

**Making markets work for consumers
The regulation of gas and electricity sales
and marketing: a review of standard licence
condition 48**

A consultation document

August 2003

Summary

The direct marketing and sale of gas and electricity to residential customers has resulted in high levels of switching with significant benefits to consumers, including those consumers with low incomes. However this progress has been accompanied by complaints about some direct sales and marketing practice. Effective regulation is therefore required.

The sale and marketing of gas and electricity are currently regulated through standard licence condition 48 of the gas and electricity supply licences. This licence condition currently lasts until March 2004. It has been suggested that the licence condition does not provide a satisfactory level of protection for consumers, that it provides uncertainty for suppliers and can be hard to enforce in practice. This paper seeks to address those views by putting the licence condition in the context of non sectoral consumer protection regulations and legislation, reviewing its terms and beginning a dialogue about potential changes.

The paper recognises that the industry has responded to calls for improvements in the conduct of direct sales and marketing and that there has been a substantial recent reduction in the number of complaints about marketing to energywatch. It also recognises that some suppliers have a much better record than others, attracting proportionately fewer consumer complaints, and that those suppliers could be unreasonably penalised by the introduction of more extensive obligations. Therefore, the purpose of this paper is not to propose a more obtrusive licence condition, but to consider ways of making it more effective for both consumers and suppliers, with low compliance costs for suppliers whose marketing activities are responsible. The paper discusses a range of suggestions as to how the licence condition might be modified and in particular considers how the licence condition could be directed towards improving specific 'outputs', in terms of consumer experience, rather than a detailed and prescriptive management of 'inputs' or company practices. It is hoped that the paper will prompt detailed discussion of the regulation of direct sales and marketing, leading to firm proposals for changes to the licence condition.

Views on the issues raised in the document are invited. The closing date for responses is Friday 17 October 2003.

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1. Introduction

- 1.1. The marketing of gas and electricity to residential consumers is subject to control through standard licence condition 48 of the licences of gas and electricity suppliers. This paper seeks to put the licence condition in the context of non sectoral consumer protection regulations and legislation, review its terms and to begin a dialogue about potential changes.
- 1.2. A draft Regulatory Impact Assessment, inevitably brief at this early stage, is attached at **appendix 1**.

2. Timetable and responses

2.1 The proposed timetable is as follows:

September	Seminar with licensees
September	Seminar with consumer stakeholders
17 October	Responses requested on the issues discussed in this document.
November	Publication of firm proposals for consultation
January 2004	Publication of decision document
March 2004	Publication of a statutory consultation document proposing modifications to the gas and electricity supply licences.
April 2004	Implement modifications to the gas and electricity supply licences.

Views invited

2.2 Comments are invited on the issues raised in this document. These should be sent to:

Annette Lovell

Head of Customer Contact and Compliance

Ofgem

9 Millbank

London

SW1P 3GE

Tel: 020 7901 7443

Fax: 020 7901 7130

Email: annette.lovell@ofgem.gov.uk

The closing date for responses is 17 October 2003.

Contact

- 2.3 If you wish to discuss this consultation paper, please contact Annette Lovell at the address above.

Confidentiality

- 2.4 All responses will normally be published on the Ofgem website and held electronically in the Ofgem Research and Information Centre unless they are marked confidential. Consultees should try to confine confidential information to the appendices to their responses. Ofgem would prefer to receive non-confidential responses and to receive responses in an electronic form.

3. Background

- 3.1. Since the introduction of competition into the gas and electricity supply markets suppliers have made extensive use of direct selling as a channel to market – on the doorstep, by telephone, through the Internet and in public places such as supermarkets. The resulting levels of switching have led to significant benefits for consumers, in the form of lower prices and differentiated service.
- 3.2. However, this has not been without difficulty and there have been many complaints about the sales tactics of some suppliers. Misselling has attracted widespread criticism and concern for the impact on consumers, and in turn on the market.
- 3.3. Ofgem has recognised that although the number of complaints about misselling is proportionately few, the circumstances which lead to a complaint can be significantly distressing to the consumer involved. Ofgem is committed to creating a regulatory environment in which consumers can have confidence that they will be treated appropriately and in which suppliers will exert control over, and take responsibility for, their sales agents. Indeed Ofgem has already taken action against some suppliers for failing to comply with their licence obligations.
- 3.4 Suppliers employ sales agents to conduct doorstep or telephone sales using a variety of arrangements. Some rely on directly employed staff, some employ external agencies to conduct this activity on their behalf, others use both methods. Licence obligations covering direct sales apply equally to the use of a supplier's own staff and to the use of agencies. Agencies can vary in size from large national companies to smaller locally focused operations. Agencies often conduct direct sales across a range of industries.
- 3.5 Sales agencies are employed under contract to suppliers and such contracts will usually set out expected levels of performance. Indirectly employed individual agents, whose contracts have been terminated for poor performance or disciplinary reasons have, in the past, been able to move between agencies and suppliers as checks and controls have been difficult. The launch of the Energysure scheme was an attempt by the industry to control this problem (see paragraph 4.17).

3.6 Direct selling has provided significant benefits to consumers. In June 2003 Ofgem published 'Domestic gas and electricity supply competition – recent developments'. This provided evidence of a high level of market activity, with healthy numbers of consumers switching or expressing an intention to switch. Research suggests that consumers who switch supplier are able to make significant savings, with discounts of up to 23% offered to direct debit customers, up to 19% offered to credit customers and up to 12% offered to prepayment meter customers.

The majority of switching within the market seems likely to be attributable to direct selling. Research carried out in 2002 by JD Power, indicated that, of those who had switched, 90% of electricity customers and 92% of gas customers had been contacted by a sales agent (although it is not possible to conclude that the decision to switch was directly attributable to a direct sales approach). In 2001, research undertaken by MORI suggested that 61% of all gas and electricity switchers had been approached on the doorstep, 25% on the telephone, 18% in the street and 10% at in-store promotions or exhibitions.

3.7 In the autumn of 2002 Ofgem conducted some research into the consumer perceptions of direct selling. The results of that research are summarised in chapter 5 of this document.

3.8 In reviewing the regulation of direct sales it is necessary to consider other, linked, policy issues which have an impact on consumers, in particular the way in which the transfer process is managed. The regulatory regime has given suppliers the right to block, or object to, customer transfers in certain circumstances. This right applies for example when a customer has not given sufficient notice or when they have a debt which has been demanded in writing and has remained outstanding for more than 28 days. In recognition of the fact that there is an imbalance in the existing arrangements, Ofgem has now consulted on proposals to remove the right to object for insufficient notice and to allow an old supplier to initiate an objection when the customer states that they have not entered into a contract with a new supplier. It is expected that the new arrangements will come into effect in November 2003.

- 3.9 In February 2002 gas and electricity suppliers signed the Erroneous Transfer Customer Charter. This put in place arrangements for the return of customers to their original supplier following an erroneous transfer.
- 3.10 In June 2003 Ofgem and energywatch hosted a meeting with suppliers to discuss a programme of work designed to deal with problems in the transfer process.
- 3.11 Complaints about direct sales are monitored by energywatch; details of the trend in complaints are attached at **appendix 2**.
- 3.12 It should be noted that in reviewing the licence condition Ofgem will not seek to address serious crimes, such as violence or burglary, which can be associated with unsolicited visits to the home, but which fall within the remit of other enforcement bodies. It would be inappropriate to try to tackle them here. However, any measures which are within Ofgem's control, and which support attempts to deal with these crimes, will be considered fully.

The consultation

- 3.13 This consultation document is an attempt to summarise the information that Ofgem has received from interested parties and to reflect Ofgem's own experience of the licence condition. It is intended to be a starting point for discussion, to prompt a full range of comments on the issue, with a view to drafting clear proposals for a revised licence condition.

