

Gas and Electricity Supply Licence Review

Way Forward

August 2005

Summary

Companies supplying gas and electricity to industrial, commercial and domestic customers in Great Britain are licensed by Ofgem. Electricity and gas supply licences contain a number of conditions that suppliers must comply with. If licensed companies fail to comply with these conditions, Ofgem may impose financial penalties after investigation of alleged breaches.

There have been a number of important developments since the licence conditions were first introduced. New legislation has provided Ofgem and other bodies with new powers under competition and consumer law. Effective competition has been successfully introduced into gas and electricity supply for all customers in Great Britain.

Against this background, and Ofgem's commitment to the principles of better regulation, Ofgem published a consultation document in February 2005¹ ("the February document") proposing a review of the contents of the supply licences with a view to making them shorter and simpler by removing obligations which were no longer necessary. The document also asked for views on how long the review should take to allow sufficient time for the industry and other interested parties, such as consumer groups, to effectively engage in the review.

The majority of respondents supported Ofgem's proposal to hold a review and Ofgem's objectives for the review. Some respondents stressed that the review should not focus solely on removing or simplifying licence conditions but should also consider the need for additional obligations on suppliers or more effective obligations where necessary.

In the light of these responses, Ofgem has decided to proceed with the review of the supply licence conditions. This document sets out the objectives, process and timetable for the review. The document also sets out Ofgem's views on other issues raised by responses to the February consultation document.

Ofgem will establish a Steering Group to co-ordinate the review with key stakeholders, comprising of industry (primarily suppliers) and customer representatives (in particular energywatch). Ofgem is inviting nominations from suppliers, energywatch and other customer representatives who wish to participate in the Steering Group or specific work

¹ Reviewing the gas and electricity supply standard licence conditions, Ofgem February 2005.
www.ofgem.gov.uk

groups set up by the Steering Group to consider particular subject areas. The inaugural Steering Group meeting will be held on 28 September 2005.

Ofgem expects that the review will be completed and any changes to the licences made within two years. This timetable was supported by the majority of respondents who said they think this length of time is necessary for this complex set of issues to be reviewed and resolved, taking into account the need for full consultation throughout the process.

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1. Introduction

- 1.1. In February 2005, Ofgem published a consultation document ² (“the February document”) that sought views on the proposal to review the gas and electricity supply Standard Licence Conditions (SLCs) (“the Review”).
- 1.2. In particular the February document sought views on:
 - ◆ whether it was appropriate to review the current gas and electricity SLCs
 - ◆ what the overall objectives of any review should be
 - ◆ the basic principles that should underpin any review
 - ◆ how any review should be structured, and
 - ◆ the timescale for any review.
- 1.3. The February document paper also set out the legal and regulatory framework surrounding gas and electricity supply SLCs and the background to the Review.
- 1.4. The February document did not include any specific proposals to change the gas and electricity supply SLCs.

Structure of this paper

- 1.5. This document is structured in the following way:
 - ◆ Chapter 2 considers respondents’ views on whether it is appropriate to review the supply licences and Ofgem’s decisions in light of these views
 - ◆ Chapter 3 considers the objectives of the Review, respondents’ views and Ofgem’s decisions in light of these views
 - ◆ Chapter 4 sets out the proposed principles behind the Review, respondents’ views and Ofgem’s further thoughts on these principles

² Reviewing the gas and electricity supply standard licence conditions, Ofgem February 2005.
www.ofgem.gov.uk
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- ◆ Chapter 5 sets out the proposed structure and timetable for the Review, respondents' views on these and Ofgem's decisions in light of these views, and
- ◆ Chapter 6 sets out how Ofgem intends to take the Review forward.

1.6. A wide range of comments were received on issues relating to the Review that were not directly related to the questions raised in the February document. These have not been considered in detail in this Way Forward document. These comments have been captured in an issues register which is set out in Appendix 1 to this document. The issues register will be presented to the Steering Group so that they can ensure that the issues are considered carefully during the Review itself.

