.8. There has in the past been concern that the dynamics of metering competition ought not to interfere with the customer's right to switch. This may be the premise underlying the current conditions. In particular, some have taken the view that the meter might be used by suppliers to lock in to customers to supply by them. However, just as the proposed modification to the licence generally grants suppliers and customers more freedom to enter into more sophisticated contracts, there is no reason suppliers ought not to use metering services as part of their customer proposition to seek and retain those customers, subject to normal competition law restrictions. If, for example, microgeneration is to become more widespread, customers will possibly need more complex metering installed in the context of the offers made to them by suppliers.

6.9. Indeed, as smart meters become more prevalent over time, the meter provided to the customer is likely to be more differentiated depending on the product the customer has chosen. In this context, the increasing association by the customer of a change of supplier with a change of meter may be part of the natural market development. Regulation has a role to play in facilitating the interoperability of metering between suppliers but this is likely to be best managed through industry codes (for example to determine protocols for the exchange of data), rather than

licences (although the use of the licence will remain an option). Ofgem published a document 'Domestic Metering Innovation - next Steps' in June 2006<sup>27</sup>.

6.10. We are therefore currently of the view that there is no general need to regulate meter provision through the licence. We therefore propose to remove SLC 34 (1), (2) and (7) in the gas licence and SLC 7 in the electricity licence.

6.11. The only other area of meter provision that may continue to need licence coverage is circumstances where a domestic consumer does not have a meter. This is likely to be limited to cases of new connections or where a meter has been removed following a disconnection. We consider that the regulatory arrangements should be clear that a supplier should be responsible for providing a meter to a domestic consumer where asked to do so. The most effective way to deal with this issue is to clarify that in relation to SLC 32, it is not reasonable to refuse to supply a domestic consumer on the grounds that there is no meter.

6.12. Meter provision was the subject of discussion in the SLR Metering Workgroup. No consensus view emerged. We therefore welcome views on the our proposals.

## Meter maintenance

6.13. During the workgroup discussions suppliers suggested that the requirement to undertake an inspection of meters once every two years (SLC 17) was disproportionately expensive compared to the benefits that the inspection brought<sup>28</sup>.

6.14. The workgroup identified four criteria to assess the obligations. These were safety, theft, billing and energy settlement:

- **Safety and theft:** Both licences require the inspection include an appraisal of any deterioration of the meter that might affect its safety as well as looking for signs of tampering. Theft is currently subject to a project considering the licence obligations and the incentives that apply to suppliers. The Health and Safety Executive has raised concerns that if this obligation was to be removed safety standards would be compromised. To take these issues forward ERA suppliers have agreed to undertake a risk assessment exercise which will seek to set out the requirement to inspect meters on grounds of safety or to detect signs of theft.
- **Billing:** This requirement is related to suppliers' billing performance as the obligation provides a backstop where the consumer is at risk of being billed on a

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[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15591\\_Metering\\_Innovation\\_Decision\\_document\\_final.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15591_Metering_Innovation_Decision_document_final.pdf)

<sup>28</sup> The obligations set out in SLC 17 differ between the gas and electricity supply licences. In the electricity supply licence, SLC 17(1) requires that the supplier shall use all reasonable endeavours to ensure that, at least once in every period of two years (beginning with the date on which the condition comes into force), it inspects any non-half-hourly meter at premises at which it has at all times during that period been the supplier. In gas, SLC 17(1) requires the supplier to use all reasonable endeavours to ensure that, in the case of any premises at which it is the gas supplier, an inspection is made of the meter and its associated installation at intervals of not more than two years and where the relevant transporter informs the supplier that such an inspection is due. The gas licence specifies that "reasonable endeavours" includes seeking a warrant to enter premises. One further difference between the arrangements is that, whilst the gas provisions relate to all meters, the electricity supply licence only refers to non-half hourly metering systems.

long sequence of estimated meter reads. In line with the Authority's response to the energywatch billing super complaint<sup>29</sup> and the principles of better regulation, suppliers are moving to implement restrictions on back billing supported by the Energy Services Ombudsman scheme. These measures would offer more effective protection for consumers than the existing licence conditions. If the Ombudsman scheme and back billing arrangements are delivered, then the obligation in SLC 17 to take a meter reading once every two years together with the obligation in SLC 40 to provide consumption data and the last meter read (on request) may be removed<sup>30</sup>.

- **Energy settlement:** The arrangements for dealing with the accuracy of energy settlement<sup>31</sup> are set out in the BSC for electricity and the Network Code for gas and do not need to be reinforced by this licence condition. Each agreement contains provisions for the frequency of the submission of actual meter readings for the calculation of settlement positions.

6.15. We propose that the requirement to read and inspect meters in SLC 17 may be removed if:

- an effective domestic consumer Ombudsman scheme and back billing arrangements are introduced, and
- the safety and theft related concerns associated with inspection of the meter are resolved. ERA suppliers have agreed to undertake a risk assessment to help inform the debate on the future requirements for meter inspections for safety and theft purposes. The requirement for the inspection of meters that have the more advanced features of smart meters, may well be less onerous. It is hoped that the ERA risk assessment will inform this debate.

## Conduct of supplier agents

6.16. Suppliers have statutory rights to enter premises. Licence conditions<sup>32</sup> place obligations on suppliers on how they exercise those rights. We propose to retain obligations in the licence to ensure that suppliers continue to use those powers responsibly. The licence conditions are different for the gas and electricity markets and our view is that they should be harmonised where possible. There will need to be separate arrangements in gas for secondary sub-deduct metering systems.

