

June 2000

Marketing gas and electricity

**Decision document and
proposals on the modification of
licence conditions**

Summary

The introduction of competition into the domestic gas and electricity markets has led to suppliers using direct selling techniques such as doorstep sales and telephone sales. Increasingly, suppliers are also selling contracts for electricity and gas in public places such as supermarkets, shopping malls and motorway service stations.

Surveys show that most people find direct sales such as these informative. However, not all consumers' experiences have been positive, with many being misinformed or misled by sales agents. For this reason, OFFER and Ofgas (now merged to be Ofgem) introduced licence conditions for domestic suppliers to regulate their marketing activities. The present conditions include requirements on suppliers covering staff selection and training; sales agents identification; audits of all doorstep or telesales; cancelling contracts where requested by the customer; maintaining contact if there is a delay; and providing complaint handling procedures including compensation arrangements. These licence conditions have recently been extended to March 2002.

Ofgem's experience of using the licence conditions to regulate marketing has led it to propose a number of enhancements to ensure that consumers feel confident when changing supplier. Well run marketing should contribute to an efficient market for domestic gas and electricity. The enhancements proposed would oblige suppliers to:

- ◆ ensure the customer understands that they have entered into a contract;
- ◆ send out terms and conditions following a telephone sale (gas only; this already applies in electricity);
- ◆ provide for the on-going management of sales agents;
- ◆ carry out an audit and provide the same safeguards for sales conducted in public places as for doorstep and telephone sales;

Views are invited on the proposed enhancements. Ofgem expects the enhancements to be in place by August 2000.

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1. Introduction

Purpose of this document

- 1.1 In January 2000, Ofgem consulted on proposed enhancements to existing licence conditions on the marketing of gas and electricity to domestic consumers. The objective of any change to the licence conditions is to provide further protection to customers from inappropriate sales techniques while enabling suppliers to market actively. This document outlines Ofgem's view following initial consultation, proposes formal licence amendments and outlines the way forward for introducing the new licence conditions.

Background

- 1.2 The present marketing conditions in the gas and electricity supply provide for largely identical requirements on gas suppliers and electricity suppliers. They were introduced, in light of experience in the early stages of the new domestic gas market, to supplement existing general regulations on direct selling and provide the Director with powers to protect customers in the particular circumstances of the gas and electricity markets.
- 1.3 The present licence conditions require supply licensees in respect of direct sales to ensure staff are properly selected and trained; agents are readily identifiable and contact takes place at reasonable times; that sales on the doorstep or by telephone are audited; reasonable steps are taken to cancel contracts when requested by the consumer; and that contact with the customer is maintained in case of a delay to processing the contract; provide complaint handling and that no supplier enters into an agreement with agencies seek up-front payments from customers.
- 1.4 Following the January consultation, the Director notified suppliers on 15 March 2000 that the licence conditions covering marketing would be extended for a further two years to 30 March 2002.
- 1.5 The January consultation also asked for views on a number of proposed enhancements to the licence conditions. These enhancements included ensuring consumers have understood they had a contract; extending the current

requirements on electricity suppliers to send out terms and conditions following a telephone sale to gas suppliers; widening the licence requirements to cover sales in shopping centres and internet sales; and ensuring appropriate on-going management of staff. These enhancements are discussed in greater detail in this document.

- 1.6 Ofgem received 34 responses to the consultation in January, of which two were confidential. A list of non-confidential respondents is included in Appendix 1. Their responses have been placed in the Ofgem library.

Structure of the document

- 1.7 The Chapters in this Consultation Document are structured in the following way: Chapter 2 outlines the regulatory framework to introducing enhancements to the licence conditions. Chapter 3 outlines the background to the introduction of the marketing licence condition. Chapter 4 sets out the proposed licence amendments, the views of respondents to Ofgem's previous consultation and Ofgem's view. Chapter 5 provides information on other areas of consumer protection which will affect those marketing gas and electricity. Chapter 6 provides a summary and sets out the way forward in introducing licence enhancements.

Comments invited

- 1.8 Comments are invited on the issues raised in this document and in particular Ofgem's proposals. It would be helpful to receive replies by 19 July 2000. Responses should be sent to:

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London
SW1E 5JD
Or by e-mail: Rosalind.Cole@ofgem.gov.uk.

It is open to respondents to mark all or part of their responses as confidential.

However, we would prefer it if, as far as possible, responses were provided in a form that can be placed in the Ofgem library. If you have any queries concerning this document Tanya Morrison (020 7932 1679) or Joanne Taylor (020 7932 5854) would be pleased to help.

2. Regulatory Framework

- 2.1 This chapter sets out the regulatory framework for the licence conditions covering marketing for gas and electricity suppliers. It further explains processes to alter the licence conditions within the gas and electricity regulatory frameworks.
- 2.2 Legislation for gas and electricity include duties for the Director General of Gas Supply and the Director General of Electricity Supplier (hereinafter both are referred to as the 'Director') to secure and promote, respectively, effective competition in the supply of gas and electricity, to protect the interests of consumers in respect of the prices charged and the other terms of supply, the continuity of supply, and the quality of supply provided.
- 2.3 Both the Gas Act and Electricity Act allow for the amendment of individual licences. However, the framework for altering classes of licences varies somewhat with the procedures which the Director must follow for changing licences for gas suppliers being set out in the Act itself while the procedures in electricity are contained within licence conditions. The framework for calculating the required voting thresholds ("the 90/90 rule") also varies.
- 2.4 The current marketing licence conditions in electricity and gas supply licences provide for largely identical requirements on suppliers. The conditions currently in place will cease to have effect on 31 March 2002. Background to the current licence conditions is set out in more detail in the next chapter.

Electricity

- 2.5 The Electricity Act 1989 allows for amendments to the conditions of individual licences. Before making modifications, the Director must give notice that the modifications are being proposed and setting out their effect and why it is intended that the modification is to be made. Changes are made with the consent of the individual licensees, or, where consent is not forthcoming, by reference to the Competition Commission.

- 2.6 In order to make changes to a class of licences, such as those for supply to designated customers, a revision can be made to the Contract Terms Conditions of the electricity supply licences (Condition 41).
- 2.7 These conditions cover the terms that suppliers can offer to designated customers and can include conditions concerning dealings with customers prior to and for the purpose of entering into contracts for electricity supply.¹ The licence allows for amendment to the Contract Terms Conditions of all licences covering supply to designated customers. The current licence conditions covering marketing were introduced in this manner.
- 2.8 In order for the enhancements proposed by the Director to be introduced, under the relevant conditions of the PES and second-tier licences, it is necessary that not less than 90% of electricity suppliers which are entitled to supply electricity to Designated Premises² agree and that suppliers to 90% of designated customers agree to the modification. How the Director will establish the requisite numbers is set out in Appendix 4.

Gas

- 2.9 Section 23 of the Gas Act sets out (inter alia) the basis on which the Director may modify for general application the standard conditions of supply licences. Under Section 23 the Director may not make such a modification unless 90% of suppliers whose licences contain the standard conditions, by number and by volume of gas, supplied consent to the modification. The current marketing licence condition for gas suppliers was introduced through this route³.
- 2.10 The power of the Director to amend licences under section 23 is subject to veto by the Secretary of State. If a licence modification cannot be introduced by agreement under section 23, the Director may make a reference to the Competition Commission under section 24 if he remains minded to press for the introduction of a modification.

¹England and Wales PES Licence Condition 33 paragraph 10(c)
England and Wales Second Tier Licence Condition 51
Scottish PES Licence Condition 28 Part V
Scottish Second Tier Licence Condition 42

² Premises using no more than 12,000 kWh annually.

³ Standard Condition 14A of the Gas Suppliers'

Way forward

- 2.11 The process and timetable for voting on the amendments to licences are outlined in chapter 6. Assuming that the required numbers do consent to the changes, the Director will issue notices to licensees implementing the amended conditions.
- 2.12 If the requisite number of consenting votes is not received, Ofgem will consider what further action it can take.

3. Progress on marketing regulation to date

Background.