2. Appropriateness of a review

- 2.1. This chapter outlines the views of respondents on whether it is appropriate to review the gas and electricity supply licences. It also sets out Ofgem's conclusions in light of these views.

February document

- 2.2. The February document set out the history of the current SLCs. With the commencement of the Utilities Act 2000 (the Utilities Act) an amended set of SLCs were designated by the Secretary of State in September 2001. Although the Utilities Act entailed restructuring of the electricity licences (the Public Electricity Supply and second tier supply licence were changed to establish the Distribution and Supplier licences) and some modest revision to the obligations, Ofgem and DTI agreed in principle that any modifications should be limited to changes that were essential, rather than a full-scale review of what was desirable or necessary. Some SLCs have subsequently been amended, for example those that concern suppliers' obligations towards vulnerable customers have been changed as part of Ofgem's work on the Social Action Plan.
- 2.3. Ofgem's Corporate Plan³ made a commitment to "review the supply standard licence conditions [...] using the principles of good regulation⁴, with the objective of improving the targeting and effectiveness of regulation of the gas and electricity supply sectors, and to reduce barriers to entry and expansion".
- 2.4. As set out in the February document, Ofgem considers there are a number of reasons why it is now appropriate to review the supply SLCs. The reasons given were extensive and included the following:
- ◆ the content of some conditions (especially those SLCs that apply only to domestic suppliers) carries over statutory obligations in place prior to the introduction of competition that are no longer appropriate in a competitive market

³ Ofgem Corporate Plan 2004-7. Ofgem May 2004 109/04

⁴ The five principles of better regulation, as set out in the Energy Act 2004, are proportionality, accountability, consistency, transparency and targeting.

- ◆ some obligations were created to secure effective market opening and the barriers to entry that they create are inappropriate in the context of competitive markets
 - ◆ it may be appropriate to consider whether it is still necessary for all domestic suppliers to be subject to the same licence obligations or whether certain types of supplier (for example small new entrants or suppliers who supply customers connected to distributed generation such as combined heat and power) should be exempt from some or all of any remaining licence conditions, and
 - ◆ some SLCs are unnecessarily complex.
- 2.5. In the February document, Ofgem specifically asked stakeholders to provide views on whether it was appropriate to review the current SLCs.

Respondents' views

- 2.6. Fifteen respondents commented on whether it was appropriate to review the current SLCs. Of this number, 12 were broadly in favour of a Review for the reasons set out by Ofgem. The remaining three respondents did not agree that it was appropriate to review the current SLCs.
- 2.7. One customer representative gave its support to the Review as an opportunity to produce a forward thinking licence to reflect all possible causes of consumer detriment. Its support was given on the assumption that the Review was a genuine attempt to strike the right balance between consumer protection and allowing the market to work. It expressed concern that the February document carried a presumption that further deregulation was the only direction that the Review would travel.
- 2.8. A supplier that supported the Review stated that it should be justified on the grounds of meeting the principles of better regulation and should be supported by an Impact Assessment that demonstrated the benefits to customers. That supplier then went on to urge Ofgem to commit to conducting similar reviews of all types of licence.

- 2.9. One non-domestic supplier suggested that the rapid development of competition had demonstrated that the licence was not deficient or overly obstructive in any major area. This view was broadly supported by a further non-domestic supplier who suggested that, if domestic licence holders consider it to be of value, the review should focus on Section C (Domestic Supply Obligations) in the licence, without looking more widely at the licence as a whole.
- 2.10. For one customer representative the timing of the Review was poor given the likely future developments such as the EU Directive 2005/29/EC on unfair commercial practices, the imminent publication of UK Consumer Strategy, the Hampton review, and on going work to review the marketing licence condition. They recommended that the timing of the Review be set to allow for policy to reflect the conclusions of these initiatives. In addition this representative considered that, if SLCs are to be replaced by existing consumer protection, the regulator must first prove it will take action under the Enterprise Act 2002⁵ and that such action is at least as effective as regulatory action under the SLCs.

