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for all gas and electricity customers

The Retail Market Review – Draft Impact Assessment for the updated proposals for businesses

Consultation – supplementary appendix

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Overview:

This document sets out the draft Impact Assessment on our proposals to review the retail market arrangements for business consumers.

Context

This document reflects the commitment set out in Ofgem's Corporate Strategy and Plan 2010-15, to undertake a review of Great Britain's energy retail markets.

Ofgem's principal objective is to protect the interests of both existing and future energy consumers. The Retail Market Review (RMR) aims to make the market better at serving the interests of consumers and enable individual consumers to get a better deal from energy companies.

Associated documents

All documents are available at www.ofgem.gov.uk

- The Retail Market Review – Updated proposals for businesses, Reference 134/12.
- The Retail Market Review – Updated domestic proposals, Reference 135/12.
- Research into the proposed Standards of Conduct: Non-Domestic Consumers, Insight Exchange, October 2012.
- Research Findings on the Experiences of Non-Domestic Customers, Opinion Leader, October 2012.
- Quantitative Research into Non Domestic Customer Engagement and Experience of the Energy Market, Accent, June 2012.
- The Retail Market Review: Domestic Proposals, December 2011, Reference: 116/11.
- The Retail Market Review: Draft Impact Assessments for Domestic Proposals, Supplementary Appendices, December 2011, Reference: 116a/11.
- The Retail Market Review – Non-domestic Proposals, Reference 157/11.
- The Retail Market Review – Draft Impact Assessments for Non-domestic Proposals, November 2011, Reference: 157a/11.
- Small and Medium Business Consumers' Experience of the Energy Market and their Use of Energy, Harris Interactive, June 2011.
- The Retail Market Review – Findings and Initial Proposals, March 2011, Reference: 34/11.

- Energy Supply Probe - Proposed Retail Market Remedies, August 2009, Reference: 99/09.
- Energy Supply Probe - Initial Findings Report, October 2008, Reference: 140/08.

Contents

1. Introduction

Chapter Summary

In this chapter we describe the purpose of this document. We outline the key barriers in the non-domestic market, and summarise our proposed package of measures, designed to alleviate these problems. Finally, we describe the approach we follow in assessing the impact of our proposals, and provide an outline of the structure of this document.

1.1. This draft Impact Assessment (IA) supports our accompanying consultation document on our proposals to improve the information provided to non-domestic consumers and help them to engage more effectively with the energy market.

1.2. The purpose of this IA is to explain our draft proposals to extend protections to include more small businesses, improve the information on bills, encourage improvements to the objections process, and introduce enforceable Standards of Conduct (SOC). We intend to consult on the wider framework for Third Party Intermediaries (TPIs) by summer 2013, and therefore this IA does not consider our proposal for a common Code of Practice for non-domestic TPIs.

1.3. Our preliminary qualitative analysis indicates that our proposed package of measures is likely to provide a net benefit to non-domestic consumers. We also set out our approach to quantifying the impacts of our proposal.

Barriers in the non-domestic market

1.4. In the March and November 2011 Retail Market Review (RMR) consultations we set out our concerns in relation to a number of specific problems faced by non-domestic consumers, particularly small businesses.

1.5. Through our research, and consultation process, we have identified a number of key barriers to the effective engagement of non-domestic consumers.

1.6. The key barriers that we have identified in the non-domestic market are:

- **Lack of clear contract information**: Smaller businesses are often not clear when their contract ends or when they can switch supplier. This means they may be rolled over onto more expensive contracts, missing out on opportunities to transfer to a better deal.
- **Billing issues**: Business consumers report issues with the clarity and accuracy of their bills. This can make it hard for them engage properly to assess their energy contract. Inaccurate back-bills can cause smaller

businesses significant difficulties, for example if a large bill is received unexpectedly.

- **Problems with transfers**: Some poor behaviour from suppliers, and potentially TPIs, during the switching process means that businesses can be frustrated in their attempts to switch.

Our proposal

1.7. In November 2011, we consulted on a range of proposed measures that sought to help business consumers get the best energy deal without unnecessary difficulties. These measures were developed from concerns we had identified in specific areas of the business market. They proposed to widen protections for small businesses, investigate problems with businesses facing objections to transfer, improve confidence in TPIs and asked whether binding SOC would be useful in the non-domestic market.

1.8. Broadly, respondents agreed with us intervening in the first three areas above, but they did not always agree with our specific measures and in some cases made new suggestions. There was particularly mixed reactions to our proposal to introduce binding SOC in the non-domestic area.

1.9. We have reconsidered our proposal in light of these responses and additional stakeholder engagement over the last months. Our updated proposal includes the following elements:

- **Expanding protections and improving information for small businesses**. We are proposing to extend the scope of SLC 7A beyond micro businesses, clarifying termination procedures, and mandating contract end date and notice periods to be on bills.
- **Objections**. Updating stakeholders on our enforcement action, increased monitoring and encouraging industry to resolve other issues with the objections process
- **SOC**. We propose introducing a new obligation on suppliers requiring them to meet a prescribed standard of conduct in their dealings with small non-domestic consumers, namely in relation to contracts, billing and transfers
- **TPIs**. We are consulting on a new proposal to create a develop options for a common Code of Practice for non-domestic TPIs. We are also launching a parallel piece of work to review the wider regulatory framework for TPIs. This will be consulted on in more detail in 2013 and therefore will not be considered further in this draft IA.

Objectives for the RMR proposal for non-domestic consumers

1.10. Our objective for the non-domestic part of the RMR project is different to the domestic RMR. There is more new entrant competition in this section of the market and much more consumer engagement, with widespread use of fixed term contracts. Nonetheless, we have evidence that businesses, particularly smaller businesses, face a number of specific problems in engaging effectively our objective with the non-domestic RMR is to address these specific barriers.

1.11. Our proposal aims to improve information given to businesses, where issues have been identified through analysis of contacts data, non-domestic consumer research and supplier data. Our package of measures will therefore be successful if we see a reduction in the unnecessary problems some business consumers, in particular smaller businesses, face when engaging at particular points.

1.12. While we consider that our proposals will have significant benefits to business consumers in their own right, we do not consider that we will be able to meet our objectives in full unless we also tackle the issues around TPI behaviour in the market. As described in Chapter 6 of the updated proposals for businesses, we intend to issue a further consultation on our TPI proposals by the summer of 2013.

Approach to the IA

1.13. In this section we set out our approach to conducting this draft IA. We also outline the current balance between qualitative and quantitative assessments of the impacts.

1.14. The purpose of this IA is to assess the impacts of our proposal, and in particular to assess the net impact on consumers. We do this by assessing how likely our proposal is to achieve the objectives that we set out above. We start by analysing how our proposed package of measures is likely to address the barriers identified. We also assess the distributional effects of our proposal, and how it may impact on competition, sustainable development, and health and safety.

1.15. Our analysis is based on the assessment of our proposal against the counterfactual scenario. The counterfactual (or base case) represents the alternate situation that would exist if our proposal was not implemented[1]. While we have considered different options for each measure, our analysis considers exclusively the impacts that our proposed package of measures (formed by the preferred option for each measure) will have in relation to the counterfactual[2].

[1] The counterfactual is a hypothetical alternative situation that reflects the best judgment as to what would have occurred in the absence of the RMR proposal. This includes, for example, the impacts of policies that have been implemented, but have a delivery date in the future (e.g. the smart metering rollout, the green deal, etc.).
[2] We do not assess the impacts of multiple alternate options to our proposal.

1.16. In defining each one of the measures to include in our proposed package, we have looked at a number of different options. We have analysed each option to decide the optimal measures to include in the package, and/or the optimal design for any specific measure. Chapter 6 sets out the assessment of the different options we have considered for each one of our proposed measures.

1.17. The analysis conducted in this draft IA is essentially qualitative. This is driven by the lack of data at this stage to conduct a quantitative assessment of the proposals. Chapter 3 sets out how we propose to quantify the impacts of our proposed package of measures once we move to final proposals. We are requesting data from stakeholders based on this approach, so as to be able to undertake some quantification of the impacts.

Structure of the document

1.18. This document is structured as follows:

- Chapter 2 assesses the impacts on consumers
- Chapter 3 assesses the impacts on competition
- Chapter 4 assesses the impacts on sustainable development
- Chapter 5 assesses the impacts on health and safety
- Chapter 6 sets out the different options assessed in each of the measures in our proposed package
- Chapter 7 considers risks and unintended consequences

2. Impacts on consumers

Chapter Summary

This section sets out the potential impacts on consumers of the non-domestic RMR proposals. We identify the key barriers to consumer engagement in the non-domestic market, and assess the likely impacts on consumers of our proposal in terms of how they may mitigate or remove these barriers.

Question 1: Do stakeholders agree with our assessment of the impacts of our proposed package of measures on consumers? Please explain your views.

2.1. In November 2011, we consulted on a range of measures that sought to help business consumers get the best energy deal without unnecessary difficulties. These proposals were developed from concerns we had identified in specific areas of the business market. We have now conducted further consumer[3] research and looked at the issues that small businesses have raised to organisations such as the Ombudsman and Consumer Direct. This has indicated three main areas of concern:

- Lack of clear contract information
- Billing issues
- Problems with transferring supplier

2.2. This chapter sets out the evidence for each of these three areas, what we consider to be the causes of these, and the impact we expect our proposals to have for consumers.