6.17. We propose that a single modified condition will provide a list of procedures that would ensure that persons entering a premises:

- are readily identifiable to members of the public
- use passwords provided for vulnerable customers
- are appropriate persons to visit and enter customers' premises, and

<sup>29</sup> Ofgem's response to the super-complaint on billing processes made by the Gas and Electricity Consumer Council

[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11828\\_16305.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11828_16305.pdf)

<sup>30</sup> We note that the European directive on energy end-use efficiency and energy services (Directive 2006/32/EC) places emphasis on consumers having energy consumption information to aid in improving energy efficiency. DEFRA and DTI are considering what implications, if any there may be for regulations in this area.

<sup>31</sup> The arrangements set out in Network Codes and the Balancing and Settlement Code for determining the apportionment of energy supplied by each supplier.

<sup>32</sup> The related licence conditions are: SLC24 (electricity) Code of Practice on Procedures with Respect to Site Access, SLC 24 (gas) Arrangements in Respect of Powers of Entry, SLC24A (gas) Authorisation of Officers, SLC 24B (gas) Exercise of Powers of Entry.

- are able to inform customers, on request, of a contact point for help and advice that they may require in relation to the supply of electricity/gas.

6.18. The supplier would also be obliged to prepare a policy statement on how its arrangements for complying with the requirements above would operate and to provide it to any person who asks for it. We do not propose to retain the current requirements set out in SLC 26 and SLC 27 for approval, compliance and reporting on these arrangements as a code of practice. We expect that the Authority will be able to collect associated information as and when necessary using its other information collection powers.<sup>33</sup>

### **Gas - SLC 7A. Code of Practice for Meter Reading**

6.19. SLC 7A(1) and (2) has never been activated as the Authority has not seen the need to designate a Meter Reading Code of Practice. Suppliers must ensure that their agents must comply with the obligations related to site access as discussed above. We propose to remove these provisions.

6.20. SLC 7A(3) deals with the fitting of a meter and applies to non-domestic premises only. This obligation is the hook by which the Ofgem Approved Meter Installer (OAMI) approval scheme operates. The OAMI scheme should be retained in the licence as a means to ensure that non-domestic meter installations are safe and appropriate, until such time as equivalent regulations are introduced to deal with the matter. Therefore the obligations set out in SLC 7A(3) and (4) on the use of approved meter installers should be retained, although the drafting may be improved. Similar obligations are set out in SLC 34(5) and (6) in respect of domestic premises and should be retained.

### **Gas - SLC 17A. Adjustment of Charges where Meter has Registered Erroneously**

6.21. Gas suppliers are required to adjust charges where a meter has under-registered and repay charges where it has over-registered. No such obligations exist for electricity and we do not consider it necessary to retain specific obligations in gas. We propose to remove SLC 17A(1), (2) and (3). We consider that the circumstances of secondary sub-deduct premises continue to require regulation to protect customers billed on meter readings derived from sub-deduct metering systems. Therefore the effect of SLC 17A(4) should be retained.

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<sup>33</sup> We note that the gas shipper licence reflects the similar obligation to that of the gas supply licence. Were the modifications proposed above to be adopted in the gas supply licence we would propose that the gas shipper licence be amended to maintain continuity.

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## 7. Industry Codes and Agreements

**Chapter Summary:** This chapter deals with the licence obligations that refer to core industry codes and agreements. We propose to remove obsolete obligations and draft a single licence condition referring to codes and agreements in gas and electricity licences.

Ofgem has established a separate project, the Industry Codes Compliance Review (ICCR), to consider how compliance with codes and agreements should be dealt with across all licence holders - including transporters, shippers, generators and interconnector operators - and the role that the licence should play.

**Question 7.1:** Should the licence maintain the current requirements to accede and comply with codes and agreements until the results of the ICCR are known?

**Question 7.2:** Should the obligations in respect of change co-ordination extend to make consequential changes in respect of the Grid Code, Distribution Codes and the MRA?

7.1. The February 2005 consultation document proposing a review of the supply licence discussed whether the obligations in the supply licence to become a party to the codes and agreements and to comply with them were necessary; in particular, whether the compliance arrangements set out in the codes and agreements themselves should (or do) contain sufficient sanctions to ensure compliance. We propose that a single licence condition should be used to bring references to the electricity codes and agreements together.

7.2. We propose to remove obsolete obligations<sup>34</sup> from the electricity supply licence relating to the transitional arrangements for the introduction of the Balancing and Settlement code in relation to the introduction of the NETA (New Electricity Trading Arrangements) and the removal of the SAS (Settlement Agreement for Scotland).

### The obligation to become a party to a code or agreement

7.3. We propose to retain the obligation to become a party<sup>35</sup> to the BSC, CUSC, DCUSA, MRA and SPAA in order to ensure that all relevant parties are required to use and comply with a common set of standards to facilitate interoperability. We support the conclusion reached by the workgroup that for those codes where there is no requirement to be a party to them there is no need to introduce one.

<sup>34</sup> SLC 8 (electricity) Settlement Agreement with Scotland - all paragraphs

SLC 10 (electricity) Balancing and Settlement Code and NETA implementation SLC 10(2), (3), (4), (5) (6) and (7) only, and

SLC31B (electricity) BETTA run-off arrangements scheme

<sup>35</sup> The nature of the current obligations to be party to the codes is not consistent. For example, the requirement to be a party to the BSC and CUSC only applies where a supplier supplies or offers to supply premises. However, in the case of the MRA and DCUSA the supplier is required to be a party irrespective of whether it is active in the supply market. However, in amalgamating the obligations into a single licence condition, we propose that the differences between the treatments of the codes set out above should be removed to bring greater standardisation.

### **Change co-ordination**

7.4. The electricity supply licence contains obligations that require the licensee to make and implement consequential changes to other core industry documents which are required to give effect to changes to the CUSC, DCUSA, and BSC. These should be retained in effect. Currently, there is no requirement in relation to the MRA, Grid Code and Distribution Codes. We would welcome views on whether the amalgamated licence condition should extend the obligations to make consequential changes in respect of the Grid Code, Distribution Codes and the MRA.