Ofgem's view

- 2.11. Ofgem considers that the Review is required for the reasons stated in the February document. The aim of the Review is to have a set of clear and effective licence obligations. This is thought to require the removal and clarification of some of the obligations currently contained within the SLCs. This does not however rule out the addition of further obligations where this is considered to be appropriate.
- 2.12. Ofgem acknowledges the view of some respondents who consider that there are no compelling grounds for a review for those suppliers who are licensed to supply non-domestic suppliers only. However, Ofgem considers that due to the interrelated nature of the SLCs and their impact on both the domestic and non-domestic markets, the Review will need to be comprehensive and consider all SLCs to ensure that they remain fit for purpose.

⁵ The Enterprise Act 2002 provides for Ofgem to enforce a wide range of UK consumer protection laws including for example the Trade Descriptions Act 1968 and the Consumer Protection (Distance Selling) Regulations 2000.

- 2.13. Ofgem considers that the scope of the Review should be clearly set out and bounded. This should enable the project to deliver an acceptable outcome within the agreed timeframe. It is therefore not Ofgem's intention to expand the scope of the Review to include the SLCs of other licences. However, at the end of the Review Ofgem will consider whether there is merit in conducting further reviews to examine the SLCs of other licence types.
- 2.14. Ofgem notes the comment of one respondent that there may be developments in other customer protection legislation while the Review is taking place. These developments will need to be monitored on an on-going basis to understand their impact on the need for sector specific energy regulation. It is expected that analysis of the SLCs will provide a valuable input into the debate on future proposals for customer protection legislation. To the extent that some of the consumer protection legislation mentioned impacts on the marketing of energy to customers, Ofgem notes that the marketing licence condition (SLC 48) has been specifically excluded from the scope of the Review. This is because a decision will be required on its future by March 2006.

3. Overall Objective

3.1. This chapter deals with the overall objectives for the Review. It sets out Ofgem's initial proposals, the views of respondents and Ofgem's conclusions.

February document

3.2. As set out in the February document, Ofgem's overall objective in proposing a review of the gas and electricity SLCs is to develop a set of clear and effectively drafted SLCs that:

- ◆ provide proportionate protection for the particular circumstances of gas and/or electricity customers (in particular for vulnerable customers), given wider market developments and Ofgem's powers under competition and general consumer protection law
- ◆ make it easier for new companies to enter and compete in the electricity and gas retail markets, and
- ◆ provide a flexible framework within which the competitive markets can evolve without the need for sector specific regulation of the domestic and non-domestic gas and electricity retail markets.

3.3. Ofgem intends that this overall objective will achieve:

- ◆ for vulnerable customers, all suppliers offering tailored assistance, and meeting a minimum standard, but details may vary between suppliers
- ◆ suppliers continuing with the practice of building customer protection into how they run their business, but licence compliance would no longer have to be a key issue in every business initiative, and
- ◆ for new entrants, a simpler regime greatly reducing management overheads and freeing managers to concentrate on competing in the market.

3.4. Ofgem requested views on whether these are appropriate objectives upon which to assess the Review.

Respondents' views

- 3.5. Twelve respondents commented on Ofgem's proposed overall objectives for the Review. Of these respondents, two did not agree that the Review would meet Ofgem's overall objectives. The majority of respondents agreed with some or all of Ofgem's overall objectives for the Review. Some respondents proposed additional or alternative objectives. These views are summarised below.

Better regulation

- 3.6. Four respondents commented on the Review in terms of the principles of best regulatory practice. Two suppliers welcomed Ofgem's commitment to adhere to better regulation principles of transparency, accountability, proportionality, consistency and targeting. Another supplier commented that the underlying principle of the Review, to withdraw from regulation where appropriate, was fully consistent with Ofgem's new legal duty to have regard to best regulatory practice.
- 3.7. A further supplier commented that the Review would be burdensome in terms of resources needed to monitor its development. As such this respondent's view was that too wide a scope could be seen as contrary to Ofgem's obligations in terms of best regulatory practice.