- 3.1 In January 2000, Ofgem published a consultation document⁴; ("the January document"). The document outlined the extensive use of doorstep sales agents in marketing to gas and electricity customers. Most suppliers active in the gas and electricity markets report that doorstep selling or other forms of direct sales (such as approaches in shopping centres and telesales) provide the most effective means of attracting customers to switch suppliers. The majority of suppliers active in the domestic market have large-scale field sales forces. In many cases these are not employees of the licensee but employed (or engaged on a self-employed basis) by specialist local agencies hired to work on behalf of the licensee.
- 3.2 Since the domestic gas market opened to competition in the South West in 1996, doorstep selling has become the single most important source of information. Research commissioned by Ofgem has found that doorstep sales agents is a leading source of information for customers, particularly for those who switch supplier⁵. In total 62% of all customers reported having had some contact with new electricity or gas suppliers through doorstep selling. This suggests that up to 15 million households have had one or more doorstep sales visits.
- 3.3 Ofgem believes that doorstep selling is one of the most important ways in which the benefits of competition are drawn to the attention of customers – in particular those in lower income and other disadvantaged groups. If direct sales are conducted professionally and with sensitivity they are an important and valid part of the market place and one which brings important benefits.
- 3.4 A substantial majority of customers who have been in contact with suppliers report no problems. However, particularly when prompted, a number of problems were reported. Similar results arose in relation to telesales. The significance of these issues is not known. Some may reflect general customer

⁴ 'Marketing Gas and Electricity - A Consultation Document' January 2000

⁵ 'Electricity and Gas Competition Review – A Research Study Conducted for Ofgem by MORI' January 2000

concerns about the acceptability of doorstep sales. Others suggest some customers have experienced more deep seated problems.

- 3.5 Despite these problems a clear majority of customers now rate the contact they had with doorstep salesperson as informative. Ofgem considers this to be an appropriate way for suppliers to inform consumers of the choices available to them in the domestic gas and electricity markets as long as direct marketing is carried out professionally and sales agents provide accurate information to consumers.

Extension of the licence

- 3.6 The January document invited views on Ofgem's proposal to extend the operation of the existing licence requirements on the marketing of gas and electricity to domestic customers for a further two years from 31st March 2000 to 31st March 2002.
- 3.7 Ofgem received 34 responses to the consultation document (Appendix 1 lists the respondents). All 34 respondents agreed with Ofgem with regards to extending the licence condition. A number of different views were received with regards to the length of time the marketing licence conditions should run for.
- 3.8 All consumers groups wanted the licence condition to be extended. Many expressed the view that it would be premature to lift the restrictions even in 2002. Although doorstep selling is providing a useful means of raising awareness of competition for disadvantaged groups, consumer groups felt that the present conditions should remain but be considerably strengthened. In their view, marketing continues to cause problems, and malpractice has not been sufficiently reduced. They believed that greater sanctions should be taken against companies and also against agencies that employ staff who breach the licence.
- 3.9 Consumer groups feel that the option to extend the protection after March 2002 should remain as part of the licence as it is premature to say that the licence conditions will not be needed. A number of groups also thought that the licence condition should be made permanent and not subject to two-year limitations.

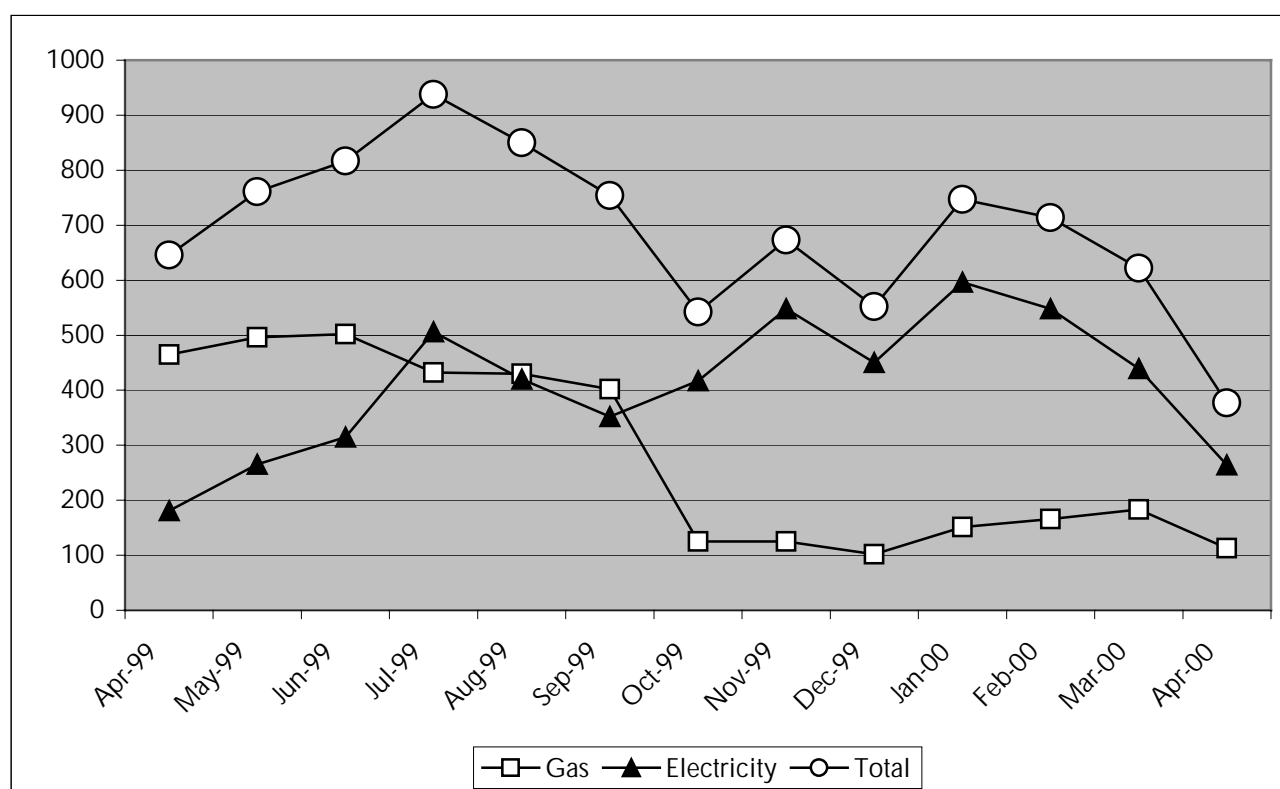
- 3.10 All of the suppliers who responded agreed with Ofgem's view that the licence condition should continue for a further two years. A number recognised that there is still sufficient concern about the standards of performance from some suppliers to justify the need for continued sector specific obligations. They felt that the industry still needs to maintain standards and to have a mechanism for addressing shortcomings. A few suppliers thought that Ofgem should monitor more closely all suppliers' processes and procedures to ensure that quality sales are achieved.
- 3.11 However, the overwhelming view of the industry was that, as the market matures, the marketing licence condition should fall away, to ensure that consumers can be adequately protected by existing consumer protection and self-regulation by the industry once the market had matured. Measures of market maturity suggested included not only the number of new entrants but also other factors such as levels of awareness, discounts available and number of switchers as this would show a better picture of how the market is developing. Ofgem also received the suggestion that as an aid to the transition to self-regulation, the condition could be restructured so that any supplier that has signed a recognised code (such as that operated by the AES) should have licence requirements suspended.

Ofgem's view

- 3.12 Ofgem agrees with customers' and suppliers' views as expressed in the responses to the consultation document that the licence condition should be extended to March 2002. Doorstep selling appears to be the most effective and widespread method of communicating with customers. It is the biggest source of information on both electricity and gas competition, especially among those who have switched supplier. According to recent research from MORI, the vast majority (four in five) says they have not experienced any problems with their contact with energy suppliers. However, significant minorities (14%) have experienced problems with doorstep salespeople.

3.13 Figure 1 shows the total number of direct sales complaints received by Ofgem in the last year⁶. Gas-related complaints have continued to rise since December 1999 as suppliers have started to offer dual fuel contracts. Complaint levels still appear to be closely related to overall levels of activity in the market. Research by the OFT⁷ demonstrates that complaints received by bodies such as Trading Standards Departments, Ofgem or consumer bodies are the 'tip of the iceberg' with the true level of consumer problems being encountered being much higher.

Figure 1: Direct selling complaints in gas and electricity



3.14 As set out in the January document, Ofgem believes that the present circumstances of the electricity and gas markets - high levels of marketing activity following the relatively recent opening of the domestic electricity and gas markets and correspondingly high levels of consumer concern— requires the continuation of the marketing licence conditions at least until March 20002. However, Ofgem believes that sector specific regulation of marketing activities

⁶ From 1/10/99 Ofgem switched to recording gas complaints as only cases where the customer had already approached the supplier and, the issue remained unresolved. Prior to this date Ofgem recorded all expressions of dissatisfaction with a gas supplier as a complaint. The decrease in gas and total complaints shown in Figure 1 is, in part, a reflection of this new definition.