Lack of clear contract information

Evidence of lack of clear contract information

2.3. A review of suppliers' compliance with SLC 7A showed us that all suppliers have taken steps to comply with the licence condition, introduced in January 2010[4]. This review has since been closed and suppliers have made improvements. However there were a number of deficiencies with some supplier materials mainly focused on two key issues:

[3] See Appendix 3 of the updated proposals for businesses for an overview of non-domestic consumer research.
[4] http://www.ofgem.gov.uk/business-consumers/Pages/protection-for-businesses.aspx

- Firstly, some suppliers were not providing either full or accurate information to micro businesses in their principal terms and statement of renewal terms about the duration of a contract.

- Secondly, some suppliers' principal terms and conditions were not always written in plain and intelligible language.

2.4. Consumer research indicates that some businesses are subject to poor information regarding rollovers and termination of contracts. Evidence from other business representative groups also demonstrates issues with energy contracts.

- Contracts were the biggest issue for smaller businesses in our SOC research[5]. Many businesses had negative experiences of signing up to a contract they did not fully understand. In some cases, this lead to consumers being tied into unaffordable contracts. Consumers also identified problems with complex tariff information, poor communication around contract rollovers, and unsuitable or inconsistent notice periods.

- Qualitative evidence from our research in 2011 showed widespread uncertainty and confusion over contracts and their terms[6].

- The Federation of Small Business (FSB) indicated that a fifth of members have experienced difficulties when attempting to switch energy suppliers. Of these, 67 per cent say this was due to notice periods for termination not being clearly stated, 55 per cent cite complicated terms and conditions, and 35 per cent attribute their difficulties to a lack of clarity over what paperwork needed to be submitted[7].

2.5. Consumers currently covered by SLC 7A have highlighted that they do not always receive communications relating to their contracts:

- In our qualitative research, there was a perception that suppliers failed to deliver renewal notifications[8].

- A sizeable minority of businesses in our quantitative research are dissatisfied with the clarity of contracts[9]. For example, 13 per cent of SMEs who said they

[5] Insight Exchange, 2012 Research into the proposed Standards of Conduct: Non-Domestic Consumers, September 2012, page 4.
[6] Harris Interactive, 2011, Small and Medium Business Consumers' Experience of the Energy Market and their Use of Energy, report to Ofgem. March 2011, page 26.
[7] Federation of Small Business, 2012, 'Voice of Small Business' survey panel, April 2012. http://www.fsb.org.uk/fsb-survey-panel
[8] Opinion Leader, 2012, Research Findings on the Experiences of Non-domestic Customers, August 2012, page 25.
[9] Accent, 2012, Quantitative Research into Non Domestic Customer Engagement and Experience of the Energy Market, June 2012, page 49.

had a contract were dissatisfied with their electricity contract. This was an area where significantly more of the Small and Medium sized Enterprises (SME) sector as a whole were dissatisfied in comparison to large businesses[10].

- Over a quarter (26 per cent) of FSB members surveyed say they have been rolled over without their knowledge[11].

2.6. Research from the Forum of Private Business (FPB) indicated that 35 per cent of their members surveyed did not know when their contract ended[12]. Cornwall Energy's recent report for Consumer Focus showed a similar lack of awareness, with 70 per cent of respondents to their survey of micro businesses (on a fixed term contract) aware of the expiry date[13].

2.7. FPB research also showed that 69 per cent of small businesses felt it was difficult for them to keep up to date with contract anniversaries, and notification periods even harder to keep track of. It also indicated that businesses protected under the current SLC 7A are less dissatisfied than other small businesses that are not protected by the licence obligations.

2.8. As part of the response to our November 2011 consultation we received 323 submissions from business consumers driven by a campaign from two third party intermediaries (TPIs)[14]. The first called for contract end dates and termination procedures to be highlighted on bills and for renewal letters to be sent by recorded delivery. In addition to the above, the second campaign called for standardisation of termination procedures and suppliers to offer their best price first. These responses indicate some dissatisfaction with the current level of information provided to business consumers.

2.9. We have less evidence of significant detriment in the large business sector. This is partly because contacts data does not include large businesses. Large businesses still find the energy industry complex, but issues tend to be more pronounced for SMEs. Our recent research[15] suggests that large business consumers have better relationships with energy suppliers than smaller businesses.

[10] Electricity: SME 13 per cent and 9 per cent large businesses. Gas: 12 per cent SMEs and 5 per cent large businesses.
Base: respondents that knew they had a contract (83 per cent for each fuel).
[11] Federation of Small Business, 2012.
[12] Forum of Private Business, 2010, Utilities Report, December 2010, page 2.
[13] Consumer Focus/Cornwall Energy, 2012, Under the microscope - reviewing the micro-business energy market, September 2012, page 51.
http://www.consumerfocus.org.uk/files/2012/09/Under-the-microscope.pdf
[14] RMR non-domestic informal responses
http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=70&refer=Markets/RetMkts/rm
[15] Insight Exchange, 2012.

Causes of lack of clear contract information

2.10. Energy is a lower priority area for many businesses in terms of cost. The evidence from our quantitative research[16] highlights that, of the respondents who were aware of the proportion of their energy costs in relation to their total costs, 69 per cent of micro businesses spend less than five per cent of their total costs on electricity. For small businesses the equivalent figure is 74 per cent[17]. However, we recognise that energy is a growing cost for business, making it all the more important to help engagement.

2.11. Information from our qualitative research indicates that time can be a significant barrier to business consumer engagement[18]. Some had negative experiences with regard to contract rollovers and errors in the charges they were given in their bills and believed these could have been avoided if there had been greater transparency and clarity in the information provided by their supplier. Consumers felt remedying issues can be both time consuming and costly to their business.

2.12. Our recent information request to suppliers also showed us that termination periods can differ significantly between suppliers. Some suppliers will allow termination up to 30 days before the contracts ends, whilst others allow termination up to 90 days before. Although this is within the rules of SLC 7A, it could cause confusion for many consumers.

Impact of proposals on lack of clear contract information

2.13. The extension of SLC 7A protections will increase the number of business consumers protected when they enter and come to the end of their energy contract. We have proposed to extend these protections by almost doubling the electricity threshold to 100,000 kWh and increasing the gas threshold by half to 293,000 kWh[19], in line with a current annual spend of between £10,000 and £11,000 per fuel. Table 2.1 below shows the estimated annual spend for consumers at the current micro business and proposed consumption limits, based on average non-domestic prices for very small and small businesses[20]. Annual spend closest to these thresholds for each fuel are highlighted.

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[16] Accent, 2012.
[17] Business size is defined by employee numbers. Micro businesses have less than 10 employees, and small businesses, 10-49 employees.
[18] Opinion Leader, 2012.
[19] 293,000 kWh is the threshold for monthly read gas meters.
[20] DECC thresholds for very small and small non-domestic consumers respectively are 0-20 MWh and 20-499 MWh (electricity), <278 MWh and 278-2777 MWh (gas). Prices include the Climate Change Levy (CCL), a tax on the use of energy in industry, commerce and the public sector, but exclude VAT.

Table 2.1: Estimated annual spend for current micro business consumption thresholds and proposed thresholds

		Size of Consumer	
Electricity		**Very small** £0.125 per kWh	**Small** £0.108 per kWh
Current Micro	55,000 kWh	£6,897	£5,929
Proposal	100,000 kWh	£12,540	£10,780
Gas		**Very small** £0.037 per kWh	**Small** £0.029 per kWh
Current Micro	200,000 kWh	£7,456	£5,768
Proposal	293,000 kWh	£10,923	£8,450

Source: Ofgem analysis, DECC Quarterly Prices (Q1 2012)

2.14. Elexon data indicate there are 1.93 million non-domestic electricity meters that consume up to 55,000 kWh (the current electricity threshold for a micro business). In comparison, there are 2.09 million meters that consume less than 100,000 kWh, an increase of 160,000, and 91 per cent of all non-domestic electricity meters. There is no comparable data for gas.

2.15. The addition of contract end dates on bills is a key part of our proposal to improve information to small business consumers. 83 per cent of businesses are aware that they have an energy contract, but around 10 per cent of those with a contract are unsure of its duration[21]. Our qualitative research also indicated that micro and small businesses were not always sure or aware that they had a contract with their energy supplier. It also showed that although some consumers would like more information, for many the bill will be the main contact with their supplier[22].

2.16. The expansion of SLC 7A alongside the introduction of contract end dates will alert more businesses to engage with their supplier as their contracts reach the time for renewal. If for any reason consumers do not receive the renewal letters (a current requirement of SLC 7A), or aren't aware of receiving it, the constant reminder of the end date through the duration of the contract should mean they are more aware when they need to review their supply contract. This should lead to

[21] Accent, 2012.
[22] Some consumers with low engagement wanted clearer, simpler information on their bill rather than more information in other forms. They often did not look at additional leaflets. (Opinion Leader, 2012)

fewer consumers being automatically rolled over, usually onto significantly higher rates[23].