4. The legal framework

Sectoral regulation

- 4.1 The Gas and Electricity Markets Authority (the Authority) has a principal objective to exercise its functions to protect the interests of gas and electricity consumers, including future consumers, wherever appropriate by promoting effective competition .
- 4.2 The Authority grants licences for the supply of gas and electricity. Marketing activity is regulated by standard licence condition 48 of the Electricity Supply Licence and standard licence condition 48 of the Gas Suppliers Licence. The wording of the licence conditions is attached at **Appendix 3**.
- 4.3 Under the mechanism for collective licence modifications a proposed modification to a licence cannot be made where statutory objections are raised by at least 20 per cent of supply licensees or by suppliers with a total market share of at least 20 per cent.
- 4.4 In February 2002 Ofgem consulted on proposals to extend the duration of the existing marketing licence condition until 31 March 2004 and whether, and if so, they could be made more effective.
- 4.5 In March 2002 Ofgem published a decision document which announced the extension of the marketing licence condition as proposed. It also proposed a review of the condition.
- 4.6 In June 2002 Ofgem consulted on a proposal to apply a more rigorous approach to the enforcement of the marketing licence condition. In August 2002 Ofgem published a decision document which outlined how the new approach would apply and announced that it would review the licence condition and that this process would be informed by a programme of research.
- 4.7 In April 2002 Ofgem gained powers to impose financial penalties for breach of licence obligations. Sections 30A of the 1986 Gas Act and 27A of the 1989 Electricity Act provide that, where it is satisfied that that a licence holder has contravened any relevant condition or requirement, or has failed, or is failing to achieve any standard of performance, the Authority has the power to impose a

financial penalty of such an amount as is reasonable in all of the circumstances of the case. In November 2002 Ofgem confirmed its proposal to impose a financial penalty of £2 million on London Electricity plc for its failure to comply with standard licence condition 48.

General legislation

- 4.8 Sales and marketing activity is regulated by a range of legislation enforced by a number of different institutions which are not specific to the gas and electricity markets.
- 4.9 The police responsibility for the enforcement of criminal legislation extends to the direct selling of gas and electricity in so far as it concerns specific crimes, for example violence or fraud. The response to these crimes will depend upon individual force policy.
- 4.10 General consumer protection legislation is enforced principally by Local Authority Trading Standards Departments. This provides for sanctions for breaches of criminal legislation including:
- The Trade Descriptions Act 1968 which prohibits false descriptions made about goods and false statements about the provision of services, inaccurate or misleading descriptions of goods and services; and
 - The Consumer Protection Act 1987 Part III (Misleading Price Indications); and
 - The Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987.

Trading Standards Departments can also seek civil remedies under legislation including:

- The Control of Misleading Advertisements Regulations 1988 (as Amended); and
- The Consumer Protection (Distance Selling) Regulations 2000.

- 4.11 In addition to its duties and powers with regard to licence compliance the Authority also has concurrent powers with the Office of Fair Trading for the

enforcement of a range of Regulations which may have a bearing on direct selling.

They include:

- The Consumer Protection (Cancellation of Contracts Concluded Away From Business Premises) Regulations 1987;
- The Unfair Terms in Consumer Contracts Regulations 1999; and
- The Consumer Protection (Distance Selling) Regulations 2000.

Under these Regulations Ofgem can seek court orders.

4.12 Ofgem has been designated an 'enforcer' under Part 8 of the Enterprise Act and has the power to obtain enforcement orders from the Courts in relation to breaches of consumer protection legislation. Legislation covered by the Act includes:

- The Control of Misleading Advertisements Regulations 1998 (as amended);
- The Consumer Protection (Cancellation of Contracts Concluded Away From Business Premises) Regulations 1987;
- The Unfair Terms in Consumer Contracts Regulations 1999; and
- The Consumer Protection (Distance Selling) Regulations 2000.

In this matter the relationship between the OFT and Ofgem will be defined by a concordat which is currently under discussion.

4.13 The relationship between suppliers and their agents is regulated by the Commercial Agents Regulations (Council Directive) 1993. Some suppliers have said that the regulations have made it difficult to take action to terminate contracts where this has been necessary for the performance of licence obligations. The application of the regulations has not been fully tested in the Courts.

European law

4.14 In June 2003 the European Commission adopted a proposal for a Directive on unfair commercial practices. The proposed Directive seeks to establish a general prohibition of unfair commercial practices, in particular misleading and aggressive

commercial practices. The proposed Directive states that a commercial practice may mislead through action or omission and describes aggressive practices as harassment, coercion and undue influence. The Directive would apply where there are no specific provisions regulating unfair commercial practices in sectoral legislation. Where such provisions do exist, it is intended that they would take precedence over the framework directive. Where a sectoral directive regulates aspects of commercial practices, the framework would be applied to those aspects not covered.

Self regulation

- 4.15 The Advertising Standards Authority (ASA) is the independent, self-regulatory body for non-broadcast advertisements, sales promotions and direct marketing in the UK. It administers the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code) to ensure that advertisements are legal, decent, honest and truthful. The ASA has a number of sanctions it can use to ensure that advertisements, sales promotions and direct marketing that break the CAP Code are amended or withdrawn, including the refusal of further advertising space and adverse publicity.
- 4.16 The Trading Standards Institute, in association with a range of other organisations, has developed a 'National Doorstep Selling Protocol'. This has been supported by a number of energy suppliers and other organisations including energywatch and West Yorkshire Police. The protocol states that, where possible, representatives will have previously arranged an appointment before calling on a consumer, and where this is not possible sets out a procedure to be observed. This includes the use of identification cards, a land-line number through which a consumer may confirm the credentials of a caller and an agreement to return at a later, pre-arranged date, if requested by the consumer. This measure was prompted by a range of distraction burglaries and violent crimes by individuals purporting to represent a range of utility companies.
- 4.17 In 2002 the major energy suppliers initiated a scheme called *Energysure*. This provided for minimum standards for the recruitment and training of sales agents, and established a register of accredited agents. Further information about energysure is available at:

http://www.energysure.org.uk/about_esure.html

- 4.18 In April 2003 the major energy suppliers signed the Association of Energy Suppliers' (AES) Code of Practice for the Face to Face Marketing of Energy Supply. The code was produced with input from Ofgem, energywatch and the DTI, and to answer widespread concern about energy sales, which had been the subject of an energywatch summit in May 2002. The code incorporates *Energysure* requirements and provides for some consumer protection which is in excess of the requirements of the legislation and the licence. For example the code requires the payment of £250 compensation in cases of proven forgery. The code is managed by a Code Administrator, appointed by the AES, and is overseen by an independent Code Panel chaired by Lord Dubbs. Details of the code can be found at:

<http://www.aes.org.uk/code.html>

Enterprise Act

- 4.19 In September 2002 Citizens Advice asked the OFT to look at the problems consumers experience with doorstep sales in a wide variety of goods and services. The OFT has responded to this supercomplaint by launching a market investigation into doorstep selling and intends to report on its findings before the end of 2003.