Barriers to entry

- 3.8. Three respondents commented on whether the SLCs were a barrier to entry for new companies wishing to compete in the electricity and gas electricity retail markets. One respondent agreed that the licensing regime could deter new entrants. It suggested that the more straightforward the licence, the less significant this deterrent would be.
- 3.9. One respondent commented that it was the complexity of the various industry codes that formed a "stumbling block" rather than a barrier to entry for new entrants. Consequently its view was that a holistic review, including governance and decision making, in respect of all industry codes and documents would now be timely. Another respondent did not view the licence itself as a barrier and considered that the Review would be burdensome to monitor.

Impact on customers

- 3.10. Four respondents discussed the objectives of the Review and their impact on customers. One supplier did not agree that the SLCs must provide proportionate protection for vulnerable customers and, in its view, the overwhelming majority of SLCs should be removed.
- 3.11. A further supplier commented that energy sector regulation should be reserved for areas where there was a clear and compelling need for additional customer protection. In its view the focus of the Review should be to deliver a minimum set of regulatory obligations which should apply equally to all equivalent suppliers affording the same protection to comparable customers.
- 3.12. One respondent commented that the industry has demonstrated the ability to manage, in an appropriate manner, its own internal procedures and operations in the best interests of customers throughout Great Britain.
- 3.13. One customer representative set out its view that, as fuel is an essential service, it was vital that the rules for this sector met the needs of all consumer households, particularly vulnerable customers. They felt that, to ensure a high standard of customer protection, there would need to be an objective to achieve enforceable regulation, avoiding language such as "best endeavours". In addition, this respondent called upon Ofgem to analyse consumer complaints to consumer bodies to examine the quantity and nature of breaches of SLCs, consumer protection and self regulation and use this data to identify where and why these measures are failing and to decide whether it is appropriate to change the current SLCs.

Flexible framework

- 3.14. One respondent commented that it was important that Ofgem should guard against the danger of innovation being stifled by SLCs as the more prescriptive the condition the less likelihood of innovative thinking. In its view SLCs should be drafted from scratch rather than starting with existing obligations.
- 3.15. One supplier proposed that a flexible regulatory framework that could adapt to changing market conditions should be included as an objective for the Review. This would potentially promote competition and avoid the need for further

licence reviews in future years and reduce regulatory uncertainty. However, in its view, flexibility should not come at the expense of proportionate and appropriately targeted consumer protection.

- 3.16. One supplier, whilst recognising the requirement for SLCs, suggested that one way of reducing red-tape would be to make it easier to switch off conditions where they were not applicable.

Ofgem's view

- 3.17. Ofgem welcomes the comments received and the general support for the objectives of the Review as set out in the February document. The debate on the role of sector specific regulation against other forms of regulation including self regulation and general consumer law will be reviewed and taken forward by the Steering Group.
- 3.18. Ofgem considers that a minor modification to part of the overall objective would be useful. The addition is shown below as underlined:
- ◆ provide a flexible framework within which the competitive markets can evolve without the need for unnecessary sector specific regulation of the domestic and non-domestic gas and electricity retail markets.

4. Principles of the Review

- 4.1. This chapter sets out the principles that Ofgem proposed in the February document would form the overall framework of the Review. It takes each proposed principle in turn, sets out the views of respondents and Ofgem's conclusions in light of these views.

Principle 1

A licence condition or self-regulation (such as an industry wide Code of Practice) is only necessary where there is a clear need for additional protection for the particular circumstances of gas and/or electricity customers (or specific groups of them), over and above that provided by general consumer protection legislation.

Respondents' views

- 4.2. Four respondents commented directly on principle 1. Two respondents stated their agreement with this principle.
- 4.3. A customer representative commented that self regulation, in its view, was not a replacement or alternative to legal requirements and that consumer protection law does not provide the level of protection needed for a utility market. This respondent did not consider that there were huge overlaps between SLCs and consumer protection legislation and was of the view that neither had stopped an unacceptably high level of consumer detriment.
- 4.4. One supplier proposed a redraft of principle 1 to read "licence conditions (or forms of self regulation) are only considered necessary where there is a clear need for protection over and above that provided by general consumer law".