⁷ Office of Fair Trading, 'Consumer Detriment', OFT 296, February 2000

should no longer be required once the market has sufficiently developed and that current and prospective consumer protection legislation should provide adequate protection to consumers. Ofgem has set up an expert group on marketing with suppliers to explore what steps would be required in order for the marketing conditions to be allowed to lapse in 2002. In principle Ofgem would like to move to a regime of self-regulation but we recognise that consumer concerns will need to be addressed before the perceived additional protection offered by the marketing conditions is discontinued.

- 3.15 Ofgem took into account the views expressed in the responses to the consultation document and on the 20th March 2000, the Director General of Electricity and the Director General of Gas Supply issued notices extending the marketing licence conditions for a period of two years ending 31st March 2002. Under the licence conditions, the conditions can only be extended by a maximum of two years at a time.

4. Enhancements to the existing conditions

- 4.1 The January 2000 document considered proposals for enhancements to the conditions to provide further protection for customers and to harmonise arrangements for electricity and gas. The proposed changes to the present licence conditions are discussed in this chapter along with the views expressed by the suppliers and consumer groups in response to the January document. Ofgem's views are outlined and views invited on the proposed enhancements.
- 4.2 In addition to assessing responses to the January document, Ofgem has met with customer groups and a number of suppliers individually to discuss the marketing enhancements. Ofgem has also discussed the enhancements with the Public Utilities Access Forum (PUAF) and at a joint meeting of the Domestic Competition Focus Group (DCFG) and Competitive Market Review Group (CMRG).

Customer understanding - misleading information

- 4.3 Two common causes of customer concern are that the information provided by salesagents is misleading or that they have not understood that they had in fact agreed to enter a contract (perhaps thinking they were signing for information only). In principle existing consumer protection legislation can address these concerns, but Trading Standards Officers who have a responsibility for enforcement of the relevant legislation rarely take action⁸. It may therefore be sensible to strengthen the licence condition to provide Ofgem with a direct means of taking action against suppliers to address these problems.
- 4.4 Our proposal was to include in the conditions specific provisions requiring the licensee to take all reasonable steps to ensure that written and visual material given to customers is not misleading (oral communication is already covered by paragraph 3(b)) and that sales agents behaviour is such that it is likely that a customer will readily understand the status of any agreement that he or she enters into during any unsolicited contact.

⁸ Relevant legislation which Trading Standards Officers enforce is discussed in the next chapter.

Respondents' views

- 4.5 All of the respondents support the proposal to ensure that a customer understands at the point of sale that he or she has entered into a contract. Two of the respondents thought that it may be helpful to insist that when a contract has been entered into the terms and conditions and contract are sent in an envelope marked "gas or electricity contract". The suggestion was also made that with the contract should be a reply slip and a prepaid envelope - the reply slip should trigger the start of the contract when returned. One respondent has concerns that customers receiving audit letters are interpreting them as marketing material. Suppliers need to feel confident that customers recognise these letters and take appropriate action. A suggested means of doing this would be to require positive telephone contact with a minimum percentage of customers.

Ofgem's view

- 4.6 Ofgem's view is that the licence conditions to include provisions for that sales agents to take steps to ensure that a customer understands that they have entered into a contract. This should also help to avoid issues regarding elderly and other vulnerable consumers customers.
- 4.7 Over the coming months, Ofgem will be reviewing the type of monitoring information provided by suppliers to Ofgem on their marketing activities. One aspect which will be investigated is the extent of positive customer contact during the audit process.

Management

- 4.8 The present licence conditions already deal with the selection and training of sales staff, and require that training must be such that any relevant advice given by the salesman is not misleading. No specific reference is made to the on-going management of the sales force, although the audit requirements include provisions to require licensees to remedy weaknesses in their procedures, which are identified following customer audit. In practice Ofgem has agreed that the spirit of the condition needs to be interpreted widely.

- 4.9 Whilst it is unlikely to be possible to eradicate all examples of poor selling practices from any industry, our experience and that of suppliers strongly suggests that effective management of the sales force is critical to the successful implementation of good quality sales. It is for consideration whether the existing conditions should be strengthened to include management issues.

Respondents' views

- 4.10 Twenty-four respondents commented on this issue. Of these, 21 agreed that existing conditions should be strengthened to include management issues, whilst 3 disagreed. Of the 21 respondents who agreed with the proposal, 9 of the respondents had concerns. The concerns that they raised included issues around whether the clause was specific enough; the majority of respondents wanted clearer definitions and more detailed guidelines defining the management arrangements considered sufficient to meet this additional compliance requirement.
- 4.11 A number of consumer groups thought that if the licence addition is to have a meaningful impact then there needs to be more transparency and monitoring by Ofgem with all results placed in the public domain and suppliers who breach the conditions to be fined. A number of respondents thought that if Ofgem were to issue guidance they would have concerns if it were to be too prescriptive - for example setting out specific requirements for manager to sales agent ratios.

Ofgem's view

- 4.12 Ofgem's view is that all suppliers should have good management systems in place to ensure that they and their sub-contractors fully meet the overall requirements of the marketing licence condition. In order to ensure that this is the case, Ofgem proposes to introduce an enhancement to the licence condition to this effect.
- 4.13 Ofgem does not believe that the perceived potential for Ofgem to interpret the condition too widely will negatively impact on suppliers. Suppliers with well-managed marketing systems and procedures will have these arrangements in place already. Ofgem will be discussing with the industry, initially through the marketing expert group, the type of guidance that it can provide.

- 4.14 Since the conditions were introduced, where a supplier's performance in marketing has caused significant consumer and public concern, Ofgem has required suppliers to put in place effective and detailed monitoring of the performance of sales agents. The mechanism for monitoring performance in these circumstances has been previously shared with suppliers at industry meetings. This may form the basis for guidance and can inform Ofgem's review of the quarterly marketing returns and monitoring information provided by suppliers.

Telephone Sales

- 4.15 The present conditions deal with telesales on a similar basis to doorstep sales. However, the present conditions covering the notification of contract terms in electricity supply licences includes a provision set out in Condition 44(2) of the second tier supply licence requiring a licensee who has entered into a designated supply contract (except when it has already done so) "to provide the customer within 2 working days of the date of the contract with a copy of its full terms and conditions". The effect of this condition is to require a supplier, which has entered into a contract during a telephone sale to provide the customer with a written copy of the terms of the contract.
- 4.16 This is standard good practice for a contract of this nature notwithstanding the marketing licence conditions. However, no licence condition making this a specific requirement is set out in the gas supply licences. Nor does the electricity licence condition cover all circumstances in which suppliers enter into contracts. Most suppliers operate on the basis that the contract between the supplier and the customer is made when the customer enters into the contract. However, some suppliers operate on the basis that the contract is not made until the supplier confirms acceptance of the customer's offer to enter into the contract. The electricity licence condition relating to notification of terms does not currently cover the latter circumstances. It is for consideration as to whether, in addition to introducing a requirement into the standard conditions of gas supply licences, the condition in the electricity licences should be extended to cover all circumstances.

- 4.17 The Distance Selling Directive will require, amongst other things, that the consumer must receive written confirmation on their rights to withdrawal from the contract and the conditions for cancellation. The Directive will be implemented in the UK this month.

Respondents' views

- 4.18 Eighteen respondents agreed with the general principle of the proposal, with only one supplier suggesting removing the obligation from the electricity licence on the basis that the regulations under the Distance Selling Directive will go much further than the proposed licence changes
- 4.19 One of the respondents thought that the conditions should be extended with the customers being sent cancellation details with the contract and the cancellation period commencing from date of receipt of the letter rather than the phone call.
- 4.20 One respondent supported the alignment of the electricity and gas supply licences but believed that Ofgem should re-examine the present arrangements if extension to the gas licence is sought. The two working day deadline set out in the electricity supply licences has to cover not only the despatch of contract, but also delivery and receipt by customers. Suppliers cannot guarantee such delivery timescales and a more practical time frame would be to increase it to five working days. Cooling off periods should run from this date, as this is when the customer is in receipt of all of the information. Sending terms and conditions within two days of the phone call could impact unnecessarily on suppliers processes and conflict with existing consumer legislation.

Ofgem's view

- 4.21 Ofgem agrees with the 18 respondents who think that the gas and electricity licensing regimes should be aligned so that gas customers who enter into contracts over the telephone should also receive a full set of terms and conditions. In Ofgem's view the customer protection provided in electricity licences should be extended to cover gas supply and that the conditions in gas and electricity licences should be extended to cover all circumstances in which contracts are made. We have therefore proposed a new standard condition 3A to the standard conditions of gas suppliers' licences and an amendment to

conditions 44 and 45 of the 2nd tier electricity suppliers' licences and conditions 36, 64 or 31 (as appropriate) of the PES licences.