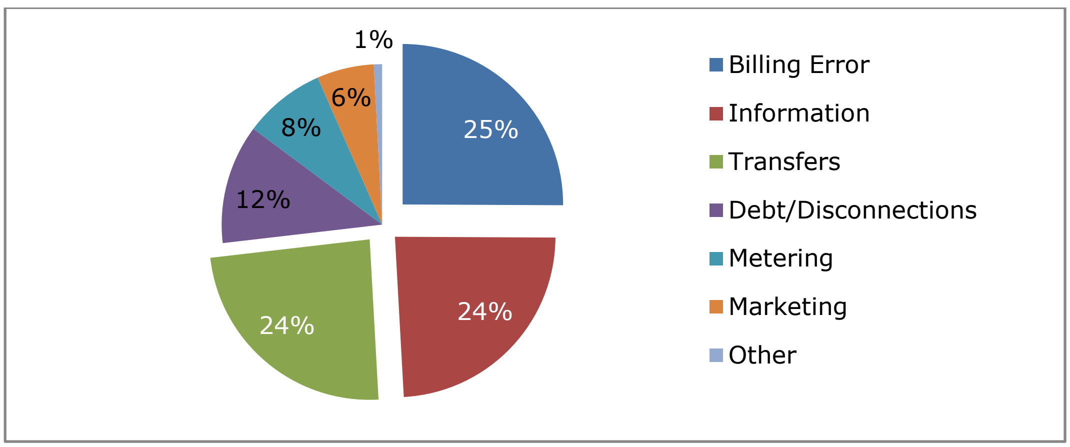
2.17. Overall, our SLC 7A proposals will increase the number of business consumers getting clear and intelligible information about their contract. Contract end dates on bills will give consumers more clarity about their fixed term contracts, helping engagement and reducing the chance of them being inadvertently rolled over.

Unclear billing information

Evidence of unclear billing information

2.18. Billing is one of the key points of dissatisfaction for non-domestic consumers. Figure 2.1 below shows that billing accounts for 25 per cent of non-domestic contacts to Consumer Direct/OFT in Q1 2012. The largest categories are back-bills, errors in bills, inaccurate meter reads, estimated bills and bill clarity.

Figure 2.1: Primary contact reasons from non-domestic consumers to Consumer Direct/OFT Q1 2012



Source: Consumer Direct/OFT, Ofgem analysis.

2.19. Our qualitative research from Opinion Leader highlights this issue, with business consumers reporting a perception that bills are not transparent and may be deliberately opaque[24]. Overall, businesses reported low levels of understanding of their energy bills and tariffs, and consequently did not scrutinise their bills very

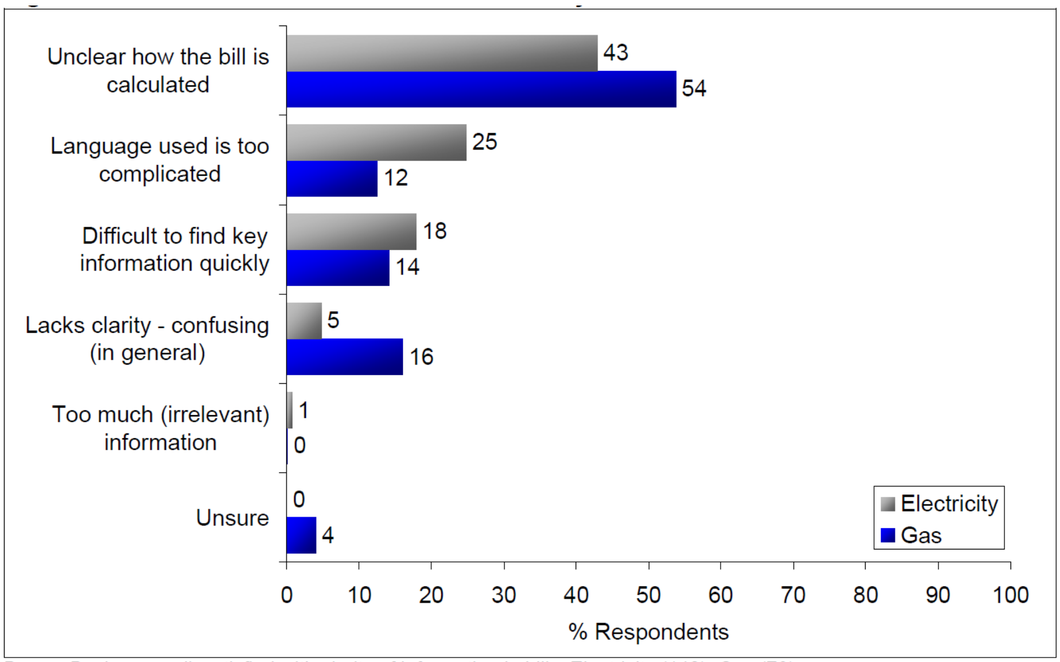
[23] In 'Under the microscope', Cornwall Energy state that an intermediary told them roll over prices are much higher than those competitively negotiated. They cite a premium of 40 per cent for electricity prices and 53 per cent for gas prices in January 2012.
[24] Opinion Leader, 2012.

deeply. Confusion stemmed from unfamiliar terminology, unexplained charges, and the number of unexplained rates.

2.20. This research also highlighted a general lack of understanding, specifically around the bill and tariffs. Many consumers, not just small businesses, felt that suppliers didn't recognise the needs of their business and that information provided by suppliers was considered to be insufficient, difficult to understand or inaccurate.

2.21. Quantitative research re-affirms this perception[25]. Overall a sixth (16 per cent) of electricity respondents and just over a fifth (21 per cent) of gas respondents were dissatisfied with the clarity of information in their bills. Figure 2.2 below shows that of those business consumers dissatisfied with bill clarity, the major reason was due to it not being clear how the bill was calculated. Complicated language and difficulty in finding key information were other reasons of dissatisfaction.

Figure 2.2: Reasons for dissatisfaction with billing clarity



Bases: Businesses dissatisfied with clarity of information in bills: Electricity (142), Gas (76)

Source: Accent, 2012

2.22. The majority of Consumer Direct/OFT contacts on billing were due to back-bills or catch-up bills. Although large back-bills are relatively infrequent they can cause small businesses difficulty. Some businesses in our qualitative research[26] felt they had probably been overcharged, but unless the sum had been considerable they

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[25] Accent, 2012.
[26] Opinion Leader, 2012.

often did not pursue it, due to the time they thought it would entail. We recently provided an update to our position on non-domestic back-billing[27]. This includes data indicating that approximately 60 per cent of back-bills issued in 2011 (where the supplier was at fault) were less than £2,000, but nearly 10 per cent were over £10,000.

Causes of unclear billing information

2.23. For many small businesses, energy is a low priority and therefore they do not scrutinise their bill too closely. The length of time spent and perceived hassle to resolve and check bills, means often businesses choose not to.

2.24. Our quantitative research[28] showed that over a third (36 per cent) of electricity consumers accept the bill, if it looks roughly correct. Smaller businesses in our qualitative research[29] simply checked bills to see if they looked about right in terms of monthly spend. They did not have the time to check and interrogate each bill, and many businesses will not challenge their supplier. This can result in problems faced by consumers not being resolved proactively, such as large back-bills.

2.25. Recent SOC research[30] highlighted that smaller business often lacked any professional relationship with their supplier and sought the ability to have a discussion with someone who understood their business. Qualitative research also suggested that some business consumers would value a dedicated account manager. The absence of any personal contact with suppliers to give context means that negative experiences can be accentuated.

Impact of proposals on unclear billing information

2.26. Enforceable SOC will ensure that suppliers have to improve behaviour and interactions or risk enforcement action and potentially being fined. This puts incentives on suppliers to improve conduct and help meet the objective of the RMR of a better functioning non-domestic energy market.

2.27. Analysis of Ombudsman cases from micro businesses shows that in 2010/2011, 81 per cent covered billing issues. Of the 1,400 billing cases the Ombudsman received last year, over 1,200 would have the potential to be covered by the proposed SOC. These 1,200 cases comprise back billing, disputed charges, inaccurate invoices and renewal notices.

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27 http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=Nondombackbillingpositionoct12.pdf&refer=Sustainability/Cp/Ewbc

28 Accent, 2012.

29 Opinion Leader, 2012.

30 Insight Exchange, 2012.

2.28. The SOC will also be particularly helpful with regards to billing, where currently there are only limited licence conditions in place for non-domestic billing (these are limited to requirements to incorporate a consumer's own reading into a bill). However, earlier this year many non-domestic suppliers signed up to voluntary standards on back-billing for micro business consumers[31]. They also signed up to voluntary measures around debt and disconnection[32]. We also note that the proposal to base the SOC on information based interactions was supported by Consumer Focus, in their response to the November 2011 consultation.

Problems with transfers

Evidence of problems with transfers

2.29. Analysis of contacts to Consumer Direct/OFT shows that transfers are a greater concern for businesses than for domestic consumers[33]. They represent around a quarter of contacts from businesses, and particularly focus on problems due to contracts and supplier objections.

2.30. This could be partly a function of the higher switching rates in the non-domestic market, but it also suggests that consumers are not fully aware of their contract terms and when they are able to switch supplier[34].