Ofgem's view

- 4.5. Ofgem considers that this principle is correct. It will be a challenge for the Steering Group and Ofgem to articulate these requirements and determine in what circumstances sector specific regulation is required.

Principle 2

Notwithstanding principle 1, given the essential nature of gas and electricity, there is likely to be a continuing need to protect vulnerable customers by licence conditions and/or self-regulation.

Respondents' views

- 4.6. Six respondents commented directly on principle 2.
- 4.7. One customer representative stated its support for principle 2 and said that it should be retained.
- 4.8. One customer representative group said that it was important for protection for low income and vulnerable customers to be retained. Without the SLCs the market would often not on its own provide the necessary protection. Even if some suppliers wanted to continue with current policies others might not and competitive pressures could result in a lowering of protection all round. They considered that any proposals for weakening or removing SLCs relevant to fuel poverty or the protection of low income and vulnerable customers would need to be subjected to the most critical appraisal. They suggested that any such proposals must be discussed extensively and in good time.
- 4.9. One supplier said that it was important that additional protection for domestic vulnerable customers was fully justified and the existing wording of principle 1 alone should be sufficient recognition of the need to protect vulnerable customers. Therefore the proposed principle 2 could be deleted. Another respondent stated that principle 2 should qualify or supplement principle 1.
- 4.10. A third respondent added that principle 2 not only singled out protection of vulnerable customers but as expressed overrode principle 1.
- 4.11. One supplier stated its view that it did not agree that there was a continuing need to protect vulnerable customers by licence condition.

Ofgem's view

- 4.12. Ofgem recognises that principle 2 is consistent with principle 1. However, due to our specific statutory duty to have regard to the interests of vulnerable

customers, Ofgem considers that it is helpful to explicitly set out this requirement as a discrete principle.

Principle 3

Licence conditions that relate to compliance with industry codes and agreements are only likely to be necessary if they do not themselves contain adequate sanctions for suppliers who breach them.

Respondents' views

- 4.13. Six respondents commented directly on principle 3.
- 4.14. One supplier agreed with the basic premise of principle 3, but suggested that the existing arrangements in industry codes and agreements may require changes in some areas to allow full advantage to be taken of this principle. Principle 3 was also supported by a second respondent. It stated that licence conditions should remain where it was believed that the sanctions provided within the industry codes and arrangements were not adequate.
- 4.15. A further respondent said that the Review should explore whether compliance with industry codes and agreements had to be enforced through the licence or whether the codes and agreements should contain their own enforcement processes.
- 4.16. One supplier considered that licence conditions relating to compliance with codes and agreements were not necessary. Its view was that there was a strong and clear commercial incentive on suppliers to be a party to a code or agreement and that without being a party to these agreements it may be impossible to supply customers. This respondent considered that it was vital to ensure that the integrity of the national systems which underpin competition was maintained, but said that this did not mean that these SLCs should be removed from the scope of the Review at the outset.
- 4.17. One supplier did not support the removal of licence obligations that required compliance with codes and agreements that establish industry interoperability and govern the infrastructure and process for market operations. In its view, scope existed for evolving these documents into self-governing instruments;

however it considered that Ofgem should retain full power and jurisdiction to enforce compliance in the consumer interest as had been intended by Parliament. In addition this respondent suggested that this principle should be amended to “licence conditions that require suppliers to comply with core industry codes and agreements that establish industry interoperability to remain and be amended in light of the Authority's statutory duties”.

- 4.18. One customer representative said that it had not seen evidence that the internal governance of codes or agreements were able to provide equivalent sanctions to those available to Ofgem or that such governance was adequate as a deterrent. This respondent was keen to see regulation develop to allow consumers to be compensated when companies broke the rules.

Ofgem's view

- 4.19. Ofgem notes the points raised and the diversity of views in this area. Ofgem remain of the view that this principle is sound. However, it is clear that, if the principle of achieving compliance with industry codes through the SLCs is altered then this may require significant changes to the internal constitution and governance of these codes. It is anticipated that a workgroup will be established to review the relationship between the SLCs and industry codes. Ofgem will ensure that the views raised here will be considered by the relevant workgroup.