- 4.22 However, Ofgem would like to consider further the argument that there are practical problems involved in sending terms and conditions within the two working days deadline set out in the electricity licences. Views are invited on what are reasonable timescales for the sending out of terms and conditions following a telephone sale.

Public Places

- 4.23 Suppliers are increasingly exploring other avenues to marketing gas and electricity, including sales in public places. These include having stands in shopping centres, at motorway service stations, and at exhibitions. The current marketing conditions require suppliers entering into contracts with domestic or Designated Customers in a doorstep or telesale to audit the sale to ensure that the customer understands and is content with the sale. At present, the conditions do not cover sales made in public places.
- 4.24 Sales discussions in public places can give rise to many of the same problems that occur with doorstep sales and may indeed give rise to further problems. It would therefore seem desirable to amend the audit requirements to include such public sales activities.

Respondents' views

- 4.25 Twenty-three respondents commented on this issue and the proposal was fully supported by all of the respondents. Encouragingly, a number of suppliers commented that they already follow this proposal and treat shopping centre sales in the same way as they do direct sales. Two respondents suggested that suppliers should ensure that the person who signs the contract is the account holder not the tenant or partner of the registered account holder. Another respondent suggested that copies of contracts should be sent separately (with a reply slip) to the customer so those customers realise that they have signed a contract. A further respondent believed that all companies and sales agents operating in public places should clearly indicate the identity of the licensed

supplier that they represent on all literature, personal identification and on the sales stand.

Ofgem's view

- 4.26 Ofgem agrees with the 23 respondents who commented on the extension of the licence to cover sales in public places. The new condition will give consumers the formal protection provided in the marketing licence condition to sales conducted in public places.

Internet sales

- 4.27 Some suppliers have started to make use of the Internet to attract new customers and to carry out contract administration activities. Ofgem wishes to encourage the developments of new methods of marketing to customers and believes that this is welcome and is likely to provide important new opportunities for customers. Generally the nature of sales over the internet can provide a good opportunity for customers to consider carefully the terms on offer and have their questions answered before entering into any agreement with a supplier. As in all other cases it is important that the information provided by suppliers is accurate and that the customer understands the nature of the agreement being entered into. The licensee will also wish to be assured that informed consent has been given by the customer. At present internet sales have not given rise to significant concerns specific to the electricity and gas markets. Ofgem has consulted on whether the present conditions should be altered in any way to take account of internet sales, for example to include internet sales in the category of sales where a customer audit post sale is required.

Respondents' views

- 4.28 Twenty-five respondents commented on this issue. Of these, 13 agree that internet sales should be audited whilst 11 disagreed. One respondent commented that the accuracy of information in e-mails and supplier web sites should be audited by Ofgem but did not express a firm view over internet sales. Respondent views were split between suppliers and consumer groups. The majority of suppliers did not agree with auditing internet sales - one respondent

commented that signing up over the internet requires repeated positive action by the customer, who must take steps to seek a web site and to agree a contract. In their view Internet sales are initiated by a customer and avoid direct sales methods, customers are under no pressure and are able to leave the site at any time. An internet contract has more in common with a postal contract than direct sales. A number of respondents agreed that the requirements under the Distance Selling Directive provide a high level of consumer protection and additional audits will offer no benefits and increase supplier costs.

- 4.29 The respondents who agreed with the proposed amendment to the licence conditions believed that given the likely expansion of the internet an audit should be included as it will ensure that proper sales techniques will be adopted for the new route to market. In addition two suppliers agreed with the licence amendment as they already audit their internet sales.
- 4.30 One respondent commented that if the licence condition was to be amended to include internet sales then it should apply to licensees, including internet companies, even if an associated company meets some licence conditions on its behalf.

Ofgem's view

- 4.31 Ofgem acknowledges that internet sales differ from direct sales such as those conducted on the doorstep or through telephone sales in that the customer is proactive in seeking out the supplier and will be actively entering into the contract. Ofgem also concurs on the view that introducing burdensome requirements to audit such sales could inhibit the development of this innovative way for suppliers to market to, and maintain contact with, gas and electricity customers.
- 4.32 Ofgem is aware of the developments in protection for consumers using internet technology such as that provided by codes of practice through TrustUK (see chapter 5 for further information) and through EU legislation such as the Distance Selling Directive.
- 4.33 With this in mind, Ofgem's view is that it is not necessary for there to be specific provision made in the marketing licence conditions to cover internet sales.

Ofgem will look to ensure that internet sales are carried out to high quality standards taking due note of other relevant legislation and guidance, particularly where Ofgem has concurrent powers.

Summary and views invited

- 4.34 In summary, Ofgem is committed to reviewing the marketing licence conditions in both gas and electricity. Ofgem considers it appropriate to update the licence conditions to provide further protection for customers from inappropriate sales techniques whilst enabling suppliers to market actively the new opportunities for customers brought about by the competitive gas and electricity markets.
- 4.35 Views are invited on the options and issues raised in this chapter, particularly on:
- ◆ The enhancement requiring setting up of appropriate procedures for the management of sales staff
 - ◆ Appropriate timescales for providing gas customers who enter into contracts over the telephone with a written copy of the terms and conditions of their contract
 - ◆ Extending the conditions to cover sales made in public places such as shopping centres and motorway service stations
 - ◆ Ensuring that customers understand that he or she has entered into a contract
 - ◆ Whether internet sales should be included in the marketing licence conditions.
- 4.36 Enhancements proposed by Ofgem will be subject to consent procedures by Licensees. An indication of the way forward is outlined in chapter 6. The consent procedures are set out in Appendix 4.

5. Developments in consumer protection

- 5.1 This chapter looks at consumer protection legislation with relation to marketing of which all suppliers in the gas and electricity markets should be aware. Where relevant, Ofgem outlines its view on the impact of the legislation in relation to the current marketing licence conditions and for the future regulation of marketing in the gas and electricity markets.

Background

- 5.2 In the January document, Ofgem outlined some relevant developments which will impact on the selling of gas and electricity. These included the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 (as amended) which requires customers who sign contracts on the doorstep to be given a written notice of their cancellation rights and for a seven-day cooling off period within which the customer can cancel without penalty. The regulations were strengthened last year to make it a criminal offence not to give a notice of cancellation rights. An EU Directive on telephone selling was adopted, which, inter alia, requires the establishment of a database containing the details of those customers who do not wish to be contacted at home. Another Directive on long distance selling will provide for regulations to control the way in which contracts agreed "at a distance" e.g. by telephone, fax, mail or e-mail may be marketed.
- 5.3 The January document also noted that in 1999, Cheshire Trading Standards successfully prosecuted Northern Electric and Gas plc for a number of offences under the Trade Descriptions Act 1968 for doorstep miss-selling during the year. Customers were told they were signing for information only when in fact they were entering legally binding contracts. The company pleaded guilty and was fined £12,000 plus costs.
- 5.4 In March this year, Ofgem held a workshop to discuss with the industry how existing and forthcoming consumer protection legislation could be used in the gas and electricity markets in the event that the licence conditions expire in March 2002. The workshop also looked at how industry self-regulation and/or

“co-regulation” could work. Co-regulation is seen as providing self-regulation with statutory backing.

- 5.5 The issues discussed at the workshop are outlined below. This is not intended to be an exhaustive listing; suppliers and their agents should take steps to ensure that they are aware of the range of legislation and regulations covering their activities.

Developments in UK legislation

- 5.6 In July 1999, the Government published its white paper, Modern Markets: Confident Consumers, outlining its view on helping consumers. The focus is on making markets work, providing better information, self-regulation if practicable with legislation where necessary.
- 5.7 The Trade Descriptions Act is being widened to make it an offence for suppliers to misdescribe services in the way that it is already an offence to misdescribe goods. The offence will be strict liability, which is it will not be necessary for enforcement agencies to prove that the statement was made knowingly or recklessly. Charges can be levied against agents, agencies or trader or the company itself.
- 5.8 The Distance Selling Directive is due to be implemented in June 2000. This directive covers all forms of distance selling including by telephone, fax, or e-mail. It will apply regardless of whether the supplier or the consumer initiated the contact. It will be required that the consumer is informed about the supplier's name and address before the contract is completed. Consumers must also be informed of rights of withdrawal from the contract.
- 5.9 The injunctions directive will allow bodies such as the OFT, trading standards departments, consumer organisations and regulators (eg Ofgem) to have the right to seek injunctions for breach of certain directives. The directives covered will include misleading advertising, distance selling, and unfair contract terms.