### **The obligation to comply with a code or agreement**

7.5. We note that the workgroup's consideration of the obligations to comply with industry codes and agreements raised profound questions about the relationship between Ofgem and these documents, and the discharge of Ofgem's duties. Ofgem considered that these questions, which affect all types of licence, would merit detailed consideration across all codes and licence types. The ICCR has therefore been initiated as a separate project to consider the obligations to comply with the Grid Code, Distribution Codes, CUSC, BSC, MRA, UNC and SPAA and across all licence types<sup>36</sup>. The ICCR project is tasked with considering the implications of changes in this area across all the licence types. Ofgem published a consultation document 'Industry Codes Compliance Review Consultation' in June 2006<sup>37</sup> that sets out the scope of the project.

7.6. Until the ICCR has reported, we propose to maintain the effect of the obligations to comply with the Grid Code, Distribution Codes, CUSC, DCUSA, BSC, MRA and SPAA, subject to any further consideration noted in this chapter on accession and change co-ordination.

### **The obligation to establish and maintain a code**

7.7. Industry codes are typically set up and maintained through a licence obligation. For example, the transmission licence contains an obligation to establish the BSC<sup>38</sup> and Grid Code<sup>39</sup>. Similarly, the MRA was set up by distribution companies in accordance with SLC 37 of the distribution licence. The SPAA is the only code that was set up in accordance with a supply licence condition<sup>40</sup>. This requires domestic suppliers to prepare and maintain the SPAA. Having licensed parties identified as code owners or maintainers is a potentially important element in ensuring the effective operation of a code, its obligations and its effective governance. We see no reason to change this obligation in respect of the SPAA. Accordingly, we propose to retain the obligation in SLC 34A to prepare and maintain the SPAA.

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<sup>36</sup> Note that the DCUSA may also be included subject to the findings of the ICCR.

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[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15594\\_ICCR\\_Condoc\\_FINAL.pdf?wtfrom=/ofgem/index.jsp](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15594_ICCR_Condoc_FINAL.pdf?wtfrom=/ofgem/index.jsp)

<sup>38</sup> SLC C3

<sup>39</sup> SLC 7

<sup>40</sup> SLC 34A of the gas supply licence

## 8. Other standard licence conditions including SoLR

**Chapter Summary:** This chapter deals with a wide range of SLCs set out in Section B and C of the licence that are not covered elsewhere in this consultation document. We are proposing to retain but simplify the arrangements for appointing a Supplier of Last Resort (SoLR), for the Authority to require information and for ensuring clarity as to when premises should be treated as domestic. We propose to remove SLC 12A, SLC 12B, SLC 13, SLC 33, SLC 48A, SLC 49 and SLC 50 in their entirety as they are no longer required. We are also proposing to amend parts of SLC 22 where the obligation on the definition of domestic premises has expired.

**Question 8.1:** Do you agree with the proposals to retain and simplify the SoLR arrangements?

### Prohibition of Discrimination in Selling Electricity (SLC 12A) - electricity only

8.1. We consider that this prohibition is no longer necessary and should be removed. The provisions were originally put in place to prohibit ex-monopoly suppliers and distributors from selling electricity to new suppliers on terms different from those offered to their own supply businesses. It would be more appropriate for this to be addressed by other means, such as under the Competition Act.

### Prohibition of Cross-Subsidies (SLC 12B) - electricity only

8.2. We propose that SLC 12B is removed from the electricity supply licence. In relevant circumstances, cross-subsidies should be considered under other relevant legislation such as the Competition Act.

### Change Co-ordination for the Utilities Act 2000 (SLC 13)

8.3. SLC 13 is no longer in operation and should be removed as it contains a sunset date which has now passed. It required changes to industry documents to give effect to the Utilities Act 2000.

### Security and Emergency Arrangements (SLC 14)

8.4. The content of SLC 14 in the gas and electricity licences differs significantly between both markets and is looked at separately below:

#### Compliance with requests from the GT SLC 14(1) and (2), pipe-line system emergency SLC 14(3) and Energy Act 1976 direction SLC 14(3) - gas only

8.5. To maintain the safety of the network we propose to retain obligations to:

- use best endeavours to comply with requests from GTs for the purpose of averting or reducing danger to life or property or securing the safety of the pipe-line systems or the safe conveyance of gas,

- include within non-domestic contracts a term that, for the duration of a pipe-line system emergency allows the supplier to discontinue supply at the request of the GT or shipper, and requires the customer to use best endeavours not to use gas when told not to by a supplier or a GT, and
- include in all contracts a term which, if a direction under the Energy Act 1976 prohibiting or restricting the supply of gas to specified persons is in effect, allows the supplier to discontinue or restrict supply, and requires the customer to stop using gas when told by the supplier to do so.

### **Shipping arrangements prior to 2 March 1995, SLC 14(5) - gas only**

8.6. Where the supplier has a contract with their shipper which was executed prior to 2 March 1995 and it is empowered thereby to secure rights to use the GT's network for the conveyance of gas, the supplier shall exercise that power in conformity with "security standards" as defined in the condition. We consider that this obligation should be removed from the licence in the almost certain event that the arrangements that it envisaged have expired. We would be grateful for information from respondents on whether any of the envisaged shipping arrangements are still in effect.

### **Fuel Security Code, SLC 14 - electricity only**

8.7. SLC 14(1) of the electricity supply licence requires the supplier, insofar as it supplies or offers to supply premises in England and Wales, to comply with the provisions of the Fuel Security Code (FSC) as designated by the Secretary of State. The FSC is currently being considered for revision to make the arrangements GB wide. Separate arrangements were previously required for Scotland prior to BETTA being introduced. If the amendment to the FSC is made the reference to "England and Wales" in SLC 14(1) and the entirety of SLC 14(2) should be removed to effect this change.