2.31. Quantitative research also indicates some dissatisfaction with the transfer process[35]. Of those SMEs that had switched or considered switching, 16 per cent of electricity respondents and 12 per cent of gas respondents were dissatisfied with the switching experience. As Figure 2.3 shows, over half of these respondents who expressed dissatisfaction either attributed this to unclear/inaccurate information or it being a time-consuming and difficult process.

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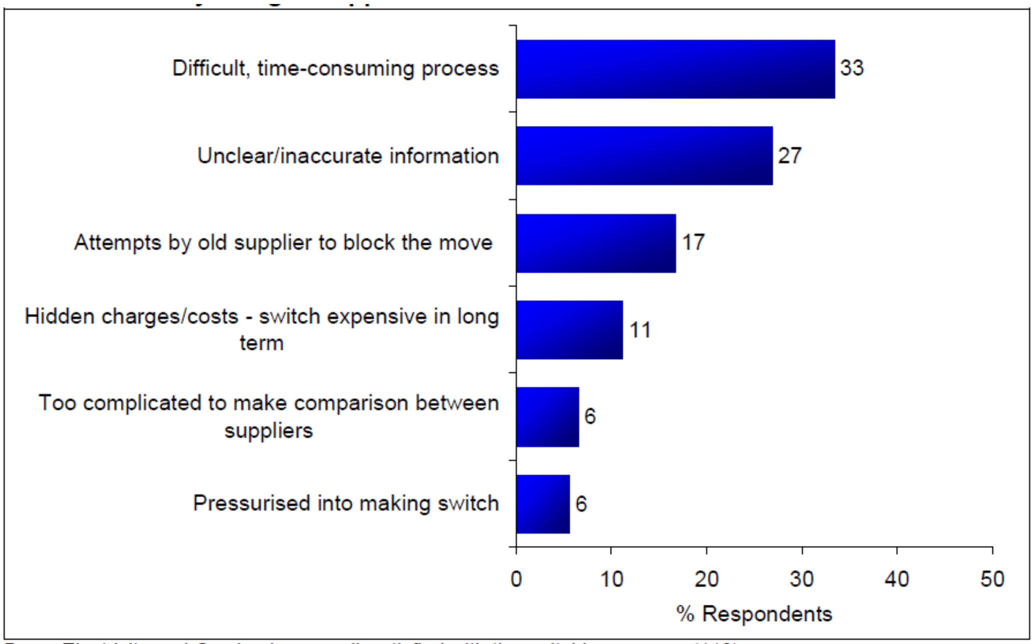
[31] http://www.energy-uk.org.uk/policy/microbusiness-.html
[32] 13 of 22 gas suppliers that supply micro businesses and 12 of 19 electricity suppliers that supply micro businesses have signed up to the code. Consumer Focus has published a list of signatories to the code, a number of which have moved further on time limiting the back-bills where the supplier is at fault. http://www.consumerfocus.org.uk/policy-research/energy/non-domesticbusiness-energy
[33] See Figure 2.1. 24 per cent of business contacts are due to transfers, compared to 6 per cent for domestic consumers.
[34] Datamonitor estimates the churn rate for major energy users (spend >£50,000 per year) at 24 per cent for electricity and gas in 2011. For SMEs (spend <£50,000 per year) the churn rate is estimated at 23 per cent for electricity and 21.5 per cent for gas.
[35] Accent, 2012.

Figure 2.3: Reasons for dissatisfaction with the experience of switching or seeking to switch energy supplier



Base: Electricity and Gas businesses dissatisfied with the switching process (118)

Source: Accent, 2012

2.32. Data that we receive from suppliers show that most object to approximately a quarter or less of attempted transfers. Objection rates for a number of suppliers also appear to have fallen since our November 2011 consultation[36]. But we are concerned that some suppliers still object to close to 50 per cent of consumers wishing to leave. We recognise that this can be influenced by practices of the gaining supplier, the proportion of consumers on fixed term contracts, and differences in contractual terms, but we consider that objections should be the exception, not the norm[37]. If consumers are consistently frustrated by the switching process, or face financial penalty, then they will be less likely to switch in the future, diminishing competitive pressure on suppliers. Of those who had never considered switching in our quantitative research, 25 per cent of SMEs using electricity and 28 per cent using gas believe it is 'too much hassle'[38].

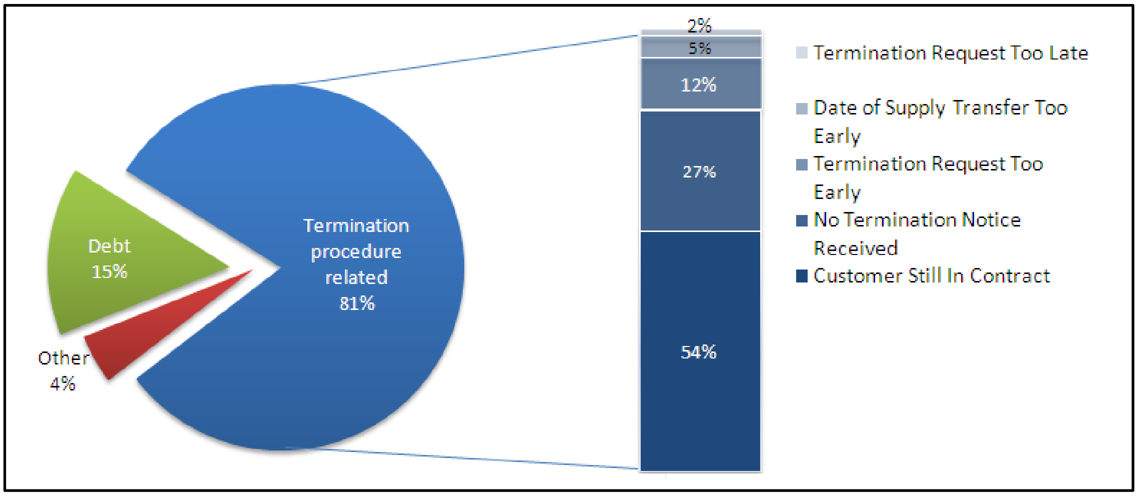
2.33. We have also received complaints directly from consumers and brokers on the difficulties they have faced when trying to switch supplier.

[36] Based on voluntary data submissions provided to us by non-domestic suppliers.
[37] See Chapter 4 of the consultation document, 'Updated proposals for businesses'.
[38] Accent, 2012.

Causes of problems with transfers

2.34. In our previous RMR non-domestic consultation document, we published analysis of an information request from August 2011 that showed 81 per cent of proposed transfers were blocked due to termination procedures[39]. Figure 2.4 below shows that the majority of these were due to the fact that the consumer was still in contract or no termination notice was received by the current supplier. This suggests that many non-domestic consumers do not have clear information about their contracts and the process for termination and switching supplier.

Figure 2.4: Most objections are related to termination procedures



Source: Ofgem, formal information request objections sample data 2011.

2.35. As mentioned in paragraph 2.12, this may be caused by the different renewal and termination procedures adopted by suppliers. Consumers may assume that termination notice periods are the same across all suppliers. Our qualitative research[40] showed some businesses are uncertain about whether they can switch, or were surprised when they tried to switch and found that they were tied to a specific fixed term.

2.36. As part of the information request, we also received copies of the notices suppliers sent to consumers when there was an objection to transfer, a requirement of SLC 14.3. Although we saw examples of good practice, some letters lacked sufficient detail explaining the reason for the objection, and what the consumer needed to do to resolve it. We published an open letter in the November 2011 consultation reminding suppliers of their obligations under SLC 14.3 and suggestions

[39] Chapter 3 of RMR non-domestic proposals, November 2011.
[40] Opinion Leader, 2012.

of good practices. We have seen some improvements to these letters in the past year.

Impact of proposals on problems with transfers

2.37. As described in paragraph 2.16, the expansion of SLC 7A alongside the introduction of contract end dates will alert more businesses to engage as their contracts reach the time for renewal. It should also make consumers (and brokers working on their behalf) more aware when the contract ends. Several brokers in our SOC research[41] noted that the responsiveness of suppliers to queries, such as contract end dates, had decreased noticeably. If there are fewer attempts by consumers to switch when still in contract, the major source of objections (see Figure 2.4) would fall.

2.38. The clarification to SLC 7A to enable termination notice by the consumers to be given at any time should also reduce a significant proportion of objections. As Figure 2.4 shows, 12 per cent of objections related to termination procedures are due to the request for termination being too early.

2.39. We are not proposing any specific licence changes to SLC 14, although our proposed SOC will cover objections. Nevertheless, our enforcement investigation should encourage suppliers to review their own objections practices. We consider that some of the issues raised to us in response to our November 2011 consultation can be addressed by the industry[42] and we hope to see these concerns addressed. However, until such changes have been made it is difficult to know what precise impact they will have.

2.40. We consider that if business consumers have more clarity about their contract, when the contract ends, and what they need to do to transfer, they will experience fewer problems when they look to move supplier.

[41] Insight Exchange, 2012.
[42] A number of respondents had concerns around change of tenancies, repeated registration requests and win-backs. See Chapter 4 of the consultation document, 'Updated proposals for businesses'.