Office of Fair Trading

- 5.10 The Office of Fair Trading (OFT) was set up under the Fair Trading Act 1973 and has a key role in protecting consumers. Ofgem has concurrent powers with the

OFT in respect of competition policy, eg the Competition Act. The OFT also regulates the provision of consumer credit.

- 5.11 The OFT's consumer protection work focuses on protecting consumers by preventing abuse, empowering consumers through access to information and redress and promoting competition. The OFT supports and reinforces the ASA's controls (see below) where it has been unable to take effective action. OFT can ban advertisements where it serves the public interest. The OFT also deals with 'rogue traders', enforces the Unfair Terms in Consumer Contracts Regulations (to which Ofgem also has concurrent powers).

Codes of Practice

- 5.12 Under the Fair Trading Act 1973, the Director General of Fair Trading has duty to encourage the development of codes of practice. Trade associations are considered the appropriate bodies for developing and owning such a codes.
- 5.13 In the Consumer White Paper, it is envisaged that the OFT will have a more active role in approving codes which would meet core principles set by the Secretary of State and are effective in protecting consumer interests. Participating codes could have the right to use an OFT hallmark following independent assessment of the codes.
- 5.14 The core principles for codes will include: that contracts must be clear and fair, staff know about and meet the terms of the code, an effective complaints handling system is developed; adequate publicity is sought for the code; the code's supervisory body includes include people from the industry, consumers with independent members. The aim is for industry to commit to standards above the law and to minimise the need for regulation.

Associations covering the direct selling of gas and electricity

- 5.15 There are a number of bodies involved in regulating the activities of direct marketing through the use of codes already in place. Many suppliers are members of one or more of these bodies. Brief summaries of their activities are provided below.

- 5.16 The Direct Marketing Association (DMA) is the largest marketing trade association, representing companies that use direct marketing or who supply direct marketing services. The DMA has a Code for Direct Marketing intended to be a one stop shop includes key legislation and accepted best practice. Compliance with the code is mandatory for DMA members. A Direct Marketing Authority independently adjudicates or conciliates with an independent panel. It has the authority to issue admonitions, suspensions or even expulsions from the DMA where the Code is breached. The DMA is in the process of having a code approved for e-commerce to include standards on privacy and performance, provision of information and use of code symbol. In addition, the DMA oversees mail and telephone preference services.
- 5.17 TrustUK is a joint non-profit making venture between the Alliance for Electronic Business (comprising the Confederation of British Industry, Computing Services & Software Association, Direct Marketing Association, e-centre UK and the Federation of Electronics Industry) and the Consumers' Association. It has the endorsement of the UK Government and seeks to foster consumer trust and confidence in Internet trading through the accreditation of on-line codes of practice. TrustUK's core principles are set out in the Consumers White Paper. The principles mean that consumers accessing a website will see an e-hallmark guaranteeing that traders are legitimate and be confident that suppliers will not use marketing techniques that take advantage of children or other vulnerable consumers. In addition, traders using the e-hallmark will provide clear, accurate information and provide consumers with information on how to avoid unsolicited e-mail.
- 5.18 The Direct Selling Association (DSA) aims to promote high standards in direct selling. The DSA's consumer code has been developed as a generic code for direct selling of all consumer goods and services. The code deals with methods of selling, advertising and identification of direct sellers, cancellation rights and administration. DMA's codes are administered by an independent administrator.
- 5.19 The Association of Energy Suppliers (AES) was established in 1997 with the aim of bringing together all energy suppliers to promote good practice in the marketing of electricity and gas and associated goods or services. Its Code of Practice for Marketing is enforced by a Panel made up of consumers groups and

suppliers with an independent chair. The Panel can also consider and make recommendations on development and administration of the Code. In 1998, the Code was amended to require sales agents to leave pricing information with potential clients even if they did not sign a contract.

Trading Standards

- 5.20 Local Authority Trading Standards Officers deal with a wide range of consumer protection laws - approaching enforcement through the provision of, information, advice services, monitoring and inspections, and complaint investigation.
- 5.21 In the third quarter of last year (the period most recently reported by the Office of Fair Trading) local trading standards authorities received 1971 consumer complaints relating to gas and 887 relating to electricity.
- 5.22 Local trading standards authorities can take action, under the Trade Description Act 1968, against suppliers who are misleading or who mis-sell. Charges under the Act can be brought against the agent, agency or company or in some cases against individual trainers. Similarly, the Consumer Protection Act 1987 enables action to be taken against misleadingly priced goods or services, including price indications based on incorrect future expectations (eg false claims of "cheapest price for 12 months") and where price comparisons are misleading (eg not comparing like with like or explaining where key differences are). To discharge these statutory responsibilities, Trading Standards Officers have relevant powers to inspect goods, enter business premises, require the production of business records and to seize and retain such records.

Advertising

- 5.23 Ofgem does not regulate the advertising of gas and electricity supply offerings. There are bodies which work to ensure that advertising is not misleading and accurate.
- 5.24 The Advertising Standards Association (ASA) deals with advertisements in print, posters, cinema and video and direct marketing (eg maildrops). Codes of Practice were updated to include advertisements on CD-ROMs, computer and video games and the internet in 1995. These rules are set by the industry

through a committee of advertising practice. Decisions on complaints are made by an independent council made up of lay people. The ASA publicises those who break relevant codes. Further sanctions can include refusal from media to place advertisements, withdrawal of trading privileges and ultimately referral to the OFT. Many gas and electricity advertisements which have fallen foul of the rules have done so in respect of price comparisons.

- 5.25 The Committee of Advertising Practice (CAP) publishes a Help Note on Price Claims in Utilities Advertising which Ofgem would expect suppliers to be take due note of the Help Note when developing their advertisements.
- 5.26 The Independent Television Commission (ITC) is a statutory regulator with powers under the 1990 Broadcasting Act. Television advertising must comply with ITC codes. ITC has powers under the Control of Misleading Advertisements Regulations. There are no special rules for utilities although the ITC does take into account the guidance provided by the CAP Help Note. Suppliers should make themselves aware of the ITC's rulings in respect of televisions advertising.

Future developments

- 5.27 The marketing licence conditions have now been extended in time and will remain in force until March 2002. It will be open to the Director to extend the Conditions further at that stage.
- 5.28 Ofgem has now established an expert group with industry representatives to advise on the application of the current conditions as well as to look at their future role, consider the impact of other regulation in relation to the condition, and investigate the potential for a move to a regime of co-regulation or self-regulation.
- 5.29 The group will consider the extent to which it may be possible for the industries to develop and administer a voluntary Code of Practice, which along with existing consumer protection legislation would provide sufficient consumer protection to allow the marketing licence conditions to fall away in March 2002. The group are also reviewing the existing marketing licence guidelines.
- 5.30 Ofgem will report further on developments in this area in the decision document on the enhancements to the licence due in August 2000.

6. Conclusions and way forward

- 6.1 Ofgem considers it appropriate to enhance the current licence conditions on marketing to provide additional protection for consumers. In this document, we have set out the reasons for the proposed enhancements. The changes being proposed are included in Appendices 2 and 3. These enhancements will require licensees to:
- ◆ ensure that a customer understands that he or she has entered into a contract;
 - ◆ set up procedures for the management of sales staff;
 - ◆ provide gas customers who enter into contracts over the telephone with a written copy of the terms and conditions of their contract;
 - ◆ carry out an audit and provide the same safeguards for sales conducted in public places as for doorstep and telephone sales;
- 6.2 Views are invited on the above proposal and accompanying legal drafting set out in Appendix 2 and 3. Details on how to respond are set out in Chapter 1.
- 6.3 Following the period of consultation, amended drafts of the proposed licence enhancements will be produced in light of responses. In order to assess the consent or non-consent to the proposal, all holders of supply licences will then be sent separate forms for each modification proposed and asked to indicate whether they consent to the individual modification or not. These forms will need to be returned to the Director. Appendix 4 sets out how the votes for gas and electricity suppliers will be calculated.
- 6.4 Once all forms have been returned, Ofgem will establish whether sufficient numbers of licensees have assented to enable the enhancements to be implemented in the licence conditions. Assuming that the requisite thresholds are met, the Director General of Gas Supply and the Director General of Electricity Supply respectively will then issue notices modifying the licence conditions. This will be set out in Ofgem's decision document due in August 2000.

Appendix 1

Respondents to the 'Marketing Gas and Electricity, A Consultation Document', January 2000.