Principle 4

Licence conditions that are considered necessary will be clearly drafted and will provide a flexible framework within which the maturing competitive market can evolve.

Respondents' views

- 4.20. Four respondents commented directly on principle 4. Each of these respondents supported this principle although one customer representative cautioned that flexibility in drafting may lead to vagueness and the opportunity to avoid meeting SLCs in all areas.
- 4.21. One supplier commented that the SLCs should be amended to stress the importance of user requirements and included proposed drafting “licence

conditions that are considered necessary should be clearly drafted, easily intelligible and provide a flexible framework within a developing market”.

Ofgem’s view

- 4.22. Ofgem welcomes the general support for this principle. Ofgem maintains that this principle represents an important aim and will work towards this goal with the assistance of the Steering Group and workgroups.

Principle 5

- 4.23. *Licence conditions should not restrict suppliers from differentiating themselves in the competitive market and be drafted in a way that will allow suppliers to implement any necessary changes at their own rate without having to move at the pace of the slowest. This means that suppliers who are able to comply quickly with the new SLCs may be able to gain a competitive advantage over those that remain subject to the current SLCs.*

Respondents’ views

- 4.24. Four respondents commented directly on principle 5.
- 4.25. One supplier stated its support for the first part of principle 5. However, they considered that different licence conditions applying to different parties at different times would be incompatible and would distort competition. They also believed this to be inconsistent with the aim of standard licensing, under the Utilities Act, to create a level playing field for all licensees.
- 4.26. One customer representative commented that the result of principle 5 should be better provision of protection for consumers so that companies implementing changes early will do more not less. This respondent was however, concerned that this principle might allow companies to delay implementing change.
- 4.27. Two respondents considered that the requirement for co-operation between industry participants in exchanging data and supporting the processes that underpin market operations, e.g. the customer transfer process was paramount and that this should take precedence over the issue of supplier differentiation. This respondent also proposed a redraft of principle 5 to read “licence

conditions considered necessary should not restrict the ability of suppliers to differentiate their services and products". Another respondent proposed that principle 5 should be amended to: "Licence conditions should not unduly restrict supplier differentiation".

Ofgem view

- 4.28. Ofgem considers that the SLCs should provide a clear statement of the minimum requirements of licence holders and that these SLCs should not unduly restrict supplier differentiation. However, in circumstances where suppliers can choose to comply through self regulation rather than through compliance with licence obligations, those that do so should not be constrained by the pace of the slowest. For this reason Ofgem considers that this principle should be retained.

Other respondents' views

- 4.29. Three respondents included additional comments on principles to be adopted by the Review further to those proposed in the February document. One respondent set out its view of how the Review should take place. Each of these views are summarised below.
- 4.30. One customer representative suggested that the principles behind the Review should be that firstly consumers should be protected against future malpractices and adequately compensated where suppliers break the rules. Secondly, enforcement sanctions must be capable of acting as a real deterrent to poor customer service. Thirdly, the language of the SLC must mean that suppliers achieve good practice rather than suggesting they only need to show they tried, poor drafting of the SLC should be improved to achieve this. A fourth proposed principle was that a register of licence conditions should be available and any special conditions should be in the public domain. Fifthly, self regulation should offer more than is required by law, as required by the Office of Fair Trading's requirements for approval of business to consumer codes of practice. They considered that self-regulation in the energy market had failed to act as an alternative to regulation. Self regulation should be a reward only once the industry has proved its commitment to all consumers.

- 4.31. One supplier commented that in addition to Ofgem's proposed principles an additional principle of "simplification" should also form part of the Review.
- 4.32. Another supplier was of the view that competition had now significantly developed and, as much of the licence was a carry over from pre-competition days, it was important to assume that licensing is only required where competition has failed. This respondent stated that there should be a new principle of "that licence conditions are not generally needed in a competitive market".
- 4.33. Another supplier said that the starting point for the Review should be to understand which organisations control each aspect of the regulatory and governance chain, how they interact, where the interdependencies lie and how they communicate between themselves and industry. From this point, this respondent considered that it would be easier to identify gaps that supply SLCs need to embrace within their scope in order to ensure compliance with the objectives and principles set out in the February document.