### **Exchange of Information Between Licensee and Relevant Transporter or Shipper for Operation, Development or Maintenance of Pipe-Line System and Detection and Prevention of Theft (SLC 16) - gas only**

8.8. In the gas supply licence SLC 16<sup>41</sup> covers a number of other areas where information is exchanged with the GT via the shipper. We consider that these issues would be better covered in industry agreements and codes however, as SPAA does not currently cover non-domestic customers and suppliers are not required to comply with Network Codes, this is not possible. In summary we propose to:

- retain requirements for meter connection/disconnection (SLC 16(6) and (7)) information to be provided to the shipper for transmission to the GT,

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<sup>41</sup> SLC 16 in the gas and electricity supply licences deals with the detection and prevention of theft. Consideration of the theft obligations is currently excluded from the SLR as a separate review of these arrangements is already taking place.

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- remove requirements to provide the shipper with information on the quantities or amounts of gas conveyed to premises to which it supplies gas (SLC 16(9))  
Shippers have commercial incentives to obtain this information from suppliers,
- further consider the requirement (SLC 16(10)) to provide details of each meter inspection to the shipper (or the transporter if requested) in conjunction with the debate on meter inspections in SLC 17 in Chapter 6,
- remove the requirement (SLC 16(11)) to restrict the use or disclosure of information obtained from the transporter under SLC 31(2)(d) of the GT licence as designated by the Authority. It is not clear that a supplier would be able to request data from the GT under this part of the GT licence,
- retain requirements (SLC 16(12) to (15)) to provide information to the shipper (to be sent to the transporter) on whether a particular premises is domestic or non-domestic. It is important for GTs to receive this information so that they can determine site load shedding priorities and SoLR related matters. SLC 16(14) and (15) are no longer required as they expired on 1 January 2002,
- remove requirements (SLC 16(16)) to retain metering information (including a record of the meter read) on disconnection of a meter owned by the supplier. This is not a feature of the electricity licence. Suppliers are required to provide the GT with an opening and closing read when a meter is exchanged. Further, a supplier would be expected to retain sufficient data to help determine disputes over charges with customers. The extent to which suppliers do or do not retain this data will impact on their ability to enforce charges. Were a case to be heard by the Energy Services Ombudsman scheme, then this is an issue that they would need to take into account.

## Provision of Information to the Authority (SLC 19)

8.9. SLC 19 obliges suppliers to provide information to the Authority. Ofgem expects to continue to require information from suppliers to enable it to perform its functions. This condition is considered to be broadly fit for purpose and should be retained; however, the drafting of SLC 19(5) could potentially be improved to provide clarity and to retain the effect of SLC 26(3) (see 5.3 above).

## Domestic Premises (SLC 22)

8.10. This SLC provides guidance for suppliers on the application of licence conditions for domestic and non-domestic premises. We propose to retain simplified drafting to provide certainty for suppliers that they will not be in breach of their licence, where a customer who was consuming energy for non-domestic purposes changes this to domestic purposes (and vice versa) or where domestic sites are part of multi-site contracts.

## Restriction or Revocation: Securing Continuity of Supply (SLC 22A)

8.11. We propose that the electricity arrangements should be extended to the gas market. These obligations<sup>42</sup> seek to mitigate the risk that a supplier withdrawing

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<sup>42</sup>SLC 22A(3) of the electricity supply licence and SLC 22A(1) of the gas licence require that where, it is preparing for a restriction or revocation of its licence, the supplier must make specified arrangements for

from the market has not made appropriate arrangements for the continuity of supply to premises. It would be appropriate for the Authority to consider the measures put in place by a supplier for its contract and deemed contract customers before consenting to a licence restriction or revocation.

### **Payments Received in Relation to Standards of Performance (SLC 23)**

8.12. Suppliers should be required to pass on to customers any standards of performance payments received from distributors (or shippers in gas) in a reasonable timeframe. We propose that this condition should be retained in the gas licence but removed in electricity when it is evident that the provisions will be adequately replicated in the new common DCUSA. There is no equivalent industry agreement in the gas market across all suppliers.

### **Assistance for Areas with High Distribution Costs Scheme: Payment to System Operator (SLC) - electricity only**

8.13. This condition was inserted into the electricity supply licence by the DTI in April 2005 under the provisions of section 184 of the Energy Act 2004, and has subsequently been revised by the DTI. It is proposed that this condition, and any subsequent change introduced by the DTI, is retained subject to minor drafting amendments.

### **Security of Supply – Domestic Customers (SLC 32A) - gas only**

#### **GT's failure to convey gas (SLC 32A(1))**

8.14. Where a supplier receive a payment from the GT (via the shipper) for a failure of the GT to convey gas to domestic premises<sup>43</sup>, the supplier must:

- set this sum off against any charges that are or may become due from the customer for the supply of gas, or;
- use its reasonable endeavours to pay that sum (so far as not set off against the charges) to the customer.

8.15. We propose redraft SLC 23<sup>44</sup> to clarify that it would be acceptable for suppliers to offset domestic customer payments against charges that are or may become due in relation to the failure of the GT to convey gas to domestic premises. This differs from other GT standards of performance in that it has the potential to affect large volumes of customers. Payment within suppliers' normal billing cycles has the potential to reduce administration costs.

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securing continuity of supply for its deemed contract customers (unless the Authority otherwise consents). SLC 22A(1) of the electricity licence has additional obligations to make arrangements for customers supplied under a contract.