The following made non-confidential responses to this consultation:

Age Concern
Amerada
Association of Energy Suppliers
British Gas Trading
Consumers' Association
Duplitype
Electricity Consumers' Committee; Eastern Region
Electricity Consumers' Committee; East Midlands Region
Electricity Consumers' Committee; Merseyside and North Wales
Electricity Consumers' Committee; Midlands Region
Electricity Consumers' Committee; North of Scotland
Electricity Consumers' Committee; South East Region
Electricity Consumers' Committee; Southern
Electricity Consumers' Committee; South Wales
Electricity Consumers' Committee; South West
Eric A Elliott-Housden
Gas Consumers Council and the National Electricity Consumers' Council
Independent Energy
London Electricity
National Energy Action Charity
National Right to Fuel Campaign
Northern Electric
North Wales Energy
Norweb Energi
npower
Powergen
Scottish and Southern Energy
Scottish Consumer Council
Scottish Power
Seeboard
Swalec
Yorkshire Electricity

Appendix 2

Part 1

Proposed changes to Condition 14A: Marketing of gas to domestic customers

Application⁹

(1) This condition applies to the marketing activities of the licensee in respect of the supply or the proposed supply of gas conveyed through pipes to the premises of domestic customers other than premises supplied or proposed to be supplied under an agreement of the kind described in standard condition 35.

(2) This condition shall cease to have effect on a date called the termination date which shall be 31st March 2002 provided that–

- (a) if the Director, after consultation with gas suppliers licensed under section 7A (1) (a) of the Act whose licences include this condition and the Gas Consumers' Council, gives notice for the purposes of this condition generally–
 - (i) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it, and
 - (ii) by sending a copy of the notice to every such gas supplier, to the Secretary of State and to the Gas Consumers' Council,

that she considers that the development of competition is such as to require the continuation of any part of this condition until such date not later than two years from the termination date as may be specified in the notice (the new termination date), then such part of this condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date; and

- (b) notice under sub-paragraph (a) may be given on more than one occasion.

Employment and training of representatives and customer contact

(3) The licensee shall–

⁹ This condition inserted under section 23 of the Gas Act 1986 on 27 January 1998.

- (a) set up appropriate procedures for selection of staff employed or engaged in roles the principal duties of which involve oral communication with customers for the purposes of the marketing activities of the licensee;
- (b) take all reasonable steps to ensure that each and every such person is trained so as to have a sufficient understanding of–
 - (i) the arrangements for competition in domestic gas supply in Great Britain; and
 - (ii) the prices charged by, and the other terms of supply of, the licensee, in particular methods of payment, duration of contracts and termination fees;

that any relevant advice given by them to domestic customers is not misleading;

- (c) take all reasonable steps to ensure that–
 - (i) a customer may readily identify the licensee whenever a representative of the licensee contacts the customer;
 - (ii) a customer will readily understand that he or she has entered into a contract; and
 - (iii) any unsolicited contact made on behalf of the licensee with any customer takes place at a reasonable time; and
- (d) take all reasonable steps to ensure that any agents and sub-contractors of the licensee set up equivalent procedures and take equivalent steps to those set out in sub-paragraphs (a), (b) and (c).

Audit of Customer Contact

- (4) Where a contract has been signed by a domestic customer, or otherwise entered into, in the course of –
 - (a) a visit by a representative of the licensee to the premises of a domestic customer, or
 - (b) a conversation in a place to which the public have access between a representative of the licensee and a domestic customer; or
 - (c) ~~electronic communication between the licensee or his representative and a domestic customer; or~~

- (d) a telephone conversation between a representative of the licensee and a domestic customer

then paragraph (5) shall apply.

- (5) Where this paragraph applies, the licensee shall, through a person other than a representative engaged in activities leading to the making of contracts between the licensee and any customer, and not less than 24 hours nor more than 14 days after the making of the contract–
 - (a) use its reasonable endeavours to contact the customer by telephone or by letter seeking his confirmation–
 - (i) that he understands that he has entered into a gas supply contract;
 - (ii) that he is content to have entered into that contract; and
 - (iii) that he is content with the way in which the sale was conducted;
 - (b) if in the course of such telephone contact, or within a reasonable period of the despatch of such a letter, the customer indicates that he is not content to have entered into the contract and wishes to terminate it, take all reasonable steps to ensure that the contract is terminated and, where reasonably practicable, that any proposed supplier transfer in relation to the contract is not put into effect; and
 - (c) if the response of the customer, alone or when considered with the responses of other customers, suggests weaknesses in the methods, systems or personnel employed or engaged by the licensee or its sub-contractors for the purpose of its marketing activities, ensure that all reasonable steps to remedy the matter are taken.

Maintaining customer contact

- (6) Where gas is not to be supplied before the expiry of 60 days from the date on which the contract was signed by the customer, or otherwise entered into, the licensee shall take reasonable steps during the period from that date until commencement of supply, to keep the customer informed that he has entered into a gas supply contract with the licensee.

Complaints and Compensation

(7) The procedures to be established by the licensee for dealing with complaints by domestic customers shall provide in appropriate cases for the payment of compensation to customers adversely affected by failure by the licensee to perform its obligations under this condition.

Reporting on performance

(8) The licensee shall keep a record of its compliance with its obligations under this condition including–

- (a) the contacting of customers in pursuance of paragraph (4)(a) and the response of customers to such contact;
- (b) the termination of contracts in pursuance of paragraph (4)(b); and
- (c) compensation paid under procedures established in pursuance of paragraph (7).

(9) Except as the Director may for the purposes of this condition generally determine, as soon as reasonably practicable after the end of each period of three months ending on 31 March, 30 June, 30 September and 31 December in every year after 1997, the licensee shall submit to the Director and to the Gas Consumers' Council a report dealing with the matters mentioned in paragraph (8) in that period and shall–

- (a) publish the report so submitted in such manner as will in the reasonable opinion of the licensee secure adequate publicity for it, and
- (b) send a copy of it free of charge to any person requesting one,

except that, in performing its obligations under sub-paragraphs (a) and (b), the licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual customers referred to therein cannot readily be identified.

(10) Reports in pursuance of paragraph (9) shall be presented, in so far as is reasonably practicable, in a standard format designated by the Director for the purposes of this condition generally.

Restriction on certain dealings

(11) Except as the Director may approve–

- (a) for the purpose of protecting the interests of any domestic customer who, prior to the date on which this condition came into effect, may have made a payment in advance with a view to arranging a supply of gas, or
- (b) where any payment in advance is wholly or mainly for services other than arranging the supply of energy,

the licensee shall not enter into any commercial relations connected with the supply of gas to any domestic customer with any person who has sought, after the coming into effect of this condition payment in advance (other than one governed by standard conditions 3(6) to 3(12)) from any such customer with a view to arranging a supply of gas and shall not enter into any contract for the supply of gas to any such customer made through the agency (either for the licensee or for any customer) of such a person.

Management

(12) The licensee shall take all reasonable steps –

- (a) to establish management arrangements that facilitate the licensee in meeting its obligations under paragraphs (3) to (9) of this condition; and
- (b) to ensure that any agents and sub-contractors of the licensee take equivalent steps to those set out in sub-paragraph (a) of this paragraph.

Interpretation

(13) In this condition, except where the context otherwise requires–

“customer” includes potential customer;

“marketing activities” means any activity of the licensee directed at or incidental to the identification of and communication with customers supplied or to be supplied with gas by the licensee and includes entering into contracts with customers;

“proposed supplier transfer” has the meaning given to that term in standard condition 7(8);

“representative”, in relation to the licensee, means any person directly or indirectly authorised to represent the licensee in its dealings with customers.

Part 2

Proposed new Standard Licence Condition 3A: Notification of terms of contract to domestic customers

1. Paragraph 2 below applies where a contract has been entered into with, or an offer which is not within two days rejected by the licensee is made by, a domestic customer in the course of –
 - (a) any visit by a representative of the licensee to the premises of the customer,
 - (b) a conversation in a place to which the public have access between a representative of the licensee and a domestic customer, or
 - (c) any telephone conversation, or any internet or other electronic or telegraphic communication between the licensee and the customerand the relevant day for the purpose of paragraph 2 shall be the second day after the contract was entered into or the offer was made.
2. Where this paragraph applies, the licensee shall (except where it has already done so) provide the customer with a copy of the full terms of any contract that has arisen, or which on acceptance will arise, between the licensee and the customer within 2 days of the relevant day.