5. Research

- 5.1 During the summer of 2002 Ofgem commissioned Accent Marketing and Research to undertake qualitative and quantitative research into consumer attitudes to the direct selling of energy. The results of the research were presented to Ofgem in October 2002. 2000 consumers from England, Scotland and Wales, who had experienced direct selling within the previous four months, were contacted.
- 5.2 34% of consumers said that the sales agent who had approached them had been 'fine, doing their job', 26% had considered the sales agent 'a nuisance', '25% had found the agent to be 'quite pushy'.
- 5.3 18% of consumers had agreed to sign a contract as a result of the contact. However, 4% of consumers said that they failed to sign because of 'horror stories' and 13% because of the 'sales approach'.
- 5.4 36% of consumers approached on the doorstep were quite or very dissatisfied with the contact while 43% were quite or very satisfied. Of those dissatisfied, 50% found the agent 'too pushy/aggressive' while 45% of those satisfied found the experience 'very informative'. 10% of respondents thought that abandoning the direct sales approach would be a positive step. This contrasts sharply with two previous surveys carried out on behalf of Trading Standards and energywatch which found that the majority of consumers did not want agents to make unsolicited contact.
- 5.5 Overall 25% of consumers who signed as a result of the contact went on to cancel the contract. However, the distribution of those customers varied depending on the sales channel; 40% who signed on the doorstep, 36% who signed on the street and 0% by telephone said that they had not wanted to change supplier. This may suggest that that a significant number of consumers who signed on the doorstep or street were doing so to encourage the agent to leave.
- 5.6 27% of respondents encountered problems when cancelling, nearly half of these arising because of the cancellation period available. Overall, 30% of respondents said that they did not receive an audit call or letter from the new supplier (as required by the licence condition).

- 5.7 2% of consumers said that their signature had been forged, 12% felt they had been 'duped' into signing a contract and 11% had been transferred without their knowledge.
- 5.8 Focus groups were also held in various locations around England, Scotland and Wales. This qualitative research suggests that, on the whole, consumers accepted direct selling of energy as the norm. However, they often felt confused when figures were quoted and said that they would like to have had more time to consider any offer without pressure. Consumers were cynical about the savings promised by sales agents; they wanted an independent method of verifying claims. Most consumers were unaware of the price comparison information available from energywatch and the Internet.
- 5.9 Consumers felt that the number of companies vying for their business was sometimes overwhelming. Respondents faced a varying frequency of approaches by agents, sometimes more than once a week. The most intrusive time for an agent to call was late afternoon or early evening, when children were returning from school or the evening meal was in preparation.
- 5.10 Doorstep selling was most criticised as consumers found it difficult to ask sales agents to leave; but found it easier to terminate a telesales call. Street sales were felt to be the least intrusive since agents could more easily be avoided. However, the presence of persistent agents within supermarket premises appeared to be particularly disliked - consumers were less able to avoid these individuals.
- 5.11 While few respondents had directly experienced forged signatures or involuntary transfer, a number of consumers reported an awareness of other individuals being signed up without their knowledge.
- 5.12 Many consumers thought that it would be preferable to receive an offer in writing. This would give them time to consider the offer in a non-pressurised environment. This view was also reflected in the quantitative research in which over a third of respondents said that they needed clearer information and more time to make a decision.
- 5.13 There was some confusion over cancellation rights; many consumers said that they would like these to be made clearer to them at the time of the sales pitch.

This was also a quantitative research finding, only 2% of respondents visited on the doorstep could recall being given cancellation details.

- 5.14 In considering the feedback provided by the research, Ofgem will continue to take into account the positive impacts of direct selling, in particular that it has opened access to the market and therefore provided the benefits of competition to those on lower incomes.

6. The case for change

- 6.1 During 2002 concerns about misselling increased and the issue received a higher public profile. energywatch reported a significant rise in the number of complaints it was receiving, although this can in part be attributed to changes in the way in which telephone enquiries were handled and complaints recorded.
- 6.2 energywatch launched its 'Stop Now' campaign in January 2002 which sought to put pressure on companies to tackle marketing abuse.
- 6.2 In June 2002 Citizens Advice published 'The fuel picture' which described their clients' experience of dealing with energy suppliers. This stated that an estimated 20% of all cases referred to NACAB by local bureaux concerned poor sales practice by fuel suppliers. The report pressed Ofgem to take enforcement action and recommended changes to the marketing licence condition.
- 6.3 In April 2002 Ofgem acquired powers to impose financial penalties for non compliance with licence conditions and undertook a major investigation of the sales practices of London Electricity plc. This investigation led to the imposition of the first financial penalty in November 2002.
- 6.4 Notwithstanding this, a number of representations that have been made to Ofgem by MPs, consumer groups and the public suggest that the licence condition does not meet the expectations of those campaigning for a change in supplier behaviour.
- 6.5 The licence condition prescribes the procedures necessary for compliance, but does not impose an absolute obligation upon suppliers. Sections of the licence condition refer variously to 'appropriate procedures', 'reasonable steps' and 'reasonable endeavours'. Some consumer groups have expressed the view that this is unsatisfactory and suppliers have sometimes sought guidance on the definition of these terms. Ofgem also considers that these terms can lead to unnecessarily complex enforcement.
- 6.6 Experience suggests that although Ofgem may have evidence of misselling, including pressure selling, selling to minors and providing misleading information to consumers, suppliers may legitimately avoid sanction by demonstrating that they have taken 'reasonable steps'.

- 6.7 The licence condition seeks to control the input to the transaction, for example the training of the sales agent, rather than the output, what actually takes place. For this approach to be effective, it must be firmly established that the provisions in the condition are directly linked to the outputs. For example, that the level of training specified in the licence condition will reduce misselling. It is not clear that this analysis has been undertaken, indeed some suppliers have suggested that they are constrained by the prescription in the licence condition from applying their own individual management styles and controls.
- 6.8 Ofgem considers that the existing licence condition may have placed too much emphasis on inputs to the sales and marketing process in the expectation that this would improve the outputs, in terms of consumer experiences. The effect of a detailed and prescriptive licence condition can be to encourage a diligent licence holder to focus time and resource on complying with the terms of the licence condition, when it may be that, from a consumer perspective, it would be more appropriate to concentrate on the outcome for consumers, that is the actual experience of a consumer subject to a direct sales approach.
- 6.9 Ofgem considers that in a competitive market suppliers should be targeted on desired outcomes, leaving them free to determine how these will be achieved within their own corporate environments, providing an incentive to do so efficiently, innovatively and flexibly as the market develops further.

7. Review of licence condition 48

Objective

- 7.1 Ofgem considers that the purpose of the marketing licence condition should be to give gas and electricity consumers confidence that they will have fair access to a competitive market, in which sales and marketing activity is carried out in an appropriate manner, and that consumers are freely able to make switching decisions based on accurate information and are not transferred against their will.

This review will therefore seek to identify and propose changes to prevent regulation which damages consumer confidence and to identify and introduce requirements which will build consumer confidence.

General

- 7.2 The first marketing licence condition was drafted and implemented in 1998, at a time when the market was much less mature. It is not a permanent licence condition, but under sub-paragraph 12 is subject to a two-yearly review. Before extending the term of the condition the Authority is required to state that it considers that the development of competition is such as to require the continuation of the condition and must consult on this view. The existing licence condition is due to be reviewed in March 2004 .
- 7.3 Ofgem does not yet believe that the supply market for domestic consumers has developed in a way which would enable sector specific regulation of sales activity to cease, but expects that as the industry develops informal alternatives, such as self- or co-regulation, the role for formal regulation will diminish. Ofgem has been encouraged by the development of the Energy Sales Code of Practice on doorstep selling and will be looking closely at the benefits that this delivers to consumers. Ofgem therefore considers it is appropriate in the meantime to retain the requirement to renew the licence condition at regular intervals.

Drafting

- 7.4 There are minor differences in the wording of the marketing licence condition contained in the gas and electricity supply licences. These have no significant

impact and there is no justification for maintaining the inconsistency. Ofgem proposes that the conditions should conform wherever possible.