3. Impacts on competition

Chapter Summary

This section sets out the potential impacts on competition of the non-domestic RMR proposals. We identify the likely overall impacts across suppliers as well as differential impacts across suppliers.

Question 2: Do stakeholders agree with our assessment of the impacts of our proposed package of measures on competition? Please explain your views.

Question 3: How much incremental cost would you incur to implement our proposed package of measures?

3.1. In this section we assess qualitatively the impacts on competition of our main proposals. We assess how likely our proposals are to affect supplier rivalry in the market, barriers to entry and expansion, small suppliers as well as the ability of suppliers to innovate.

3.2. This section also presents any estimates of the costs involved in implementing the policy proposals. We welcome stakeholder views on these costs in their responses to this consultation.

Impacts in terms of competitive pressure

Overall impact across suppliers

3.3. The addition of contract end dates on bills will act as an additional reminder to small businesses on fixed term contracts. For many small businesses with low engagement, the bill is the main interaction they have with their supplier. The frequent reminder of this date should act as a trigger to many small businesses to proactively review their energy contract.

3.4. If small businesses are more aware of their contract end date, we would anticipate more consumers searching the market for an energy contract, increasing the pressure on suppliers to offer competitive rates at renewal.

3.5. The expansion of SLC 7A will increase the number of business consumers receiving clear principal terms and notices of renewal terms, if they were not receiving these already. If this, alongside the contract end date on bills, improves small businesses’ engagement then competitive pressure should increase across the market.

3.6. The SOC policy intent and our principles based approach to regulation allows suppliers the flexibility to treat consumers fairly and meet their needs, in a way that is both consistent with the SOC and suits a supplier's business model/brand. This approach provides suppliers the flexibility to differentiate their services and/or innovate in the market, and showcase what they are doing to meet their consumers' needs. We see the SOC as a catalyst in improving the relationship between suppliers and their consumers and we envisage that it will help improve consumers' trust in the energy market. Alongside our specific proposals on SLC 7A, this can lead to greater levels of engagement by consumers in the market, placing greater competitive pressures on energy suppliers.

Differential impacts across suppliers

3.7. Although the majority of non-domestic suppliers operate across all business consumers, some suppliers supply to mainly large industrial consumers. Market indicators show this section of the non-domestic market is already highly competitive. Therefore we expect any changes in competitive pressure to be concentrated on suppliers with significant portfolios of small business customers.

3.8. Similarly, we are proposing that SOC only apply to suppliers of small businesses. For the suppliers that this applies to, we do not consider there are any differential impacts on competitive pressures. A principles-based approach allows for a number of solutions to market issues. This offers equal opportunities and challenges to all suppliers, who can account for their own business model and circumstances.

Impact on barriers to entry and expansion and small suppliers

3.9. In their response to our November 2011 consultation one supplier highlighted that enforceable SOC could impose a greater cost on smaller suppliers. It estimated that per customer costs would typically be ten times those of larger suppliers due to a lack of scale. This would make it more difficult for them to compete.

3.10. Another supplier stated that is was conceivable that some suppliers with a 'low cost, reduced service' model may experience significant financial impacts.

3.11. Our proposed SOC have developed significantly since the November 2011 consultation. Enforceable SOC only apply to suppliers of small businesses for billing, transfers and contracts, not all interactions and we have also proposed to introduce a bespoke enforcement approach. Due to these changes, we consider the proposals do not add a significant level of regulation to small suppliers or potential new entrants.

Consumers' expectations are that any supplier should be complying with the SOC at a minimum[43].

Impacts on innovation

Overall impact across suppliers

3.12. We consider that our updated SLC 7A proposal is proportionate, and will not significantly affect the range of products or services suppliers wish to offer their customers.

3.13. By using a principles-based approach to regulation, we are allowing suppliers a degree of flexibility and freedom to deliver against the SOC. This approach allows suppliers to be innovative and find solutions to challenges in the retail market. This would not be possible with a directives-based approach. A directives-based approach would dictate how suppliers handled interactions with their consumers. Therefore, the SOC should allow for innovations in both service and technology within the energy industry.

Differential impacts across suppliers

3.14. Our SOC proposal will apply to all suppliers to small businesses equally. The principles based approach allows all suppliers the chance to be innovative in their dealings with consumers, although some suppliers will choose to be more innovative than others. This will be a function of business strategy and individual decisions rather than a consequence of our proposal.

3.15. This will be an opportunity for the industry to adopt a different mindset with regard to how they interact with consumers, and the degree to which they put these interactions at the heart of their business. We recognise that some suppliers are already considering this type of shift in their business culture, so some suppliers may face a greater degree of change to comply with the SOC than others.

Impacts in terms of costs

3.16. Our information request showed that four electricity suppliers and eight gas suppliers already apply the requirements of SLC 7A to all their customers and a further nine electricity suppliers and nine gas suppliers segment their businesses in such a way that the proposed expansion of SLC 7A should have little or no impact on their operations. This is based on responses from 21 electricity suppliers and 26 gas suppliers in the non-domestic market.

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[43] Insight Exchange, 2012.

3.17. Responses to our November 2011 consultation highlighted potential costs to suppliers from an expansion of SLC 7A, albeit based on the previous proposals[44]. One supplier estimated additional costs of £3m over three years. Another supplier estimated an increase in staff numbers and postage costs of £100,000 per year. No other supplier provided cost estimates. Our updated expansion based primarily on increased consumption thresholds should help to minimise the cost implications for suppliers, as consumption information is readily available to suppliers.

3.18. Some respondents commented on the increased costs for bodies such as the Ombudsman if their services were widened to a larger group of businesses in line with our proposed definition. Discussions with the Ombudsman have indicated that they would not expect the absolute volume of cases to increase significantly, but these extra cases could be more complex. If access to the Ombudsman was expanded, the suppliers would ultimately bear the additional cost.

3.19. We recently asked suppliers whether contract end dates should be on bills. The majority of suppliers were supportive of this proposal, particularly for the SME market[45]. However, many suppliers stated that this may take significant system development, with some cost implications. No cost estimates were provided at this stage but we would welcome any additional estimates from suppliers.

3.20. Our proposal to clarify the termination condition of SLC 7A will affect suppliers that operate a discrete termination window, rather than allowing termination notices at any time before the end of the contract. Our information request indicates there are at least four electricity suppliers and five gas suppliers that operate this way. Under the amended SLC 7A condition, this will no longer be allowed. We would be interested in views from these suppliers on why they operate a termination window and any impacts our proposal will have.

3.21. Responses from suppliers to our November 2011 consultation highlighted that enforceable SOC could impose significant additional cost (see paragraph 3.9), although no quantitative estimates were provided due to uncertainty over the interpretation and additional monitoring required. A minority of suppliers believed that they would already comply with any enforceable SOC. We consider that our enforcement approach will reduce the scale of any additional costs and potential for regulatory risk and welcome views from stakeholders.

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[44] Our previous proposals were:
i) annual consumption not more than 293,000 kWh of gas per year, or
ii) whose premises are classified as electricity profile class 3 or 4, or
iii) employs fewer than 50 employees (or their full-time equivalent) and whose annual turnover and/or balance sheet does not exceed €10m, or
iv) is already a micro business customer.

[45] See Chapter 3 of the consultation document, 'Updated proposals for businesses'.

Approach to the quantitative assessment of costs

November 2011 consultation responses

3.22. A number of our proposals have changed materially from those published in November 2011. Whilst we received some limited information from respondents on the costs of implementation, not only did they vary across respondents for the same proposal, we consider that the information provided to us is now unlikely to be relevant. To help us develop our proposals further, we would like respondents to this consultation to provide detailed cost estimates for each area of our proposals. Below we provide further details on what information we expect to receive.

Approach to quantifying costs

3.23. We have been unable to conduct a quantitative assessment of our proposal at this stage due to the lack of data to inform the costs and benefits of each measure. Suppliers provided limited data on costs and benefits in their responses to our November 2011 consultation. Our proposed package has changed significantly since November, and consequently in a number of areas the cost information provided to us also is no longer relevant. We are therefore asking respondents to provide detailed evidence of the expected costs of our proposals. This will inform our subsequent policy consideration, final proposals and final IA.

3.24. It is important to establish a robust framework on which we can base any quantification of costs. This will provide a common base that all respondents will use when providing any data about costs. Respondents will have a common set of assumptions, which is fundamental to ensure that the data we receive is consistent, and that we can audit its quality.

3.25. To establish this framework, we discuss the categories of costs that suppliers may incur as a result of the implementation of our proposed package of measures. Where necessary we discuss the methodology to estimate these costs. We identify the specific questions on which we are asking stakeholders' views.

The proposal and the counterfactual

3.26. We are looking to monetise the costs that will result from implementing our proposed package of measures. The detail of these measures is provided in Chapters 3 to 6 of the consultation document[46].

[46] To justify their responses, stakeholders should provide any information on the assumptions, or any other additional information on the rationale that they have used to achieve their estimates.

3.27. The objective of requesting this information is to allow us to estimate the impact of our proposed package of measures against the counterfactual. The counterfactual represents the outputs and outcomes that would have occurred in the absence of the RMR intervention. The counterfactual is necessary for comparing actual outputs and outcomes to what they would have been in the absence of the RMR intervention.[47]

3.28. The estimation of costs should consider exclusively the incremental impacts from the implementation of our proposal. This means that the cost estimates should exclude any costs that would have been realised in any case, even if we did not implement our proposed package of measures.