<sup>43</sup> Regulation 7 of the Gas (Standards of Performance) Regulations 2005 applies where the conveyance of gas to a domestic customer's premises is discontinued as a result of a failure or, fault in or damage to the pipeline system operated by the relevant transporter.

<sup>44</sup> SLC 23 (Payments Received in relation to Standards of Performance), requires that any payment received from the GT for failure to meet standards of performance should be paid to the customer as soon as reasonably practicable after receipt.

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### **Domestic supply security standards (SLC 32A)**

8.16. We propose to remove the obligation to comply with the domestic supply security standards<sup>45</sup> where the supplier does not secure by contract with gas shippers or otherwise that all gas conveyed by GTs for supply to its domestic customers is conveyed in conformity with those GTs' Network Codes<sup>46</sup>. We do not consider that such circumstances exist but would welcome views from respondents on whether a need for this obligation remains.

### **Assignment of Outstanding Charges (SLC 49 and 50)**

8.17. SLC 49 provides for a debt to be assigned to the new supplier if a domestic customer has failed to pay a final bill or a bill received following notification to the old supplier that the customer is intending to transfer. SLC 50 allows the Authority to disapply SLC 49 in certain circumstances. We propose that this condition, together with SLC 50 is removed. Whilst some attempts have been made to assign debts relating to unpaid final bills at market start-up, suppliers reported that it proved to be a costly and frustrating process to operate and that it had not been used in practice. Suppliers who wish to use equivalent arrangements may consider bi-lateral agreements.

### **Supplier of Last Resort (SoLR) (SLC 29)**

8.18. We propose to retain the arrangements that enable Ofgem to appoint a SoLR in circumstances where a supplier's licence has been revoked. The arrangements have worked in practice and ensure supply continuity for customers when their supplier fails. They also limit the exposure of other industry parties to smeared costs where a supplier has become insolvent.

8.19. We consider that the most effective protection for consumers who are being supplied by a SoLR is the ability to switch to a supplier of their choice. To support this, we propose to introduce a new obligation to require the SoLR to include in the letter to customers under SLC 29(7) a statement that the customer is being supplied on a deemed contract and that they are able to enter into a contract with the SoLR or another supplier of their choice. This requirement is currently contained in the 2003 guidance notes on the appointment of a SoLR<sup>47</sup>. We propose that the obligation in SLC 29(6) for Ofgem to approve the letter is removed. Such an obligation is disproportionate to the circumstances and, with the inclusion in the notice of confirmation that the customer is free to switch to a new supplier, is also unnecessary.

8.20. Those elements that deal with price changes and customer hardship during the period of the SoLR appointment (SLC 29(8), (12) and (13)) should be removed. We

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<sup>45</sup> "Domestic supply security standards" relate to the availability of gas to its domestic customers and are defined in SLC 32A(4) and (5).

<sup>46</sup> Standard special Licence condition A11(1)(e) (Network Code and Uniform Network Code), which applies both to the DNs and NTS, sets out an obligation to provide reasonable economic incentives for relevant suppliers to secure that the domestic supply security standards (within the meaning of SLC 32A(4) of the gas supply licence) are satisfied in respect of the availability of gas to their domestic customers.

<sup>47</sup> [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/5291\\_SoLR\\_guidance\\_doc\\_24nov03.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/5291_SoLR_guidance_doc_24nov03.pdf)

also propose to remove SLC 29(14), which prohibits the SoLR from showing undue preference or undue discrimination between consumers.

### **SoLR Supply Payments (SLC 29A)**

8.21. This SLC sets out the process by which a SoLR can claim for the losses it has incurred in complying with a SoLR direction made by the Authority. These arrangements, together with the matching obligations in the licence for network operators, reduce the commercial risk that a supplier would otherwise face were they to be appointed a SoLR. We propose to retain the principles of this licence condition, but will simplify the drafting.

### **Provision for termination upon a direction (SLC 29B)**

8.22. This condition requires suppliers to ensure that supply contracts will terminate upon a last resort supply direction being given in respect of the relevant premises. As such, it reduces the risk of disputes with an administrator and makes the situation unambiguous for the customer. We therefore propose to retain this obligation.

### **Last resort supply: security for payments (SLC 33)**

8.23. Ofgem consulted in June 2001<sup>48</sup> on the level of the security cover that domestic suppliers should have in place to pay for the unrecovered costs of a SoLR. As a result of that consultation the level of security cover was set at £0.00. We see no reason to revise that view and therefore consider that the licence condition is unnecessary and should be removed.

### **Undertaking to be given by licensee to a relevant transporter in respect of shipping charges etc (SLC 22B – gas only)**

8.24. This SLC is limited to the gas supply licence and contemplates the situation which can occur where a shipper and a supplier are separate companies and the arrangements between a transporter and a shipper are terminated. SLC 22B requires the supplier to have in place arrangements with the relevant transporter to pay charges for a limited period to the transporter that would otherwise have been paid by the shipper. We consider that the principles of the condition should be retained (although the drafting may be simplified) as it enables a supplier who does not possess a shipper licence to be responsible temporally for the charges arising from the transportation of gas via the relevant network, where the related shipper has failed.

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<sup>48</sup> [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/288\\_14june01.pdf?wtfrom=/ofgem/whats-new/archive.jsp](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/288_14june01.pdf?wtfrom=/ofgem/whats-new/archive.jsp)

## 9. Ex-monopoly supplier obligations

**Chapter Summary:** Section D of the supply licence is only activated for the ex-monopoly supply businesses. In electricity it requires certain arrangements to be provided for top-up, standby, exempt supply services and prepayment meter infrastructure services (PPMIP), and regulates the aspects of their provision. For gas and electricity it also sets out requirements for regulatory accounts. We propose to remove all of these obligations other than for PPMIPs where we are requesting views on the need for regulation of the provision of these services.