Scope

- 7.5 Sub-paragraph 1 defines the scope of the existing licence condition in that it applies to marketing activities in respect of the supply to the premises of domestic customers. Ofgem is interested in views on whether this continues to be appropriate.
- 7.6 In particular the condition makes no specific provision for vulnerable consumers. Much concern has been expressed about the impact of misselling on vulnerable consumers, including older consumers or minors and it may be the case that they require greater levels of protection than other consumers. Ofgem is interested in views on whether it would be desirable to make specific provision for vulnerable consumers, what that provision might be and how workable definitions could be drawn up. For example, Ofgem notes that the AES code states that 'where there is sheltered housing, contact must be made with the warden or other person in authority before making any approach to the residents'.
- 7.7 Recent feedback from some industrial and commercial (I&C) consumers suggests that they can also be subject to inappropriate selling activity by suppliers, particularly those small businesses without routine access to advice or specialist knowledge. A re-drafting of the licence condition could extend protection into the I&C market, although Ofgem considers it is unlikely that it would be justified to extend it to larger I&C customers. Ofgem understands that this would have the effect of providing a level of protection beyond that available to I&C customers within other markets and recognises that there might be a cost to suppliers of introducing such protection, which may be passed on to I&C consumers, and an increased cost in the monitoring of compliance. In addition other issues being considered, such as the availability of cancellation rights, could have a significant impact upon the ability of I&C consumers to transfer quickly. Before proposing such a widening of the scope of the licence condition Ofgem would need to be convinced of the benefits and how they would be valued by I&C customers. Ofgem invites views on whether a wider scope would be desirable and how workable definitions could be drawn up.

- 7.8 The application of the licence condition is limited to oral communication with consumers, for example sub-paragraphs 2, 3 and 4. Ofgem considers that this can lead to inconsistent levels of protection for consumers who might access suppliers' marketing information or enter into contracts as a result of contact through different channels such as the Internet or following direct mail or other advertising. Ofgem recognises that consumers approach these channels with different expectations and that the sales and marketing transaction may require different controls. Ofgem would welcome views on whether and to what extent the licence condition should be modified to cover all channels for contact with consumers and whether different provisions should be made for different media.
- 7.9 The market for the supply of energy has shown signs that it may increasingly overlap with the sale of other utility goods and services and beyond, into markets such as insurance and maintenance services. Ofgem is interested to receive views about the need to balance the optimal level of protection to consumers with the need to maintain consistency and avoid unnecessary complexity for consumers and suppliers.
- 7.10 Ofgem considers that the licence condition covers all 'win back' or 'save' activity which may be undertaken by a supplier, but would like views on whether this should be made more explicit.

Consumer empowerment – building confidence

Information

- 7.11 Ofgem believes that consumers should be confident and informed participants in the market and that this could be achieved by strengthening and formalising the requirements for the information that is provided to consumers. To be of value such information needs to be made available to consumers immediately for face-to-face contact and as soon as possible by post, in the case of non face-to-face contact. There is a difference between a contact which results in a sale and a contact which does not, and the information requirements of consumers may therefore be different. Ofgem recognises that the information consumers require can be complex and that there is a balance to be struck between prescribing the content and format, with the opportunities for innovation that less prescription might provide.

7.12 Ofgem believes that the licence condition should specify minimum requirements for information and that these might include:

- a copy of the contract that they have signed (this is already a licence requirement under standard licence condition 44);
- written details of the tariff applying to the contract;
- written copies of any other information relied upon during a sale (for example, data used in calculating any quoted saving);
- details of cancellation rights and how to effect a cancellation (see paragraph 7.13); and
- details of how to complain to the supplier and contact details for energywatch.

Ofgem is interested in views on the practicality of providing such information and the value it would provide to consumers; and whether there should be different requirements for information according to different sales channels.

Cancellation rights

7.13 One of the most useful consumer protection measures can be a cooling off period during which consumers can cancel a contract. This may be particularly important after face-to-face contact with a supplier. While there is not an automatic right to a cancellation period in every circumstance, the existing licence and consumer protection legislation provide for several circumstances in which cancellation rights are available. However, these are inconsistent and can therefore be confusing to consumers. Some of the existing provisions are detailed below:

- The Consumer Protection (Cancellation of Contracts Concluded away From Business Premises) Regulations 1987 (as amended) apply to **unsolicited** visits by a supplier. Where the regulations apply, they provide a seven-day cooling off period during which time a consumer may cancel the contract.
- Sub-paragraph 4 of standard licence condition 48 requires suppliers to use **reasonable endeavours** to contact a domestic consumer (not less than 24

hours, nor more than 14 days after the date of the contract in question) and establish that the consumer understands that he has entered into a contract, is content to have entered into the contract and was content with the way in which the marketing activity was conducted. If in the course of such telephone contact, or within a reasonable amount of time of sending a letter, the consumer indicates that he wishes to terminate the contract, the supplier must take all reasonable steps to ensure that the contract is terminated and that the proposed transfer is not put into effect. This does not provide a cancellation right to all consumers as it does not impose an absolute requirement on a supplier to contact every consumer.

- In some circumstances The Consumer Protection (Distance Selling) Regulations 2000 provide for a cancellation period of 7 days, although the period will vary according to the timing of the provision of details of the right to cancel.
- Some suppliers provide for a cancellation period in addition to that provided by the licence or the legislation. These are entirely voluntary and may differ between companies, although they tend to be for a minimum period of 14 days.

Consumers are only able to take advantage of their right to cancel a contract if they are aware of and understand that right and the arrangements for effective cancellation.

7.14 Ofgem recognises that the imposition of cancellation periods will inevitably have an impact upon the length of time that it can take for a consumer's supply to be registered with a new supplier, and could therefore mean that consumers will be prevented from transferring as quickly as they might like. The current review of the transfer process, which is considering the time taken to transfer, will also consider this point and any proposals will require consistency.

7.15 Some consumer organisations have suggested that a minimum standard cancellation period of 14 days should apply. Ofgem would welcome views on the introduction of a mandatory 14 day cancellation period, how this would fit with other legal obligations, how consumers could be made aware of this right and what impact it would have upon the transfer process.

Consumer protection – preventing misselling

Licensee obligations – training and identification of staff

- 7.16 Sub-paragraph 2 (a) of standard licence condition 48 requires suppliers to set up appropriate procedures for the selection of staff employed principally in marketing activity. (The full text of the licence condition is attached at appendix 3). The condition provides no definition of appropriate procedures.
- 7.17 Sub-paragraph 2 (b) requires suppliers to take **all reasonable steps** to ensure that all marketing staff are trained so that they understand the arrangements for competition, the prices charged by the supplier, the terms of supply, methods of payment, duration of contracts and termination fees, such that any relevant advice given to consumers is not misleading. The licence condition does not define reasonable steps, nor prescribe that the information must be provided to consumers. Although it must be seen as desirable that sales agents have been trained in this way, its impact is not clear. For example it has not been established that a lack of training leads to the misleading of customers, and it may be that adequate information can be provided to consumers in a different way, for example in writing.
- 7.18 Sub-paragraph 2 (c) requires that a supplier must take **all reasonable steps** to ensure that a domestic customer may identify the licensee whenever a representative contacts a customer, that a customer will readily understand that he or she has entered into a contract and that any unsolicited contact takes place at reasonable times. The licence condition does not define reasonable steps.
- 7.19 Ofgem believes that there is an opportunity for debate about the desirability and practicability of a different approach to licensee obligations than that contained in the licence condition. Such an approach could shift the focus of the licence condition from 'reasonable endeavours' towards absolute obligations upon suppliers, in line with some other licence requirements. In opening this debate Ofgem recognises that the nature of sales and marketing activity can make it more difficult for suppliers to manage more than straightforward requirements, for example the provision of documentation, but considers that there may be scope to

place a firmer obligation upon suppliers to ensure that they take responsibility for the actions of sales agents undertaking activity on their behalf.

7.20 In considering placing a firmer obligation upon suppliers Ofgem would be seeking to prevent some of the most inappropriate activity which has been observed within the market. This might include the specific prohibition of:

- misleading consumers about the nature of a document they are signing;
- forging consumers' signatures;
- attempting to sell to minors;
- bringing undue pressure to bear, particularly upon vulnerable consumers;
- sales activity outside certain times of the day; and
- continuing an approach after a consumer has requested that it be terminated.