Estimating costs

3.29. We would like suppliers to provide granular cost information that will enable us to understand the marginal impact of each measure in our proposed package. We are therefore requesting suppliers to provide data on each cost category breakdown by each of the measures in our proposed package: extending SLC 7A protections, contract end dates and notice period on bills, and SOC. We would like any costs to be presented as one-off costs and ongoing annual costs. Measures on objections and TPIs do not currently create specific additional licence requirements at this time and therefore we do not expect any cost estimates for these.

3.30. We recognise however that there may be significant scale effects by implementing these changes simultaneously. The monetisation of these costs should consider only the efficient incremental costs of implementing each of the measures in our proposed package.

3.31. To facilitate the identification of the cost categories, it is useful to distinguish between one-off costs and ongoing costs. We intend to provide further detail on what information we are seeking from respondents in a separate guidance note that we will produce during the consultation period. Our initial views are that the following cost information should be provided. This is indicative and not an exhaustive list.

One-off costs

3.32. One-off costs are incurred in setting up the systems and processes required by our proposed package of measures. Some of these costs may be hardware costs, systems costs, and internal process costs.

Hardware costs

[47] This includes, for example, the impacts of policies that have been implemented, but have a delivery date in the future (e.g. the smart metering roll-out, the Green Deal, etc.).

3.33. To implement our proposed package of measures suppliers may need to install new hardware. The costs of new hardware would include any one-off costs that suppliers will incur with the provision, hosting and security of any additional IT infrastructure.

3.34. The extent to which suppliers will need to invest in IT infrastructure to accommodate any of our proposed measures will depend on each supplier's current infrastructure, and also on how its current practices differ from our proposal.

System costs

3.35. Suppliers may need to update their systems following the implementation of our proposed package of measures. System costs are the one-off costs to update or change the billing, back-office or any other systems that may result from implementing our proposal. These should cover one-off software development costs, but exclude any hardware costs.

Process costs

3.36. In response to our proposal, suppliers may need to change their processes. These are one-off costs of any changes in processes that may result from implementing our proposed package of measures. Process costs may also refer to costs of introducing new processes.

3.37. Staff training or the introduction of new auditing processes are examples of process costs that suppliers may incur. Where a new process is introduced, suppliers should provide the description of the process, how our proposal led to its introduction, and the rationale behind the cost estimate.

Other one-off costs

3.38. These would be any other one-off costs that the supplier could incur with the implementation of our proposals. If cost data is provided for this category, suppliers need to describe the cost, ensure that the cost is incremental, and explain the rationale for the cost estimate.

Ongoing costs

3.39. Ongoing costs are the day-to-day costs of managing and running the processes that may result from implementing our proposals.

Costs in managing customer queries

3.40. Our proposed package of measures will introduce new information in the energy market, and may change some of the ways in which consumers interact with suppliers. Consumers will need time to understand the new information, including how to use it.

3.41. It is therefore possible that suppliers may face an increase in the number of consumer queries following the introduction of our measures. To understand the likely scale of this cost, it is necessary to estimate the likely increase in the number of queries from consumers. To estimate this cost, we are therefore requesting suppliers to estimate in advance the increase in the volume of queries from consumers. We are also requesting suppliers to provide information on how long it could take for the number of queries returning to its levels pre-RMR implementation.

Auditing costs

3.42. It is possible that our proposals will lead suppliers to introduce new auditing processes, or to change their current auditing processes. We are requesting suppliers to estimate the ongoing costs of managing and running these audit costs.

Costs in running new processes

3.43. As mentioned above, our proposals may lead suppliers to introduce new processes. This category captures the ongoing costs of managing and running such processes. We are asking suppliers to describe any new process they introduce, why it is necessary, and the rationale for the cost estimates provided.

Other ongoing costs

3.44. These would be any other ongoing costs that the supplier could incur with the implementation of our proposal. If cost data is provided for this category, suppliers need to describe the cost, ensure that the cost is incremental, and explain the rationale for the cost estimate.

4. Impacts on sustainable development

Question 4: Do you agree with our assessment of the impacts of our proposed package of measures on sustainable development? Please explain your views.

4.1. We do not consider there are any significant impacts on sustainable development arising from our proposals. However, we invite views on this issue.

5. Impacts on health and safety

Question 5: In your view, what would be the health and safety impacts resulting from the implementation of our proposal? Please explain your views.

5.1. We do not consider there are any significant impacts on health and safety arising from our proposals. However, we invite views on this issue.

6. Risks and unintended consequences

Chapter Summary

This section sets out the potential risks and unintended consequences of our updated proposals for businesses.

Question 6: Do you agree with our assessment of the risks and unintended consequences that could result from our proposal? Please explain your views.

SLC 7A: Protections for small businesses

Expansion of SLC 7A protections

6.1. We recognise that by changing the current micro business definition of SLC 7A, we may be introducing confusion in relation to business consumer complaints. Currently the micro business definition is used operationally by the Ombudsman and has been adopted by consumer organisations and suppliers in relation to the complaints handling regulations. If we expand our SLC 7A protections while access to redress remained the same, some business consumers may not be getting consistent regulatory support.

6.2. We have been closely engaging with relevant parties (including DECC and BIS) and there is broad agreement that it would be better to have consistency in the market. They expressed interest in reviewing the appropriateness of their micro business definition, given our evidence that it was not covering all the consumers who wanted additional support.

6.3. In the short term it is not going to be possible to complete the process for changing legislation, although we will continue to pursue this. We have been in discussions with the Ombudsman, Consumer Focus (including the Extra Help Unit) and the Citizens Advice consumer service to discuss the possibility of a voluntary agreement to ensure that any additional small business consumers (not previously covered by the micro business definition) may be referred through an escalated complaints route should it be necessary. In doing this, we seek to reduce the risk of increasing complexity for business consumers.

6.4. We have proposed to extend SLC 7A protections significantly, almost doubling the electricity threshold and increasing the gas threshold by half. However, some smaller businesses do not regularly check their energy consumption, as Table 7.1 below indicates. Smaller businesses, in qualitative research[48], also admit that monitoring energy usage is not a priority. Nevertheless, consumption information should be readily available to suppliers and many business consumers are familiar with their monthly spend. This should increase over time as more businesses have smart and advanced meters installed.

Table 6.1: Proportion of businesses that never checked energy consumption

	Micro Businesses	Small Businesses	Medium Sized Businesses	Large Businesses
	%	%	%	%
Electricity	24	16	12	7
Gas	23	21	19	10

Bases:
Electricity: micro businesses (294), small businesses (270), medium sized businesses (108), large businesses (138)
Gas: micro businesses (112), small businesses (132), medium sized businesses (94), large businesses (62)

Source: Accent, 2012

Mandate contract end date on bills

6.5. Although contract end dates will be mandated through our proposed licence condition, there will be some flexibility as to where and how suppliers provide this information. Our draft licence is clear that this should be in a prominent position and in plain and intelligible language. This should help to minimise any risk that suppliers do not show this information clearly, such as on the back of the bill.

6.6. The reminder of the contract end date may encourage more consumers to terminate their fixed term contracts or opt-out of automatic rollover. If they do not find an alternative supplier, they will be charged out-of-contract rates or deemed rates. These rates tend to be more expensive than those under a fixed term contract. However, we consider that this risk is outweighed by the improvements in engagement we expect from our proposal (see paragraph 2.16) and fewer consumers being rolled over without their knowledge.

Objections

6.7. There is a risk that industry resolutions, potentially including code modifications, are not successful in improving the issues[49] highlighted in response to

[48] Opinion Leader, 2012.
[49] See Chapter 4 of the consultation document, 'Updated proposals for businesses'.

our previous November 2011 consultation. If this is the case, we will consider if further regulatory intervention is necessary. Our current enforcement investigation should encourage all suppliers to review their objections practices.

Standards of Conduct

6.8. Respondents to our November 2011 consultation raised concerns about the potential for regulatory risk posed by the SOC proposal. This was based on our previous proposal covering all interactions between suppliers and consumers. We have since proposed to limit the scope of the SOC to billing, contracts and transfers.

6.9. Our new policy proposals still cover a significant number of interactions between consumers and suppliers. Given the wide scope of this licence condition, concerns were raised that suppliers could be exposed to risks if our expectations in relation to the SOC were not clear. This would lead to overly cautious behaviour by suppliers, which would be expensive, something that would ultimately lead to the cost of the service increasing to business consumers.

6.10. To address these concerns and help clarify our intent with regard to expectations around the SOC, we have:

- limited the scope of the SOC to interactions in billing, contracts and transfers;
- introduced a fairness provision; and
- signalled our intention to provide guidance around existing legal terms and introduce a bespoke enforcement approach.

6.11. The addition of an overarching fairness objective will help focus supplier activity in relation to the SOC in a way that is consistent with our underlying policy intent and will minimise the potential of regulatory risk.