**Question 9.1:** Are there specific reasons for retaining the obligation to provide top-up, standby or exempt supply services, in particular to support the development of distributed generation?

**Question 9.2:** Is regulation needed for the provision of PPMIP services?

9.1. Section D currently has effect in the gas supply licence held by BGT for the whole of the UK. In the electricity market each ex-monopoly supplier has Section D switched on in its licence for its ex-monopoly (service) areas. In both the gas and electricity supply licences, Section D includes obligations to provide regulatory accounts. For the electricity market only, suppliers with Section D are also required to provide top-up, standby, exempt supply services and prepayment meter services for other suppliers operating in their service areas.

### Regulatory Accounts

9.2. SLC 52 requires licensees (and any affiliates or related undertakings) to maintain accounting and reporting arrangements which enable annual regulatory accounts showing the financial affairs to be prepared for each separate business. Suppliers are also required to prepare annual audited statutory accounts under the Companies Act 1985<sup>49</sup>. Article 19(4) of the IMED and Article 17(4) of the IMGD require that the audit of the annual accounts shall verify that the obligation to avoid discrimination and cross subsidisation is respected. Audits of annual statutory accounts would not normally cover this requirement.

9.3. As supply businesses produce annual audited statutory accounts and provided the supply licensee conducts no other regulated business within the same legal entity then there is adequate business separation, that should satisfy the requirements of the EC directive and separate regulatory accounts would be unnecessary. We therefore propose to remove this obligation and the associated SLC 52A - (Change of Financial Year) from the licences.

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<sup>49</sup> This obligation has transposed the requirements in Article 19(2) of the IMED and Article 17(2) of the IMGD.

## Top-up and Standby

9.4. The intention of top-up and standby is to provide the supply or sale of electricity to authorised electricity operators and customers in certain circumstances for sites within the supplier's service area. We propose that these obligations are removed.

9.5. There was a need to retain top-up and standby arrangements until the introduction of UK-wide trading arrangements under BETTA. Now suppliers or generators are able to seek to secure electricity supply from the trading market.

9.6. Where another party requires top-up and standby arrangements, for example to support on-site generation, it typically approaches a supplier to contract for this service. Suppliers are free to offer this service on a commercial basis. We are specifically requesting views on the implications of removing this obligation, in particular whether this would have any significant adverse implications for the development of distributed generation.

## Exempt supply services

9.7. The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001<sup>50</sup> provides that the supply of electricity need not be undertaken in pursuance of a licence in certain defined circumstances. Typically, exempt suppliers serve a small number of customers and it would be uneconomic for them to be required to comply with a licence.

9.8. It is possible that exempt suppliers could require the provision of exempt supply services. For example where a site with generation capabilities wants to supply excess electricity to another site and use a licensed distributor's network for distribution to it, the supplied site would need to be registered in the licensed distributor's MPAS.

9.9. It would be possible for exempt suppliers to become licensed if they wished to supply such sites. However, this may be disproportionately expensive. More importantly, it would be possible for exempt suppliers to seek to secure equivalent services from other licensed suppliers for the provision of registration and meter services on a commercial basis. We therefore consider that there is not a clear need for obligations in the electricity supply licence.

9.10. We welcome views on the implications of removing exempt supply services obligations from the electricity supply licence, in particular whether this would have any significant adverse effect on the development of distributed generation.

## Prepayment Meter Infrastructure Provider Services

9.11. A supplier with Section D in effect in its licence must, on application by any other supplier, offer to enter into an agreement for the provision, within the supply services area, of a system which supports the supply of electricity to customers with

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<sup>50</sup> <http://www.opsi.gov.uk/si/si2001/20013270.htm>

prepayment meter services (PPMIP services). In the electricity market the prepayment technology used has tended to differ according to the particular service area. Some PPMIP service providers operate a number of prepayment technologies in a given service area. BGT has introduced a further prepayment technology supported by a separate provider of PPMIP services.

9.12. Ofgem considers that the main principle for the provision of PPMIP services is that a new supplier should not be forced to install a new prepayment meter on change of supply. This is also important for customers as there are transactional costs in them having a new meter installed that may increase the cost of supply. The two main factors that may lead a supplier to want to install a new prepayment meter are:

- technical standards and process issues between suppliers and PPMIPs, and
- acceptability of the terms and conditions offered by the current PPMIP.

9.13. On the first point, Ofgem considers that there is a requirement for principles to support technical / interoperability issues between suppliers and PPMIPs. These principles on standardisation and interoperability could be included in the licence and/or sit in industry agreements.

9.14. On the second point, there is a concern that firstly; suppliers may be reliant on the provision of PPMIP services by providers who may themselves be competing suppliers. In this situation, regulation in some form, could be necessary to require these services to be offered fairly.

9.15. At this stage we are not able to propose a final view on the nature of the regulatory requirement for PPMIP services. The potential tools are:

- specific obligations in the licence,
- competitive pressures through the ability of suppliers to appoint a new PPMIP services provider (dependent on the interoperability issues set out above), and
- to rely on existing law such as the Competition Act or the Enterprise Act.

9.16. If obligations are required in the licence then we propose that they be on all domestic supply licence holders.

9.17. In relation to the gas market there is currently only one provider of prepayment meter services which supports quantum meter prepayment technology. There is no obligation on a licensed gas supplier to ensure that the provision of this service does not restrict, distort or prevent competition. If a set of licence obligations is considered necessary in the electricity market then we propose to give further consideration to including them in the gas licence to cover new gas prepayment technologies and associated PPMIPs.

9.18. We will give further consideration to the regulation of PPMIP services in the light of the responses we receive.

## Appendices

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## Appendix 1 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document.