7.21 It might also include a range of positive obligations including:

- the requirement to carry appropriate identification, including the name of the sales agent and their employer, possibly in the form of a business card, which must be left with the consumer;
- the requirement to state clearly that the purpose of the contact was for sales and marketing; or
- a requirement to provide certain information.

7.22 The use of 'reasonable steps' terms can create uncertainty for suppliers, since the requirement is not clearly defined; it can cause confusion for consumers as their rights are not absolutely stated; and it can make enforcement difficult as it requires a view as to what other action might reasonably have been taken.

7.23 Views are sought on the use of such 'reasonable steps' terms and the suggestion that the licence condition should focus on outcomes and outputs.

Licensee obligation - checks in the sales process

- 7.24 Sub paragraph 4 (a) requires that a supplier uses its reasonable endeavours, within not less than 24 hours and not more than 14 days of a sale, to contact a consumer and seek confirmation that he understands he has entered into a contract, that he is content to have done so and that he is content with the way in which the sale was conducted. In practice most suppliers satisfy this requirement by writing a standard letter to consumers. However, if a consumer has been the subject of misselling or is unaware that he is will be transferred to a new supplier, he may be unlikely to open such correspondence, regarding it as unsolicited marketing information.
- 7.25 Sub-paragraph 4 (b) requires that if in the course of contact described in sub-paragraph 4 (a), a consumer indicates that he is not willing to proceed with the contract , the supplier should take all reasonable steps to ensure that the supply contract is terminated.
- 7.26 In addition to allowing consumers a standard period of time in which to cancel a contract, Ofgem has been asked to consider how the licence condition could be drafted to ensure that the transfer of supply only takes place when a consumer wishes to transfer. It has been suggested that such measures would significantly reduce the impact of misselling and restore confidence in the process.
- 7.27 The licence could include a requirement for a supplier to obtain a signature from a consumer before processing a transfer. This would have the greatest impact on Internet and telephone sales, which are sometimes the subject of consumer confusion or can deliberately mislead consumers. Ofgem considers that this would slow down the switching process unnecessarily, may inhibit those consumers who want to change supplier with a minimum of inconvenience and could be subject to disputes about whether signatures are genuine. However, telephone sales are inherently more straightforward to manage and monitor for quality, and if subject to improved checks, may provide an improved experience for consumers.
- 7.28 The existing licence condition places an obligation upon suppliers to make reasonable efforts to contact consumers to confirm that they wish to proceed with a change of supplier. Ofgem notes some suppliers have voluntarily extended the scope of the requirement, so that a transfer is not processed without the supplier having had positive confirmation that a consumer wishes to transfer. As with the

requirement to obtain a signature, this has the potential to reduce the speed with which a consumer is able to transfer and could have the effect of preventing or delaying switching in the majority of cases where consumers do wish to switch. Those suppliers who have control of their sales forces and create proportionately fewer problems for consumers, would be unlikely to find this measure cost effective. Therefore Ofgem is unlikely to propose to extend the licence condition in this way, but would welcome views.

- 7.29 In the telecommunications industry Oftel has established a process for the sale of carrier pre-selection which requires both the existing supplier and the acquiring supplier to contact the consumer in writing to inform them that they will be switched. The content of the letters is prescribed by Oftel to ensure that they are appropriate. The introduction of such an approach within the energy market would ensure that consumers were aware that a transfer was about to take place, and would provide an opportunity to take action to prevent the transfer if inappropriate. However, Ofgem notes that the rate of switching facilitated by carrier pre-selection has been orders of magnitude less than is seen in gas and electricity.
- 7.30 It has been suggested that 100% verification of consumer requests to transfer could only be established by a third party. Ofgem thinks it is unlikely that the introduction of third party verification could be achieved at a reasonable cost and without unduly slowing or halting the transfer process, but is interested in wider views.
- 7.31 Gas and electricity supply are unusual because domestic supply contracts are for supply to a household at which gas or electricity is likely to be consumed by more than one person. Generally gas and electricity supply contracts are made with an individual, rather than the whole household, and regardless of the personal arrangements made for the payment of bills. The current arrangements generally work well for consumers, allowing the flexibility to respond to changing personal circumstances, without affecting supply. However, the arrangements can lead to confusion among consumers about the status of an existing contract, when a competing supplier makes a sale to a different member of the household. This has the effect of terminating the original contract, regardless of the wishes of the original consumer. Moreover, checks in the transfer process will always need to be made with the person who is newly contracting for supply, rather than the

existing customer, and that this may not always be desirable. Ofgem tends to view current arrangements as working well for consumers, however Ofgem would welcome views on this point.

Licensee obligations - consumer redress

7.32 Sub paragraph 6 of the licence condition requires that the procedures for dealing with complaints by domestic customers established by the licensee should provide in appropriate cases for the payment of compensation to domestic customers adversely affected by the failure of the licensee to perform its obligations under standard licence condition 48. The licence condition does not define 'appropriate cases'. Licensees are required to report to Ofgem quarterly, on compensation paid for such failures. Statistics reported by licensees during 2001-2 are shown in table 7.1.

Table 7.1 Number of compensation payments made as a percentage of qualifying contracts entered into in 2001/2002

GAS

Name of GAS Supplier:	Jun-01	Sep-01	Dec-01	Mar-02
Amerada Ltd	0.00	0.00	0.00	0.06
Atlantic Electric and Gas Ltd	n/a	n/a	0.00	0.00
Beacon Gas (Seeboard)	0.00	0.00	0.00	0.00
British Gas Trading Ltd	0.02	0.00	0.00	0.00
Cambridge Gas Co Ltd	0.06	0.65	2.90	9.80
Energy Supplies UK Ltd	0.00	0.00	0.00	0.00
Enron Direct Ltd	n/a	0.00	n/a	n/a
London Electricity Plc	0.05	0.04	0.11	0.07
Npower Northern Ltd (formerly Northern Electric)	0.00	0.00	0.00	0.00
Npower Gas Ltd (formerly Calortex)	0.19	0.40	0.93	0.17
Powergen Retail Gas Ltd	0.01	0.01	0.14	0.07
Scottish Power	0.09	0.26	0.24	0.13
Southern Electric	0.02	0.02	0.02	0.02
TXU Europe ¹	n/a	n/a	n/a	n/a
Npower Yorkshire Ltd (formerly Yorkshire Electricity)	0.02	0.01	0.03	n/a

ELECTRICITY

Name of Electricity Supplier:	Jun-01	Sep-01	Dec-01	Mar-02
Amerada Ltd	n/a	n/a	0.00	0.00
Atlantic Electric and Gas Ltd	0.00	0.00	0.00	0.00
British Gas Trading Ltd	0.02	0.00	0.01	0.00
Enron Direct Ltd (Now BGT Oxford)	0.80	0.00	0.71	1.14
London Electricity Plc/SWEB	0.04	0.04	0.11	0.07
Manweb ²	0.27	0.87	-	-
Npower Northern Ltd (formerly Northern Electric)	0.00	0.00	0.00	0.00
Npower Ltd	0.31	0.53	1.17	0.29
Powergen Energy Plc	0.01	0.01	0.13	0.06
Scottish Power Plc	0.38	0.52	0.41	0.22
Scottish and Southern Energy Plc	0.03	0.02	0.02	0.02
Scottish Hydro Electric ³	0.03	0.02	-	-
Seaboard Plc	0.00	0.00	0.00	0.00
SWALEC ³	0.03	0.01	-	-
TXU Europe ¹	n/a	n/a	n/a	n/a
Npower Yorkshire Ltd (formerly Yorkshire Electricity)	0.03	0.03	0.05	n/a

¹Due to restructuring and IT problems, TXU have been unable to provide accurate data for this period

²From December 2001 Manweb figures were included in the Scottish Power's report

³From December 2001 Scottish Hydro and SWALEC figures were included in the SSE report

7.33 These suggest that, in the majority of cases, suppliers pay no compensation to individuals affected by their failure to comply with standard licence condition 48. Ofgem has been urged to consider making more specific provision for the payment of compensation to consumers who have been subjected to inappropriate selling activity. Ofgem understands that there will be concern among suppliers that the right to automatic compensation could encourage the emergence of false or vexatious complaints and that offering compensation might

be a dimension of competitive difference. However, this needs to be balanced by the very real inconvenience and distress suffered by consumers who are affected, and the incentive to compliance it might provide. Ofgem has been encouraged by the inclusion of automatic compensation payable under the suppliers' doorstep selling code of practice and tends to believe that it would be appropriate to allow suppliers an opportunity to apply this in practice without further regulatory intervention. However, Ofgem invites views on whether compensation payments should be specified in the licence condition, in what circumstances and in what amounts.