6.12. The consultation document outlines that we will provide clarification about the terminology used in the SOC to ensure that suppliers and consumers are aware of how we interpret these terms. This clarity will also reduce regulatory risk as suppliers and consumers are clear on our aim and requirements with reference to the SOC.

6.13. Stakeholders noted that our proposed approach to enforcing the SOC would have an impact on how they worked in practice. Our approach to enforcement is outlined in the consultation document. We expect that this approach should help to mitigate unintended consequences. Where supplier actions are not in line with our policy intent we may take enforcement action.

6.14. We will take a proportionate approach to enforcement and therefore see a role for the Ombudsman with regard to individual cases. There may be a risk, based on experiences in some markets, that the Ombudsman’s determinations will develop precedent over time. We do not feel this is the case and this is reflected in their terms of reference which state they will not be bound their by their past decisions. Based on our proposal it does not seem that the Ombudsman's actions will be inconsistent with our policy intent. However, if this measure comes into force we will liaise with the Ombudsman to ensure a good understanding of the SOC, the policy goals and our approach to enforcement. There is already a memorandum of understanding between the Authority and the Ombudsman which states we will offer advice and expertise when needed.

7. Assessment of alternative options

Chapter Summary

This final chapter assesses the alternative options we have considered for each proposal and advantages and disadvantage of the alternatives.

Question 7: Do stakeholders agree with our assessment of the alternative options to our proposed package of measures? Are there any alternative options we have not considered? Please explain your views.

7.1. This chapter outlines the alternative options we have considered for each of our policy proposals. We have considered stakeholder responses and conducted further quantitative and qualitative research since our previous consultation in November 2011 to improve our proposals.

7.2. We consider each policy proposal in turn:

- SLC 7A: Protections for small businesses
- Objections
- Standards of Conduct (SOC)

7.3. As outlined in Chapter 1, our proposal for a single Code of Practice for non-domestic third-party intermediaries (TPIs) is at an early stage and we will consult further on the regulatory framework for TPIs more generally in 2013.

7.4. Pros and cons of alternative options are set out, alongside our preferred policy option. The consultation document, preceding chapters on impacts on consumers, impacts on competition and risks and unintended consequences describe our preferred options in more detail.

SLC 7A: Protections for small businesses

7.5. Our proposals in Chapter 3 of our updated proposals for businesses include the expansion of SLC 7A protections to businesses beyond micro businesses, clarification on termination procedures under SLC 7A and the mandating of contract end dates on consumer bills.

7.6. We have considered alternative options for SLC 7A expansion based on meter type and employee/turnover. Supplier responses to our November 2011 consultation often mentioned that information on employees or turnover is difficult to verify. Our research has also indicated that employee numbers are not always a good indicator of the relative importance of energy to the business. Therefore we are not proposing to increase the threshold on employee numbers and turnover to the European Union (EU) small business definition as proposed in our November 2011 consultation[50].

7.7. Mandating contract end dates on bills is a new proposal. Consumer groups and TPIs told us that small businesses would benefit from the end date of their contract being clearly placed on the bill. The majority of non-domestic suppliers have also expressed support for this proposal[51]. The policy options that have been considered are summarised in the table below, with our preferred policy highlighted.

Table 7.1: Policy options for SLC 7A protections

Policy	Options considered
Expansion of SLC 7A protections	**Option 1.** Covering all non-domestic consumers with non-half hourly electricity meters
	Option 2. Include EU small business definition
	Option 3. Increase consumption thresholds
Contract end date and on bills	**Option 1.** Voluntary agreement
	Option 2. Licence condition for whole non-domestic market
	Option 3. Licence condition for small businesses protected by SLC 7A
Clarify termination and rollover procedures	**Option 1.** No change
	Option 2. Clarification that consumers can give termination notice at any time

Expansion of SLC 7A protections

Option 1 – all non-half hourly metered consumers

7.8. We have considered the option of extending the scope of SLC 7A to include all non-domestic consumers with non half-hourly (nHH) electricity metering[52].

[50] Fewer than 50 employees and ≤€10 million turnover or balance sheet.
[51] 16 suppliers were supportive of the principle, although some considered it should only apply to the SME market. Five suppliers were opposed, and four suppliers were either undecided or agreed with the principle with some reservations.
[52] There are 2.15m nHH metered electricity supply points from profile class 3 to 8 (Source: Elexon).

7.9. Advantages of including all nHH metered consumers:

- It would eliminate the risk of identifying a consumption threshold that does not cover the small businesses we are aiming to protect.
- It is relatively easy for business consumers to identify. Profile class is already identified on bills and meters.
- We would only be excluding the largest businesses with half-hourly (HH) metering, and more businesses would be covered by the protections of SLC 7A[53].

7.10. Disadvantages of including all nHH metered consumers:

- There is a significant risk that, without clarity on how suppliers should treat customers with multiple sites, large businesses could be included in the definition. Several respondents criticised our original proposal to include profile class 3 and 4 electricity consumers as it could potentially include large customers with a mix of HH and nHH meters[54]. These businesses would already have a staff member or employ a broker to negotiate and monitor their energy contract.
- If the protections of SLC 7A are aligned with complaints and redress measures this may cause resourcing issues for the organisations set up to help smaller businesses, such as the Ombudsman. It may be difficult for some of these organisations to deal with the increased volume and complexity of these business cases.
- This definition could be difficult to communicate to consumers, as nHH is a settlement definition based on maximum demand, not consumption. Although higher profile classes tend to have higher consumption, this is not always the case. Elexon data shows that 18 per cent of profile class 5 (traditionally viewed as larger consumption sites) have low consumption, less than 10,000kWh per year, but 1.5 per cent of profile class 3 (viewed as more domestic-like business consumers) use more than 100,000kWh per year.
- In future all non-domestic sites will have half hourly capable metering as a result of the rollout of smart and advanced meters. This option may not cover the low consumption non-domestic consumers that SLC 7A is designed to protect.

[53] There are around 120,000 HH meters. Any supply must have a HH metering system where the average of the maximum demands in the three months of highest demand over a 12 month period is more than 100kW (Source: Elexon).
[54] Profile class 3 = non-domestic unrestricted. Profile class 4 = non-domestic Economy 7. Profile classes 5 to 8 are maximum demand. This refers to a customer whose metering system has a register that gives the maximum demand for a given period (Source: Elexon).

Option 2 – include the EU small business definition

7.11. Another alternative small business definition would retain the employee number and turnover proposed in our November 2011 consultation. This is based on the EU definition of a small business; fewer than 50 employees and annual turnover/balance sheet not exceeding €10 million[55].

7.12. There are a number of advantages to using the EU small business definition:

- EU business definitions are already widely known and currently used in legislation.
- Many consumers are currently identified by the Ombudsman, Citizens Advice Service and Extra Help Unit (EHU) by number of employees and turnover. For most of the cases referred to the EHU in 2012, consumers gave no indication of their energy spend and/or consumption.
- The current EU micro business definition is used for the purposes of the complaints handling standards and redress scheme for gas and electricity[56].

7.13. Disadvantages of using the EU small business definition:

- The bill payer may not know or be willing to provide this information.
- Many suppliers stated that this information can be difficult to verify. Specific business information may be held by Companies House, but there is no guarantee that this information will be available for the business in question[57]. They may be too small or the company may be unregistered. There is currently no requirement for businesses to submit their employee and turnover information to Companies House as part of their business record.
- There is not always a consistent link between business size and energy usage. For example, small energy intensive manufacturing businesses will use large amounts of energy but only have few employees. The increased

[55] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises
[56] The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008: http://www.legislation.gov.uk/uksi/2008/2268/contents/made
The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 : http://www.legislation.gov.uk/uksi/2008/1898/contents/made
[57] Companies House examines and stores company information and makes this available to the public. http://www.companieshouse.gov.uk/

scope of including businesses up to 50 employees may be protecting consumers that do not require it.

- Larger energy-intensive users could fall outside of the proposed consumption thresholds, but still be within the employee and turnover requirement. These consumers may already have individual account managers and tender for their energy contracts, indicating that they do not need the additional protections of SLC 7A.

Option 3 – Increased consumption thresholds

7.14. Our preferred option is to widen the SLC 7A protections to a definition primarily based on increased annual consumption thresholds, to 100,000 kWh for electricity, 293,000 kWh for gas, and any consumer already covered by the existing micro business definition on employees and turnover.

Contract end date on bills

Option 1 – Voluntary agreement

7.15. An alternative to a binding requirement on suppliers to print the contract end date on bills would be to seek a voluntary agreement from suppliers. A small number of suppliers have already stated they are introducing this, which may encourage other suppliers to follow suit. However, we consider that consumers will benefit most if this was mandatory across the market.

Option 2 – Mandate contract end date on bills for all non-domestic consumers

7.16. Another option is for our proposal to apply across the whole non-domestic market. We do not have evidence that this would be beneficial, nor have we received calls for end dates on bills from large consumer groups. Our recent information request indicates that the larger the business, the more likely it is that the person who receives and pays the bill is also the contract manager. It is more commonplace for large businesses to deal with brokers, or have dedicated account managers and it would be rare for the contract end date to be overlooked.

Option 3 – Mandate contact end date on bills for small non-domestic consumers

7.17. Although there will be some additional costs and implementation time for suppliers, we consider this proposal will have a greater positive impact if it is implemented across all suppliers for small business consumers.