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

1.3. Responses should be received by 15 September 2006 and should be sent to:  
Andrew Wallace  
Consumer Markets  
Ofgem, 9 Millbank, SW1P 3GE  
0207 901 7067  
Andrew.wallace@ofgem.gov.uk

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

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

1.6. The next stage of the project is to prepare draft modifications to the SLCs based upon the proposals set out in this document, taking into account the views of respondents. We aim to consult on the draft modifications to the SLCs in November 2006 and issue our final decision document on the proposed modifications in March 2007. The Authority may propose the modifications together, separately or in groups. If the necessary majority of licensees accept our proposals, we plan to introduce the new licence from April 2007. If they do not, it is open to us to refer the matter to the Competition Commission. Any questions on this document should, in the first instance, be directed to:

Andrew Wallace  
Consumer Markets  
Ofgem, 9 Millbank, SW1P 3GE  
0207 901 7067  
Andrew.wallace@ofgem.gov.uk

### CHAPTER: One

**Question 1.1:** Do you agree with the detailed proposals for modifying gas and electricity supply standard licence conditions set out in Appendix 7 and 8?

**Question 1.2:** Do you have any general comments on the issues raised in this document?

#### **CHAPTER: Two**

**Question 2.1:** Should the obligation to offer terms to domestic customers be retained?

**Question 2.2:** Do the current obligations to offer defined methods of payment and frequency (SLC 43) present a significant barrier to entry?

**Question 2.2:** Would suppliers cease to offer the defined methods of payment and frequency (SLC 43) if this obligation was removed?

#### **CHAPTER: Three**

**Question 3.1:** Should the rules for unilateral variation of terms and/or charges (SLC 44(6) and (7)) be amended? If so, how?

**Question 3.2:** Should the governance of the rules for when objections can be made in electricity be removed from the MRA and placed in the electricity supply licence?

#### **CHAPTER: Four**

**Question 4.1:** Should domestic suppliers continue to have an obligation to provide energy efficiency advice?

**Question 4.2:** Should domestic suppliers continue to have an obligation to provide individual notification to consumers where they are implementing a price rise?

#### **CHAPTER: Five**

**Question 5.1:** What is the appropriate scope and format for customer information on the advantages, disadvantages and removal of PPMs?

**Question 5.2:** Are there any differences between the way that suppliers notify customers who are electricity dependent and the way that distributors notify all customers of an interruption to supply?

**Question 5.3:** What is the appropriate scope and format for information to all customers on: the safe use of gas appliances, the benefits of gas safety checks, the dangers of carbon monoxide poisoning and the benefits of carbon monoxide alarms, and where to seek assistance if gas appliances are condemned?

**CHAPTER: Six**

**Question 6.1:** Are licence obligations required to ensure the provision of a meter at domestic premises?

**Question 6.2:** Should the requirements of SLC 17 to inspect and read meters at least every two years be removed subject to arrangements being made with regard to safety, theft of energy and domestic customer billing?

**CHAPTER: Seven**

**Question 7.1:** Should the licence maintain the current requirements to accede and comply with codes and agreements until the results of the ICCR are known?

**Question 7.2:** Should the obligations in respect of change co-ordination extend to make consequential changes in respect of the Grid Code, Distribution Codes and the MRA?

**CHAPTER: Eight**

**Question 8.1:** Do you agree with the proposals to retain and simplify the SoLR arrangements?

**CHAPTER: Nine**

**Question 9.1:** Are there specific reasons for retaining the obligation to provide top-up, standby or exempt supply services, in particular to support the development of distributed generation?

**Question 9.2:** Is regulation needed for the provision of PPMIP services?

## Appendix 2 - Feedback Questionnaire

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

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

2.2 Please send your comments to:

**Selvi Jegatheswara**  
Consultation Co-ordinator  
Ofgem  
9 Millbank  
London  
SW1P 3GE  
selvi.jegatheswara@ofgem.gov.uk

## Appendix 3 - Ofgem's Statutory Responsibilities

3.1 Ofgem is the Office of Gas and Electricity Markets, regulating the gas and electricity industries in Great Britain. Ofgem operates under the direction and governance of the Gas and Electricity Markets Authority. The Gas and Electricity Markets Authority has the ultimate responsibility for all that Ofgem does. It determines strategy and decides on major policy issues.

3.2 Ofgem's powers and duties are provided for under the Gas Act 1986 and the Electricity Act 1989, as amended principally by the Utilities Act 2000, Competition Act 1998, Enterprise Act 2002 and Energy Act 2004. Ofgem has concurrent powers with the Office of Fair Trading (OFT) to apply the Competition Act 1998 to the gas and electricity sectors in Great Britain.

3.3 Ofgem's principal objective is to protect the interests of consumers present and future, wherever appropriate by promoting effective competition. We must also have regard to:

- The need to ensure that all reasonable demands for electricity and, so far as is economical, gas are met
- The need to secure that licence holders are able to finance their obligations, and
- The interests of those people who are disabled or chronically sick, of pensionable age, living on low incomes, or living in rural areas.

3.4 We are also required to carry out our functions in the manner, which we consider best calculated:

- To promote efficiency and economy including efficient use of energy
- To protect the public from dangers
- To contribute to the achievement of sustainable development
- To secure a diverse and viable long term energy supply, and
- Shall have regard, in carrying out those functions, to the impact on the environment of the gas and electricity industries.

3.5 In carrying out our functions we must also have regard to 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 us to represent the best regulatory practice.

3.6 Furthermore, we must have regard to social and environmental guidance issued by Ministers. Ofgem also has a duty to consult and take into account any advice given by the Health and Safety Executive about all gas and electricity safety issues that may be relevant to our functions under the Gas Act and the Electricity Act.