Licensee obligations – reporting

7.34 Standard licence condition 48 sub-paragraph 7 requires suppliers to record compliance with the following:

- the contacting of domestic consumers for the purposes of sub-paragraph 4(a) and the response of customers to such contact;
- the termination of domestic supply contracts in relation to sub-paragraph 4(b); and
- compensation paid in relation to failures under the condition mentioned in paragraph 6.

7.35 Sub-paragraph 8 requires suppliers to report details of their compliance to the Authority and to energywatch. Suppliers are also required to publish this information and make it available free to anyone so requesting it.

7.36 Sub-paragraph 9 allows the Authority to designate a standard format for the reporting of this information.

7.37 For the purposes of monitoring compliance with the licence condition these reporting requirements will be changed to reflect any changes in the licence condition.

7.38 Views are sought on what information should be made available to the public and in what form.

8. Monitoring and enforcement

- 8.6 Traditionally the way in which Ofgem has managed the monitoring and enforcement of the licence condition has focussed on levels of consumer complaints to energywatch as an indicator of particular causes for concern and where investigative resources should be used. However, experience has demonstrated that it can take some time for the effects of misselling to be felt within the market and that it takes suppliers even longer to respond by changing processes or taking action against sales agents. To take account of this Ofgem would like to move the emphasis away from complaints reported to energywatch, although these will continue to be a significant source of information and to be used to indicate the need for further investigation.
- 8.7 In August 2002 Ofgem published a decision document, 'Regulation of gas and electricity marketing: a more rigorous approach'. Ofgem announced in this document that it would automatically investigate companies, on the basis of the number of complaints about direct selling which were reported by energywatch. However, the implementation of this policy was postponed until energywatch had introduced complaint verification processes and conducted an audit of its compliance with internal recording and reporting processes. energywatch has since told Ofgem that it is not planning to conduct such an audit and so Ofgem has concluded that it will not be appropriate to implement this policy. The use of the proposed trigger in such circumstances may lead to an inappropriate use of investigative resources and could be detrimental to the interests of both consumers and suppliers.
- 8.8 Ofgem will therefore continue its current approach, using energywatch complaint statistics as one indicator among a range of others (including information received from the Office of Fair Trading, Trading Standards, Citizens Advice bureaux and in complaints received directly) that action may be required. In addition Ofgem will work closely with energywatch to ensure that it receives feedback about direct selling activity and areas of consumer concern. Experience over the past year suggests this range of indicators gives Ofgem a reasonably clear picture of suppliers' activities.

9 Summary of views requested

Summary of issues for discussion

Paragraph	Views invited
7.3	Ofgem considers it is appropriate to retain the requirement to renew the licence condition at regular intervals.
7.4	There are minor differences in the wording of the marketing licence condition contained in the gas and electricity supply licences. These have no significant impact and there is no justification for maintaining the inconsistency. Ofgem proposes that the conditions should conform wherever possible.
7.5	Sub-paragraph 1 defines the scope of the existing licence condition in that it applies to marketing activities in respect of the supply to the premises of domestic customers. Ofgem is interested in views on whether this continues to be appropriate.
7.6	Ofgem is interested in views on whether it would be desirable to make specific provision for vulnerable consumers, what that provision might be and how workable definitions could be drawn up
7.7	Ofgem invites views on whether a wider scope would be desirable and how workable definitions could be drawn up.
7.8	Ofgem would welcome views on whether and to what extent the licence condition should be modified to cover all channels for contact with consumers and whether different provisions should be made for different media.
7.9	Ofgem is interested to receive views about the need to balance the optimal level of protection to consumers with the need to maintain consistency and avoid unnecessary complexity for consumers.
7.10	Ofgem considers that the licence condition covers all 'win back' or 'save' activity which may be undertaken by a supplier, but would like views on whether this should be made more explicit.
7.12	Ofgem believes that the licence condition should specify minimum requirements for information and is interested in views on the practicality of providing such information and the value it would provide

	to consumers; and whether there should be different requirements for information according to different sales channels.
7.15	Ofgem would welcome views on the introduction of a mandatory 14 day cancellation period, how this would fit with other legal obligations, how consumers could be made aware of this right and what impact it would have upon the transfer process.
7.23	Views are invited on the use of terms such a 'reasonable steps' and the suggestion that the licence condition should focus on outcomes and outputs.
7.28	Some suppliers do not process a transfer without having had positive confirmation that a consumer wishes to transfer, Ofgem is unlikely to propose to extend the licence condition in this way, but would welcome views.
7.30	Ofgem thinks it is unlikely that the introduction of third party verification could be achieved at a reasonable cost and without unduly slowing or halting the transfer process, but is interested in wider views.
7.31	Ofgem does not wish to change these arrangements, i.e. accepts that the result is that checks in the transfer process will always need to be made with the person who is newly contracting for supply, rather than the existing customer, and that this may not always be desirable. However Ofgem would welcome views on this point.
7.33	Ofgem invites views on whether compensation payments should be specified in the licence condition, in what circumstances and in what amounts.
7.38	Views are sought on what information should be made available to the public and in what form.
7.39	Recognising the difficulty of providing a detailed response without specific proposals, Ofgem would welcome views on the costs and benefits of: <ul style="list-style-type: none"> • extending protection to industrial and commercial customers

	<p>(see paragraph 7.7);</p> <ul style="list-style-type: none">• extending the licence condition to cover other channels of communication (see paragraph 7.8;• ceasing to mandate 'inputs' (e.g. recruitment and training requirements) and focussing instead on outputs (e.g. information given to consumers);• introduction a 14 day cooling-off period (see paragraph 7.15);• introducing 3rd party verification;• introducing compulsory compensation; and• introducing further checks in the transfer process.
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Appendix 1 Regulatory Impact Assessment

Objective

- 1.1 The purpose of this review is to consider whether Ofgem should seek to modify the way in which the direct sale and marketing of gas and electricity is regulated.

Overview of key issues

- 1.2 The introduction of competition into the gas and electricity supply markets has delivered real benefits to consumers. This has largely been due to the impact of direct selling. However concern has been expressed about the way in which this activity has been conducted by suppliers.
- 1.3 Sales and marketing is regulated in the gas and electricity licences by standard licence condition 48. This has been the subject of enforcement action by Ofgem against some suppliers, but it has been suggested that it provides an inadequate level of protection for consumers. The licence condition expires in April 2004 but can be extended on review.