Appendix 3

Part 1

Proposed changes to Condition 42 or 70 of the Public Electricity Supply Licence for England and Wales, Condition 37 of the Public Electricity Supply Licence for Scotland, Condition 51 of the second tier electricity suppliers' licence for England and Wales and Condition 52 of the second tier electricity suppliers' licence in Scotland - Marketing of electricity to Designated Customers

1. This Condition applies to the marketing activities of the Licensee in respect of the supply or the proposed supply of electricity to Designated Premises.
2. This Condition shall cease to have effect on a date (the "termination date") which shall be 31 March 2002, provided that:
 - (a) if the Director, after consultation with the Licensee, all other Electricity Suppliers, the electricity consumers' committees and such other persons or bodies as in the opinion of the Director are representative of those likely to be affected, gives notice for the purposes of this Condition -
 - (i) by publishing the notice in such a manner as the Director considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (ii) by sending a copy of the notice to all Electricity Suppliers, to the Secretary of State and to electricity consumers' committees,

that he considers that the development of competition in electricity supply is such as to require the continuation of any part of this Condition until such date - not later than two years from the termination date - as may be specified in the notice (the "new termination date"), then such part of this Condition as may be specified in the notice shall continue to

apply as if for the termination date there were substituted the new termination date; and

- (b) notice under sub-paragraph (a) may be given on more than one occasion.

3. The Licensee shall:

- (a) set up appropriate procedures for the selection of staff employed or engaged in roles the principal duties of which involve oral communication with Designated Customers for the purposes of the marketing activities of the Licensee;
- (b) take all reasonable steps to ensure that each such person is trained so as to have a sufficient understanding of:
 - (i) the arrangements for competition in electricity supply in England & Wales; and
 - (ii) the Principal Terms of Designated Supply Contracts made available by the Licensee;

such that any relevant advice given by him to Designated Customers is not misleading;

- (c) take all reasonable steps to ensure that:
 - (i) a Designated Customer may readily identify the Licensee whenever he is contacted by a representative of the Licensee;
 - (ii) a Designated Customer will readily understand that he has entered into an electricity supply contract: and

- (iii) any unsolicited contact made on behalf of the Licensee with any Designated Customer takes place at a reasonable time; and
 - (d) take all reasonable steps to ensure that any agents and sub-contractors of the Licensee set up equivalent procedures and take equivalent steps to those set out at sub-paragraphs (a), (b) and (c).
- 4. Where a contract has been entered into by a Designated Customer in the course of -
 - (a) a visit to that customer's premises by a representative of the Licensee; or
 - (b) a conversation in a place to which the public have access between a representative of the Licensee and a Designated Customer: or
 - (c) electronic communication between the licensee or his representative and a domestic customer; or
 - (d) a telephone conversation between a Designated Customer and a representative of the Licensee

then paragraph (5) shall apply;
- 5. Where this paragraph applies, the Licensee shall, through a representative who is not engaged in activities leading to the making of contracts between the Licensee and customers, and not less than 24 hours nor more than 14 days after the date of the contract:
 - (a) use its reasonable endeavours to contact the customer by telephone or by letter seeking his confirmation that:
 - (i) he understands that he has entered into an electricity supply contract;

- (ii) he is content to have entered into that contract; and
 - (iii) he is content with the way in which the marketing activities of the Licensee were conducted;
 - (b) if in the course of such telephone contact, or within a reasonable period of the despatch of such a letter, the customer indicates that he is not content to have entered into the contract and wishes to terminate it, take all reasonable steps to ensure that the contract is terminated and, where reasonably practicable, that the Licensee does not commence a supply to the customer; and
 - (c) if the response of the customer, alone or when considered with the responses of other customers, suggests weaknesses in the methods, systems or personnel employed or engaged by the Licensee or its agents or sub-contractors for the purpose of its marketing activities, ensure that all reasonable steps to remedy the matter are taken.
6. Where, by virtue of any Designated Supply Contract, electricity is not to be supplied to premises before the expiry of 60 days after the date of the contract, the Licensee shall take reasonable steps during the period after that date and prior to the commencement of supply to keep the customer informed that he has entered into an electricity supply contract with the Licensee.
7. The complaint handling procedures to be established by the Licensee in accordance with Condition 34 shall provide in appropriate cases for the payment of compensation to Designated Customers adversely affected by failure by the Licensee to perform its obligations under this Condition.
8. The Licensee shall keep a record of its compliance with its obligations under this Condition including-
- (a) the contacting of customers in pursuance of sub-paragraph 4(a) and the response of customers to such contact;

- (e) the termination of contracts in pursuance of sub-paragraph 4(b); and
- (f) compensation paid in pursuance of paragraph 7.

9. Except as the Director may for the purposes of this Condition determine, as soon as reasonably practicable after the end of each period of three months ending on 31 March, 30 June, 30 September and 31 December in every year, the Licensee shall submit to the Director and to all Relevant Electricity Consumers' Committees a report dealing with the matters specified in paragraph 8 in that period and shall:

- (a) publish the report so submitted in such manner as will in the opinion of the Licensee secure adequate publicity for it; and

- (b) send a copy of it free of charge to any person requesting one,

except that, in performing its obligations under sub-paragraphs (a) and (b), the Licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual customers referred to therein cannot readily be identified.

10. Reports in pursuance of paragraph 9 shall be presented by the Licensee, in so far as is reasonably practicable, in a standard format submitted to and approved by the Director for the purposes of this Condition.

11. Except as the Director may approve:

- (a) for the purpose of protecting the interests of any Designated Customer who, prior to the date on which this Condition came into force, may have made a payment in advance with a view to arranging a supply of electricity; or

- (b) where any payment in advance is wholly or mainly for services other than arranging the supply of energy,

the Licensee shall not enter into any commercial relations connected with the supply of electricity to Designated Premises with any person who has sought, after the coming into force of this Condition, payment in advance (other than a security deposit) from any Designated Customer with a view to arranging a supply of electricity, and the Licensee shall not enter into a contract for the supply of electricity to any such customer made through the agency (either for the Licensee or for any customer) of such a person.

12. The licensee shall take all reasonable steps –

- (a) to establish management arrangements that facilitate the licensee in meeting its obligations under paragraphs (3) to (10) of this condition; and
- (b) to ensure that any agents and representatives of the licensee take equivalent steps to those set out in sub-paragraph (a) of this paragraph.

13. In this condition:

“marketing activities”

means any activities of the Licensee directed at or incidental to the identification of and communication with Designated Customers supplied or to be supplied with electricity by the Licensee, and includes entering into contracts with such customers.

“representative”

in relation to the Licensee, means any person directly or indirectly authorised to represent the Licensee in its dealings with customers.

Part 2

Proposed changes to Condition 36 or 64 of the Public Electricity Supply Licence for England and Wales, Condition 31 of the Public Electricity Supply Licence for Scotland, Condition 44 of the second tier electricity suppliers' licence for England and Wales and Condition 45 of the second tier electricity suppliers' licence in Scotland -

Notification of terms

1. Before entering into any Designated Supply Contract the Licensees shall take all reasonable steps to draw the attention of the customer to the principal Terms of the Contract.
- ~~2. Where the Licensee has entered into a Designated Supply Contract it shall (except where it has already done so) provide the customer within 2 working days of the date of the contract with a copy of its full terms and conditions.~~
2. Paragraph 3 below applies where a Designated Supply Contract has been entered into, or an offer which is not within two days rejected by the licensee is made by, a designated customer, in the course of –
 - (a) any visit by a representative of the licensee to the premises of the customer,
 - (b) a conversation in a place to which the public have access between a representative of the Licensee and the customer, or
 - (c) any telephone conversation, or any internet or other electronic or telegraphic communication between the licensee and the customerand the relevant day for the purpose of paragraph 2 shall be the second day after the contract was entered into or the offer was made.
3. Where this paragraph applies, the licensee shall (except where it has already done so) provide the customer with a copy of the full terms of any contract that has arisen, or which on acceptance will arise, between the licensee and the customer within 2 days of the relevant day.

4. Subject to paragraph 4 the Licensee shall, at least 30 days before any Designated Supply Contract to supply electricity for a specified period is due to expire, send to the customer:
- (a) a written offer to enter into a new contract for supply from the date of expiry of the existing contract, drawing the attention of the customer to the Principal terms relevant to that offer;
 - (b) an accurate summary of the principal Terms of other contracts which the Licensee will make available to the customer; and
 - (c) details of how the customer can obtain continuity of supply from the Licensee.
5. Paragraph 3 shall not apply where:
- (a) the customer has informed the Licensee that he does not wish to continue to be supplied by it after the expiry of the existing contract; or
 - (b) it is not reasonable in all circumstances for the Licensee to be required to continue to supply that customer and the Licensee has (at least 30 days before the contract was due to expire) both notified the customer to that effect and informed him that he must make arrangements to obtain a supply from another Electricity Supplier.
6. Where a Designated Supply Contract allows for its unilateral variation (in any respects) by the Licensee and is so varied to the significant disadvantage of the customer, the Licensee shall within 10 days of the variation give to the customer written notice:
- (a) of the variation;
 - (b) of the customer's right to terminate the contract; and
 - (c) of the effect of paragraph 6.
7. Where a customer gives to the Licensee a valid notice of termination within 14 days of receiving notice under paragraph 5, the Licensee shall treat the variation as ineffective and shall neither enforce nor take advantage of it.