Clarification of termination and rollover procedures

Option 1 – No change

7.18. Currently there may be confusion around the termination and rollover procedures for consumers covered by SLC 7A. Even though consumers may have already given notice that they do not want to rollover (which they can give at any time before the relevant date), some suppliers require a separate termination notice. If no changes are made to SLC 7A this may continue. We consider it is important that we clarify termination requirements.

Option 2 – Clarification of termination procedures

7.19. We propose to amend SLC 7A to make it clear that any consumer that gives notice that they do not wish to rollover will not be required to give a further termination procedure. Aligning the notice periods for termination and rollovers will simplify the process for small businesses.

Objections

7.20. At the current time we are not considering any specific licence changes to SLC 14 on objections and we received few responses to our previous consultation advocating changes to the licence. As part of our Better Regulation principles[58] we consider some of the issues raised to us around objections may be able to be resolved through appropriate modifications to industry processes[59]. However, the proposed SOC would cover objections.

Standards of Conduct

7.21. In November 2011 we consulted on proposed new SOC, to try and tackle problems in the non-domestic market and improve supplier conduct. These SOC proposed to cover all businesses (rather than small businesses as in the existing SOC) and cover all interactions. We received a considerable level of challenge on this proposal, especially from both large and small independent suppliers not used to the level of regulation that new SOC may involve.

7.22. Respondents to our previous consultation suggested the market is already competitive. For example, in instances of detriment, business consumers are free to change supplier if they are unhappy with the service, therefore action was not needed. Additional issues over regulatory risk and interpreting our intentions around the SOC were raised by respondents. There was some support from business representative groups. Consumer Focus supported SOC focussed on improving information.

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[58] http://www.ofgem.gov.uk/About%20us/BetterReg/Pages/BetterReg.aspx

[59] See Chapter 4 of the consultation document, 'Updated proposals for businesses'.

7.23. Following the consultation, we have commissioned research, reviewed market indicators and contacts data to respond to the challenges that we received. The policy options which have been considered are summarised in the table below.

Table 7.2: Policy options for the Standards of Conduct

Policy	Options considered
Framing and scope of Standards of Conduct	**Option 1.** Legally binding SLC, covering billing. Using a directives-based approach to regulation.
	Option 2. Legally binding SOC, covering billing, using a principles-based approach to regulation.
	Option 3. Legally binding SOC as in Option 2 covering billing using principles-based regulation. Also adds an overarching fairness provision above SLC 7A and SLC 14.
	Option 4. Legally binding SOC, covering small non-domestic consumers and billing, contracts and transfers.
	Option 5. Legally binding SOC for all non-domestic consumers covering all interactions between suppliers and consumers.

Framing and scope of the SOC

Option 1 – Legally binding supply licence conditions for billing, using a directives based approach to regulation

7.24. This approach would outline a prescriptive set of rules that suppliers would need to meet in order to comply with the licence condition. The licence condition would only cover billing activity and be limited to suppliers of small non-domestic consumers. Our analysis indicates that problems in the market are centred on contracts, transfers, and significant issues around billing. Billing can be a particular issue for non-domestic consumers, covering a range of billing problems including (but not limited to) back-billing, billing accuracy and billing clarity.[60,61] Currently we only have limited protections for billing, whereas we have some specific protections around contracts (SLC 7A) and objections (SLC 14).

[60] Accent, 2012.
[61] Ombudsman Services: Energy

7.25. This option would limit the coverage of the licence condition to suppliers of small businesses, as we do not have strong evidence showing a need for this regulation on larger businesses.[62]

7.26. By using a directives-based approach we would dictate exactly what elements of billing suppliers must focus their attention on. This approach would dictate to a supplier how they must comply and offers little or no flexibility in delivery. A directives-based approach could stifle innovation as suppliers will not have flexibility to meet challenges in the market. Suppliers could also find themselves in a challenging situation to overcome problems in the market. For example, billing clarity has been raised as an issue in our research. However, our qualitative research of the market suggests that some market participants want more detail on bills and others want less. In this scenario, a directives-based approach does not easily allow the market to find solutions for all participants. A directives-based approach also dictates specific interactions that are covered by the licence. However, as noted earlier, problems in billing are more widespread than just two or three issues, and there would be a risk not all issues would be covered.

7.27. We are not proposing to use this option for several reasons. As a result of the lack of flexibility from a directives-based approach to regulation, we would limit innovation and it would harm the ability of suppliers to meet challenges they face in the market as compliance is prescribed in the licence. Additionally, the existing protections do not go far enough in two major problem areas in the market, contracts and transfers.

Option 2 – Legally binding SOC for billing, using a principles based approach to regulation

7.28. This proposal would match the proposal in Option 1 but would use a principles based approach to regulation. This approach would give suppliers the flexibility to tackle billing issues and ensure the range of challenges faced in the market regarding billing can be fully addressed.

7.29. This approach is favoured over Option 1 as it tackles many of the drawbacks of this approach to regulation. However, it would not cover the other problems identified with respect to contracts and transfers.

Option 3 – As Option 2 and add an overarching fairness provision to the existing licence conditions SLC 7A and SLC 14

7.30. This option would build on the increased protections around billing offered in Option 2 and add an overarching fairness provision above the existing protections of SLC 7A and SLC 14. This would offer increased protections around billing for small non-domestic consumers. This approach would give suppliers the flexibility to meet

[62] Insight Exchange, 2012.

the needs of their consumers and deliver against competing consumer needs (for example, around providing more or less detail on a bill).

7.31. Our evidence highlights that over two thirds of contacts to Consumer Direct/OFT in Q1 2012 were centred on billing, contracts and transfers. Therefore additional protections in these areas would help tackle the vast majority of problems in the market. This fairness provision would clarify to suppliers how the attitudes, behaviours and interactions with customers should take place. This would likely bring about improvements in supplier behaviour in contracts and transfers.

7.32. However, our analysis of contacts data highlights that there are issues outside of the existing licence conditions. For that reason, we do not propose to proceed with this proposed option, as we would not be able to improve supplier conduct in activities outside of the licence.

Option 4 – Legally binding Standards of Conduct, covering small non-domestic consumers, using principles-based regulation

7.33. Our preferred option is to proceed with proposals to introduce revised SOC in the non-domestic market. Our proposals are different to the November 2011 consultation. We would limit the scope of the SOC to suppliers of small businesses, in line with our proposed expansion of SLC 7A. Limiting the SOC to cover small businesses is based on our research, which supports the need for intervention to help small business consumers[63].

7.34. We are also proposing to focus the Standards to look at the three key areas of consumer detriment around billing, contracts and transfers.

7.35. Small businesses are currently covered by existing, non-binding SOC. Despite the introduction of the voluntary standards, there are still significant issues for these businesses. Therefore, we consider that the existing voluntary SOC have not worked and our new proposal needs to be backed by enforcement powers.

7.36. To negate issues around regulatory risk, we are proposing to include an overarching 'fairness' principle as part of the proposed licence drafting.[64] This approach also provides guidance to non-domestic suppliers about how they should approach their interactions with their customers. By acting fairly, we believe that suppliers will improve consumer interactions in the market.

[63] Insight Exchange, 2012 and Opinion Leader, 2012.
[64] See Appendix 5 of the consultation document, 'Updated proposals for businesses'.

Option 5 – Legally binding SOC, covering all non-domestic consumers

7.37. Our last option and original policy proposal was to introduce the SOC as a legally binding, overarching licence condition covering suppliers to business consumers of all sizes. This option would cover all interactions between suppliers, and their customers, including their representatives. Following our November 2011 consultation and analysis of our evidence, we are not proposing this option. There is limited evidence to introduce the SOC for large businesses[65]. We therefore do not think it would be proportionate to use this option.

[65] Insight Exchange, 2012.

Appendix 1 – Consultation Questions

CHAPTER Two: Impact on consumers

Question 1: Do stakeholders agree with our assessment of the impacts of our proposed package of measures on consumers? Please explain your views.

CHAPTER Three: Impact on competition

Question 2: Do stakeholders agree with our assessment of the impacts of our proposed package of measures on competition? Please explain your views.

Question 3: How much incremental cost would you incur to implement our proposed package of measures?

CHAPTER Four: Impact on sustainable development

Question 4: Do you agree with our assessment of the impacts of our proposed package of measures on sustainable development? Please explain your views.

CHAPTER Five: Impact on health and safety

Question 5: In your view, what would be the health and safety impacts resulting from the implementation of our proposal? Please explain your views.

CHAPTER Six: Risks and unintended consequences

Question 6: Do you agree with our assessment of the risks and unintended consequences that could result from our proposal? Please explain your views.

CHAPTER Seven: Assessment of alternative options

Question 7: Do stakeholders agree with our assessment of the alternative options to our proposed package of measures? Are there any alternative options we have not considered? Please explain your views.

Appendix 2 – Bibliography

Accent, 2012, Quantitative Research into Non Domestic Customer Engagement and Experience of the Energy Market.

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Opinion Leader, 2012, Research Findings on the Experiences of Non-domestic Customers.

Appendix 3 – Feedback Questionnaire

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?

Please send your comments to:

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