Options

- 1.4 Ofgem will be considering a number of options for addressing the issue of misselling as a result of the responses to this consultation. However, these can be categorised into three broad approaches. The first option would be to take no action to change the existing arrangements and maintain the status quo. The licence condition would continue to have effect, Ofgem would maintain its present approach to enforcement and any proposal to extend the licence condition beyond April 2004 would be the subject of consultation.
- 1.5 The current licence condition cannot be renewed without a formal proposal to extend, which must be published for consultation. The second option would be to allow the licence condition to lapse and rely on non-sector specific consumer protection legislation and industry self-regulation. This option is available only if the Authority were to decide that the development of competition was such that the licence condition was no longer required.

1.6 The third option would be to impose modified obligations upon suppliers by making changes to the wording of the licence condition.

Risks and Unintended consequences

1.7 There are risks associated with each of the options identified. These can be categorised as follows:

- risk of increased consumer detriment;
- risk of increased cost to suppliers of compliance with the licence obligation;
and
- the risk that competition will be adversely affected by the impact on either suppliers or consumers.

Competition

1.8 The review of SLC 48 recognises that the way in which sales and marketing are regulated and undertaken will have a direct impact upon competition, by influencing both supplier and consumer behaviour. If consumer confidence in the market is undermined for example through a poor experience or as a result of negative media coverage, then it is possible that consumers will be reluctant to participate in the competitive market and may elect to stay with their existing supplier. Equally if regulation is too onerous then suppliers may feel constrained from actively marketing gas and electricity, which would have a significant impact on levels of switching.

Costs and benefits

- **Environment**

1.9 It is not expected this review of the marketing licence condition will have an environmental impact.

- **Security of supply**

1.10 It is not expected that this review will have an impact on security of supply.

- **General**

1.11 In determining which option is most appropriate, consideration will be given to balancing the costs and benefits to both consumers and suppliers. Suppliers' costs will include the cost of complying with any additional obligations that they face as a result of any changes to the licence condition. These are likely to include recruitment, training, communication, systems, legal and audit costs. Consumer costs are likely to include the distress and inconvenience of experiencing misselling and the financial cost of not selecting the most cost effective supplier. Potential benefits are likely to include an enhanced reputation for the market, increased switching and therefore savings for consumers. Whilst recognising the difficulty of providing a detailed response without specific proposals, Ofgem would welcome views on the costs and benefits of:

- extending protection to industrial and commercial customers (see paragraph 7.7);
- extending the licence condition to cover other channels of communication (see paragraph 7.8);
- ceasing to mandate 'inputs' (e.g. recruitment and training requirements) and focussing instead on outputs (e.g. information given to consumers);
- introduction a 14 day cooling-off period (see paragraph 7.15);
- introducing 3rd party verification;
- introducing compulsory compensation; and
- introducing further checks in the transfer process.

Distributional effects

- **Social impacts including on priority groups**

1.13 Direct sales have opened access to the market and ensured that the substantial benefits of competition are experienced by a wide range of consumers, including those on lower incomes. However, it also seems likely that some vulnerable consumers, for example, those who are of pensionable age, may be more susceptible to misselling.

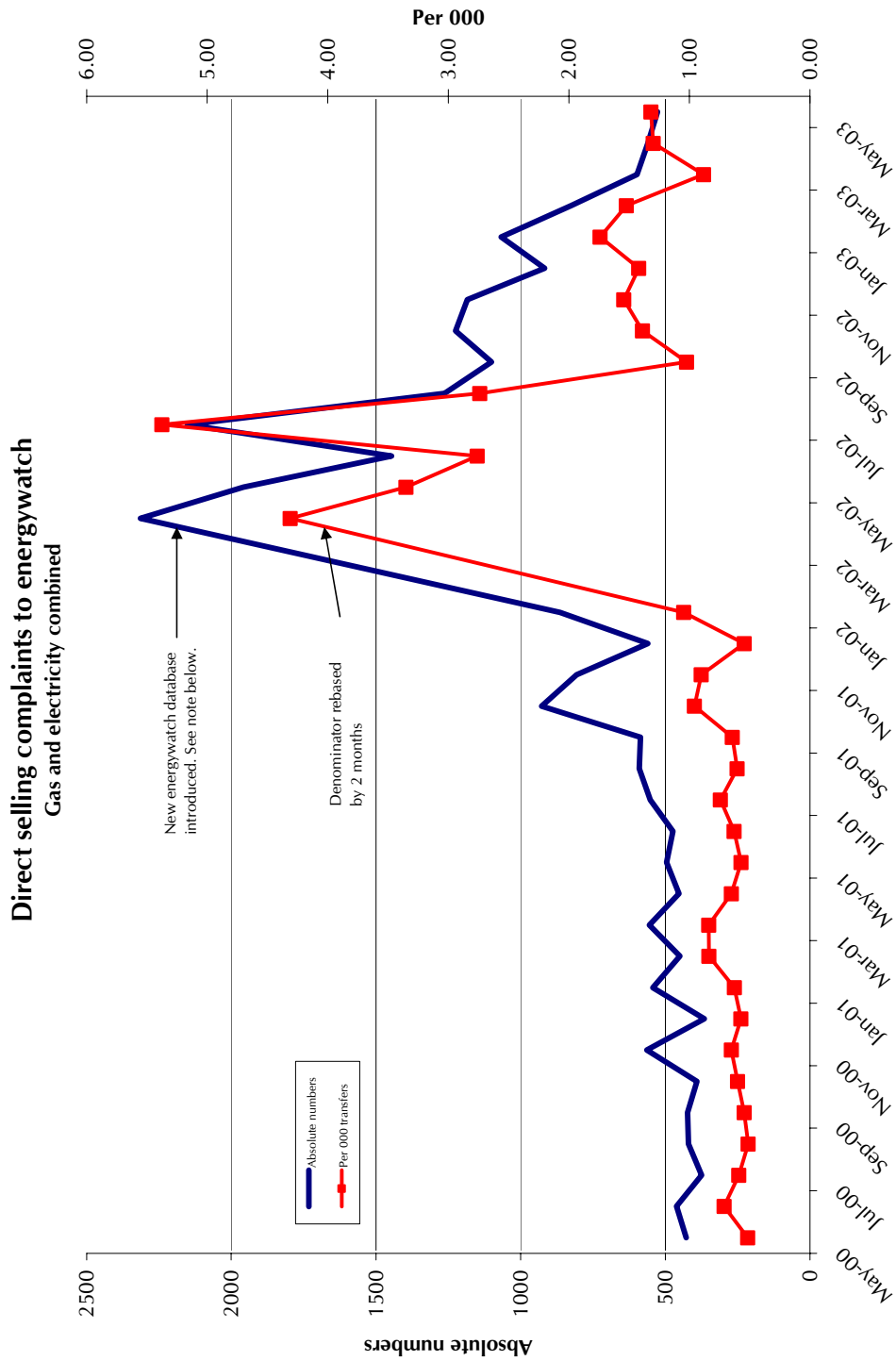
Review and compliance

- 1.14 Ofgem will continue to enforce the existing licence condition during its review. Most suppliers have signed up to a code of practice on doorstep selling, while supporting this initiative Ofgem notes that it is currently limited to doorstep sales, although other channels may be under consideration. Although early indications have been encouraging, Ofgem does not consider that the code has been established and operating for a sufficient period to draw conclusions about its long term impact.
- 1.15 Any modification to the licence condition will need to be consistent with other consumer protection legislation.

Conclusion

- 1.16 The review does not conclude that one particular option is appropriate, although it makes a case for change. It is intended primarily as a vehicle for further discussion.

Appendix 2



energywatch introduced a new complaints database during early 2002. The first available data from this database is April 2002, showing a large increase in direct selling complaints. Some of this increase can be attributed to energywatch outsourcing telephone enquiries and the subsequent increase in capacity for handling calls. However, other changes to complaint recording means that some direct selling complaints that would have been recorded on the old database are not captured on the new system.