8. Where the Licensee believes that any of its customers no longer occupies or is about to vacate Designated Premises to which it supplies electricity, it shall as soon as reasonably practicable provide any new occupier of those premises with an accurate summary of the Principle Terms of contracts it will make available to him.

Appendix 4 The consent of licence holders

- 4.1 This appendix sets how Ofgem will establish whether the required threshold of required consents have been achieved within the context of gas and electricity legislation.

Gas Suppliers

- 4.2 In order for the modification now proposed by the Director to be introduced, it is necessary, under Section 23 of the Gas Act 1986, that not less than 90% of all licensed gas suppliers, both by number and by volume of gas supplied, consent to the modification. For this purpose, the volume of gas of each gas supplier is as estimated by the Director on the basis of information available to him.
- 4.3 The Director will obtain from Transco information showing the volume of gas supplied by each licensed supplier in the last twelve months. These volumes will include gas supplied both to domestic customers and to other customers.
- 4.4 Following the period of consultation, an amended draft of the proposed licence modification will be produced in light of the responses to the consultation. For the purpose of assessing consent or non-consent to the proposal, all holders of supply licences will then be sent forms for each modification for return to the Director on which they will be asked both to indicate whether they consent to the modification or not. The forms will be accompanied by an estimate of gas volume provided by Transco for the supplier and will seek the supplier's acceptance of that volume, for the purpose of the determination by the Director of the percentage by volume of suppliers consenting to the proposed modification. If a supplier regards the volume proposed to be used by the Director in respect of his supply as inappropriate he should provide the Director with an alternative estimate and a statement of reasons for preferring his estimate over that proposed by the Director.
- 4.5 The Director General's formal notice of the proposal to modify gas Licences is included at Appendix 5.

Electricity Suppliers

- 4.6 The enhancements proposed in this document will be dealt with in accordance with Condition 33 of the PES Supply Licence (Scotland, 28) and Condition 61 of the Second tier Supply Licence (Scotland, 42). Under the relevant conditions of these Licences, it is necessary that not less than 90 per cent of electricity supplies, which are eligible to supply electricity to Designated Premises¹⁰, both by number and the number of premises supplied agree to the modification. The Director is required to allow not less than 28 days from the giving of the notice for suppliers to express their views on his proposals.
- 4.7 The Director will obtain from Metering Point Administration System Operators information showing the number of Designated customers being supplied with electricity on the date of the Director's request for information.
- 4.8 For the purpose of assessing consent or non-consent to the proposal, all designated suppliers will be sent a forms for return to the Director on which they will be asked to indicate whether they consent to the modification or not. That form will also show the number of Designated Premises for that suppliers as provided by Metering Point Administration System Operators and will seek the suppliers' acceptance of that number, for the purposes of the determination by the Director of the percentage of Designated Premises of suppliers consenting to the proposed modifications. If a supplier regards the number to be used by the Director in respect of his supply as inappropriate he should provide the Director with an alternative number and a statement of reasons for preferring his number over that proposed by the Director.
- 4.9 The Director's formal notice of the proposal to modify the electricity Licences is included in Appendix 6 and 7.

¹⁰ Premises using no more than 12,000 kWh annually.

Appendix 5

Notice of Proposal to Modify the Standard Conditions of Licences Granted and Treated as Granted Under Section 7A(1) of the Gas Act 1986 (Gas Suppliers' Licences)

The Director General of Gas Supply (hereinafter referred to as "the Director") pursuant to section 23(3) (1) (b) of the Gas Act 1986 (c.44) (hereinafter referred to as "the Act") hereby gives notice as follows:

1. The Director proposes, pursuant to section 23 (1) (b) of the Act, to modify the standard conditions of licences granted and treated as granted under section 7(A) (1) of the Act (gas suppliers' licences) by making amendments to Condition 14A – Marketing of gas to domestic customers and by inserting a new Condition 3A.
2. The proposed amendments to the condition are shown in Appendix 2 to this proposals document.
3. The effect of the modifications is set out, and the reasons why the Director proposes to make the modifications are stated, in the preceding pages of the document accompanying this notice.

Representations or objections with respect to the proposed modifications may be made by 19th July 2000 and should be addressed to the Office of Gas and Electricity Markets, 16 Palace Street, London, SW1E 5JD, marked for the attention of Ms Rosalind Cole.



Rosalind Cole, Director Retail Markets

Authorised in that behalf by the

Director General of Gas Supply, 20th June 2000

Appendix 6

Notice of Proposal to Revise the Contract Terms Conditions contained in Electricity Supply Licences Granted under Sections 6(1)(c) and 6(2) of the Electricity Act 1989

The Director General of Electricity Supply (hereinafter referred to as “the Director”) pursuant to the Condition entitled “Revision of the Contract Terms Conditions” which is numbered 33 or 61 in the licences of PES licensees in England and Wales, is numbered 28 in the licences of PES licensees in Scotland, is numbered 41 in the licences of second-tier licensees in England and Wales, and is numbered 42 in the licences of second-tier licensees in Scotland (hereinafter referred to as “the Revisions Condition”) hereby gives notice as follows:

1. Having reviewed the provisions and operation of the Contract Terms Conditions pursuant to the Revisions Condition, the Director now proposes to make certain revisions to the Condition entitled “Marketing of Electricity to Designated Customers” which is numbered either 42 or 70 in the licences of PES licensees in England and Wales, is numbered 37 in the licences of PES licensees in Scotland, is numbered 51 in the licences of second-tier licensees in England and Wales, and is numbered 52 in the licences of second-tier licensees in Scotland (hereinafter referred to as “the Marketing Condition”).
2. The text of the Marketing Condition, showing the proposed revisions, is set out in Appendix 3 to this proposals document.
3. The effect of the revisions is set out, and the reasons why the Director proposes to make the revisions are stated, in the preceding pages of this document.

Representations or objections with respect to the proposed revisions may be made by 19th July 2000 and should be addressed to the Office of Gas and Electricity Markets, 16 Palace Street, London, SW1E 5JD, marked for the attention of Ms Rosalind Cole.

A handwritten signature in black ink that reads "Rosalind Cole". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

Rosalind Cole, Director Retail Markets

Authorised in that behalf by the

Director General of Electricity Supply, 20th June 2000

Appendix 7

Notice of Proposal to Revise the Contract Terms Conditions contained in Electricity Supply Licences Granted under Sections 6(1)(c) and 6(2) of the Electricity Act 1989

The Director General of Electricity Supply (hereinafter referred to as “the Director”) pursuant to the Condition entitled “Revision of the Contract Terms Conditions” which is numbered 33 or 61 in the licences of PES licensees in England and Wales, is numbered 28 in the licences of PES licensees in Scotland, is numbered 41 in the licences of second-tier licensees in England and Wales, and is numbered 42 in the licences of second-tier licensees in Scotland (hereinafter referred to as “the Revisions Condition”) hereby gives notice as follows:

1. Having reviewed the provisions and operation of the Contract Terms Conditions pursuant to the Revisions Condition, the Director now proposes to make certain revisions to the Condition entitled “Notification of terms” which is numbered either 36 or 64 in the licences of PES licensees in England and Wales, is numbered 31 in the licences of PES licensees in Scotland, is numbered 44 in the licences of second-tier licensees in England and Wales, and is numbered 45 in the licences of second-tier licensees in Scotland (hereinafter referred to as “the Notification of Terms Condition”).
2. The text of the Notification of Terms Condition, showing the proposed revisions, is set out in Appendix 3 to this proposals document.
3. The effect of the revisions is set out, and the reasons why the Director proposes to make the revisions are stated, in the preceding pages of this document.

Representations or objections with respect to the proposed revisions may be made by 19th July 2000 and should be addressed to the Office of Gas and Electricity Markets, 16 Palace Street, London, SW1V 1LQ, marked for the attention of Ms Rosalind Cole.

A handwritten signature in black ink that reads "Rosalind Cole". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Rosalind Cole, Director Retail Markets

Authorised in that behalf by the

Director General of Electricity Supply, 20th June 2000