## Appendix 4 - Glossary

### B

#### Back Billing

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

#### BSC

Balancing and Settlement Code

### C

#### CSR

Corporate Social Responsibility

### D

#### DDA

Disability Discrimination Act 1995. Link to the Department of Work and Pensions website: [http://www.dwp.gov.uk/aboutus/dda\\_2005.asp](http://www.dwp.gov.uk/aboutus/dda_2005.asp)

#### Deemed contract

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

#### Directives (Internal Market Gas Directive and Internal Market Electricity Directive)

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

**E****EEC - Energy Efficiency Commitment**

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

**ENA - Energy Network Association**

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

**ERA - Energy Retail Association**

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

**energywatch**

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

**Exempt Supply Services**

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

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

**F****Fuel Direct**

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

### FSC - Fuel Security Code

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

## I

### ICCR

The Industry Codes Compliance Review. Ofgem is reviewing the relationship between the obligation in the various classes of licence and the industry codes and agreements to which they refer. In particular, the review will consider the appropriateness of licensees being obliged by the licence to comply with the provisions of codes and agreements. Ofgem has published a consultation document on the scope of the project 'Industry Codes Compliance Review Consultation' [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15594\\_ICCR\\_Condoc\\_FINAL.pdf?wtfrom=/ofgem/index.jsp](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/15594_ICCR_Condoc_FINAL.pdf?wtfrom=/ofgem/index.jsp)

### IMED

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

### IMGD

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

## M

### MPRN -Meter point reference number

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

## O

### Ofgem Approved Meter Installer (OAMI)

Ofgem Approved Meter Installers (OAMI's) are CORGI registered gas meter fitters with a specific Meter Installation Qualification. OAMI's sign up to the Ofgem Codes of Practice 1/a, 1/b and 1/c depending on what work they intend to do. The codes set out the processes that the meter fitter must undertake to install a meter. The OAMI

scheme (run by Corgi) ensures that the meter fitter is trained to the relevant CoP standard to undertake a meter installation. Therefore if a meter fitter is competent at the CoP/1a level only then it cannot install a meter with a capacity exceeding 6m3. These CoPs are updated/reviewed by Technical and currently CoP/1c is being reviewed.

## **P**

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

Prepayment meters currently use electronic tokens, keys or cards to enable an amount of energy bought by the consumer to be used. The consumer needs to be provided with a network of outlets where tokens can be purchased, or cards and keys can be charged up. This network of outlets needs to be linked to a payment settlement system for suppliers.

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

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

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

SLC37(3)(a) requires suppliers to establish a list (the Priority Services Register) of those domestic customers who, by virtue of being of pensionable age or disabled or chronically sick, require information and advice in respect of services specified under that condition.

## **S**

### [SLC - Supply Licence Condition](#)

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

### [SLR - Supply licence review](#)

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

### [SoLR - Supplier of Last Resort](#)

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

### SPAA

Supply Point Administration Agreement

### Standby

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

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

### Super complaint

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

### Supply licence exemptions

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

## T

### Top-up

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

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

## U

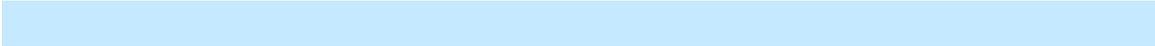
### Unfair Terms in Consumer Contracts Regulations 1999 ("UTCCR")

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

**V****Vulnerable customer**

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



## Appendix 5 - SLR timetable

5.1 In the August 2005 Way Forward document we proposed a detailed timetable for the SLR. The table below updates on the dates for the key milestones that remain and show that we are still on track to meet the original deadlines indicated.

First meeting of the Legal Workgroup.	12 July 2006
Steering Group will oversee the activity of the Legal Workgroup and assist in resolving new policy issues that arise (if any).	July 2006 –November 2006 SLR Steering Group to meet as required.
Consultation response due to Ofgem.	15 September 2006
Ofgem consults on the proposed modifications to the SLCs, including a twelve week consultation period.	November 2006
Ofgem issues final decision document and proposals for collective licence modification process.	March 2007
Unless the relevant number of objections are made or the Secretary of State exercises his veto, implementation of modifications to the SLCs.	June 2007  Note: if the modified SLCs have any significant impact on industry systems and procedures, implementation of those modifications will need to be timed to permit implementation of the necessary changes.

## Appendix 6 – Process for modifying standard licence conditions

6.1 The process for modifying standard licence conditions is set out in section 23 of the Gas Act and section 11A of the Electricity Act. A modification includes an addition, an alteration and an omission. Before making a modification, the Authority must give notice:

- stating that it proposes to make the modification and setting out its effect
- stating the reasons why it proposes to make the modification, and
- specifying the time (not being less than 28 days from the date of publication of the notice) (the notice period) within which representations or objections with respect to the proposed modification may be made.

6.2 The notice shall be given:

- by publishing it, and
- by sending a copy to each relevant licence holder, the Secretary of State, energywatch and, for modifications to the standard licence conditions of the gas supply licence, the Health and Safety Executive.

6.3 Generally, if within the notice period:

- the Secretary of State directs the Authority not to make the modification, or
- 20 percent of relevant licence holders by number or 20 percent of relevant licence holders weighted by market share give notice of objection to the Authority,

the Authority may not make the modification.

6.4 Where the Authority modifies the standard licence conditions of a licence, it may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of any licence of that type.

6.5 The Authority may make a reference to the Competition Commission requiring it to investigate and report on whether any matters relating to the carrying on of activities authorised or regulated by a licence, operate or may be expected to operate, against the public interest. If yes, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the standard licence conditions of that type. If the Competition Commission provides such a report, the Authority may make the modifications of the relevant conditions as appear to it to be required to remedy or prevent the adverse effects specified in the report.