Appendix 3

Condition 48. Marketing of Electricity to Domestic Customers

1. This condition applies to the marketing activities of the licensee in respect of the supply or the proposed supply of electricity to domestic premises.
2. 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 domestic 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 Great Britain; and
 - (ii) the principal terms of domestic supply contracts made available by the licensee;such that any relevant advice given by him to domestic customers is not misleading;
 - (c) take all reasonable steps to ensure that:
 - (i) a domestic customer may readily identify the licensee whenever he is contacted by a representative of the licensee;
 - (ii) a domestic customer will readily understand that he has entered into a domestic supply contract; and

- (iii) any unsolicited contact made on behalf of the licensee with any domestic 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).
- 3. Paragraph 4 shall apply where a domestic supply contract has been entered into by a domestic customer in the course of –
 - (a) a visit to that customer's premises by a representative of the licensee;
 - (b) a conversation in a place to which the public have access between a representative of the licensee and a domestic customer; or
 - (c) a telephone conversation between a domestic customer and a representative of the licensee.
- 4. Where this paragraph applies, the licensee shall, through a representative who is not engaged in activities leading to the entering into domestic supply contracts between the licensee and domestic customers, and not less than 24 hours nor more than 14 days after the date of the domestic supply contract in question:
 - (a) use its reasonable endeavours to contact the domestic customer by telephone or by letter seeking his confirmation that:
 - (i) he understands that he has entered into a domestic supply contract;
 - (ii) he is content to have entered into that domestic supply 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 sending such a letter, the domestic customer indicates that he is not content to have entered into the domestic supply contract and wishes to terminate it, take all reasonable steps to ensure that the domestic supply 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 domestic 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.
- 5. Where, by virtue of any domestic supply contract, electricity is not to be supplied to premises before the expiry of 60 days after the date of the domestic supply contract, the licensee shall take reasonable steps during the period after that date and prior to the commencement of supply to keep the domestic customer informed that he has entered into a domestic supply contract with the licensee.
- 6. The complaint handling procedures to be established by the licensee in accordance with standard condition 39 (Complaint Handling Procedure) shall provide in appropriate cases for the payment of compensation to domestic customers adversely affected by the failure of the licensee to perform its obligations under this condition.
- 7. The licensee shall keep a record of its compliance with its obligations under this condition, including:
 - (a) the contacting of domestic customers in pursuance of sub-paragraph 4(a) and the response of customers to such contact;
 - (b) the termination of contracts in pursuance of sub-paragraph 4(b); and

(c) compensation paid in pursuance of paragraph 6.

8. Except as the Authority may determine for the purposes of this condition generally, 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 Authority and to the Consumer Council a report dealing with the matters specified in paragraph 7 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.

9. Reports in pursuance of paragraph 8 shall be presented by the licensee, in so far as is reasonably practicable, in a standard format submitted to and approved by the Authority for the purposes of this condition.

10. Except as the Authority may approve-

(a) for the purpose of protecting the interests of any domestic customer who, prior to 21 July 1998, 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 domestic premises with any person who has sought, after 21 July 1998, payment in advance (other than one governed by standard

condition 45 (Security Deposits)) from any domestic customer with a view to arranging a supply of electricity, and the licensee shall not enter into a domestic supply 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.

11. The licensee shall take all reasonable steps:

- (a) to establish management arrangements that facilitate the licensee in meeting its obligations under paragraphs 2 to 9 of this condition; and
- (b) to ensure that any agents and sub-contractors of the licensee take steps equivalent to those arrangements.

12. This condition shall cease to have effect on a date (the “termination date”) which shall be 31 March 2002, provided that:

if the Authority, after consultation with the licensee and all other licensed electricity suppliers in whose supply licence the standard conditions in Section C have effect, the Consumer Council and such other persons or bodies as in the opinion of the Authority are representative of those likely to be affected, gives notice for the purposes of this condition generally:

by publishing the notice in such a manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

by sending a copy of the notice to all such licensed suppliers, to the Secretary of State and to the Consumer Council,

that the Authority 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.

13. In this condition:

“marketing activities”

means any activities of the licensee directed at or incidental to the identification of and communication with domestic customers supplied or to be supplied with electricity by the licensee, and includes entering into domestic supply 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.

Condition 48. Marketing of Gas to Domestic Customers

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.

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

 - (c) take all reasonable steps to ensure that–
 - (i) a domestic customer may readily identify the licensee whenever a representative of the licensee contacts the customer;

 - (ii) a domestic customer will readily understand that he or she has entered into a domestic supply contract;

- (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).
- 3. Paragraph 4 shall apply where a domestic supply contract has been signed or otherwise entered into by a domestic customer in the course of -
 - (a) a visit by a representative of the licensee to the premises of a domestic customer;
 - (b) a conversation in a place to which the public have access between a representative of the licensee and domestic customer; or
 - (c) a telephone conversation between a representative of the licensee and a domestic customer.
- 4. Where this paragraph applies, the licensee shall, through a person other than a representative engaged in activities leading to the entering into domestic supply contracts between the licensee and any domestic customer, and not less than 24 hours nor more than 14 days after the making of the domestic supply contract in question –

use its reasonable endeavours to contact the domestic customer by telephone or by letter seeking his confirmation-

 - (i) that he understands that he has entered into a domestic 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 sending such a letter, the customer indicates that he is not content to have entered into the domestic supply contract and wishes to terminate it, take all reasonable steps to ensure that the domestic supply contract is terminated and, where reasonably practicable, that any proposed supplier transfer in relation to the domestic supply contract is not put into effect; and
 - (c) if the response of the domestic customer, alone or when considered with the responses of other domestic 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.
- 5. Where gas is not to be supplied before the expiry of 60 days from the date on which the domestic supply contract was signed or otherwise entered into by the domestic customer, the licensee shall take reasonable steps during the period from that date until commencement of supply, to keep the domestic customer informed that he has entered into a domestic supply contract with the licensee.
- 6. The procedures to be established by the licensee for dealing with complaints by domestic customers under standard condition 39 (Complaint Handling Procedure) shall provide in appropriate cases for the payment of compensation to domestic customers adversely affected by the failure of the licensee to perform its obligations under this condition.

7. The licensee shall keep a record of its compliance with its obligations under this condition including-

(a) the contacting of domestic customers in pursuance of sub-paragraph 4(a) and the response of customers to such contact;

(b) the termination of domestic supply contracts in pursuance of sub-paragraph 4(b); and

(c) compensation paid in relation to failures under this condition under procedures mentioned in paragraph 6.

8. Except as the Authority may determine for the purposes of this condition generally, the licensee shall, 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, submit to the Authority and to the Consumer Council a report dealing with the matters mentioned in paragraph 7 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.

9. Reports in pursuance of paragraph 8 shall be presented, in so far as is reasonably practicable, in a standard format designated by the Authority for the purposes of this condition generally.

10. Except as the Authority may approve-

(a) for the purpose of protecting the interests of any domestic customer who, prior to 27 January 1998, 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 supply of gas to any domestic customer with any person who has sought, after 27 January 1998, payment in advance (other than one governed by standard condition 45 (Security Deposits)) from any such domestic 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 domestic customer made through the agency (either for the licensee or for any domestic customer) of such a person.

11. The licensee shall take all reasonable steps:

(a) to establish management arrangements that facilitate the licensee in meeting its obligations under paragraphs 2 to 9 of this condition; and

(b) to ensure that any agents and sub-contractors of the licensee take steps equivalent to those arrangements.

12. This condition shall cease to have effect on a date (“the termination date”) which shall be 31st March 2002 provided that:

(a) if the Authority, after consultation with all gas suppliers whose licences have this condition in effect and the Consumer Council, gives notice for the purposes of this condition generally:

(i) by publishing the notice in such manner as the Authority 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 Consumer Council,

that it 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.

13. In this condition, except where the context otherwise requires:

“marketing activities”

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

“representative”

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