Ofgem view

- 4.34. The proposals in the consultation document attracted a wide range of responses. Whilst Ofgem is content at this stage that the principles proposed in the February document are appropriate to guide the Review, we expect that the debate will encompass the issues raised above, in particular, the degree to which regulations are required in a competitive market.
- 4.35. Ofgem also notes the comment by a customer representative that licences should be made available and that special licence conditions should be in the public domain. Ofgem has introduced a new electronic public register facility to its website⁶ which allows gas and electricity licences, including whether the licence contains special licence conditions, and SLCs to be viewed.

⁶ www.ofgem.gov.uk

5. Structure and timetable of the Review

5.1. This chapter sets out the ways in which, in the February document, Ofgem suggested that the Review could be carried out, how it could be structured and the two timetables proposed. This chapter goes on to set out the views of respondents' and Ofgem's conclusions on the nature of the Review, its structure and the timetable that will be followed.

Options – which SLCs should be included?

February document

5.2. In the February document Ofgem stated its view that a full, comprehensive review of all SLCs was appropriate and sought views from stakeholders on whether this was the correct approach. In addition, Ofgem also set out alternative approaches. Below is a list of the potential approaches⁷:

- ◆ do nothing
- ◆ rectify gaps and overlaps and a general 'tidy up'
- ◆ review certain SLCs, and
- ◆ comprehensive review.

Respondents' views

5.3. Nine respondents commented on whether a full, comprehensive review of the SLCs was appropriate. All agreed that it was. Some respondents included additional comments. These are set out below.

5.4. One supplier commented that there should be a commitment to give due and proper regard to recent licence modifications to ensure that the reasoning behind those changes was not lost. They also considered that it may be appropriate to

⁷ Details on each of the approaches proposed and their relative merits are set out in the February document.

review other obligations, e.g. shipper licence and Statutory Instruments at the conclusion of the Review.

- 5.5. One customer representative stated that it was vital that full account is taken of how the various SLCs interact.

Ofgem View

- 5.6. Ofgem agrees with respondents that a comprehensive review should be undertaken. The benefits that may be gained from a comprehensive review cannot be achieved through a tidying up exercise. One of the deliverables of the project must be to review the rationale for each of the required obligations. However, the Review should be delivered against a defined scope, and although it may be appropriate to consider a review of other licences' standard conditions at a later date, Ofgem does not consider that the scope of this Review should be extended.

Structure of the Review

February document

- 5.7. The February document set out three options for the way in which the Review could be structured if a comprehensive review was to be carried out. These are listed below⁸:
- ◆ work through the SLCs in numerical order
 - ◆ review the licence section by section, and
 - ◆ divide the Review into themed 'tranches'.
- 5.8. The approach of dividing SLCs into themed tranches would mean developing three or four groups of SLCs that covered high level themes. Themes suggested in the February document were:
- ◆ industry codes and agreements

⁸ Details on the options proposed for the way in which a comprehensive review could be structured are set out in the February document.

- ◆ customer contractual and information issues
 - ◆ protection of vulnerable customers, and
 - ◆ tidying up and consequential changes.
- 5.9. In the February document, Ofgem considered that the themed tranche approach offered the best prospect of the Review delivering, within a reasonable timescale, a new set of SLCs that are appropriate for a maturing market.
- 5.10. Views were specifically sought from respondents on how the Review should be structured in the February document.

Respondents' views

- 5.11. Twelve respondents commented on how the Review should be structured. Of these twelve respondents, eight supported themed tranches, two supported a section-by-section review and one proposed that the Review should take each SLC in turn. The remaining respondent did not support the Review.
- 5.12. The Energy Retail Association (ERA) supported a themed approach and suggested an alternative set of work streams. Another supplier welcomed a themed approach and supported those proposed by the ERA. In this respondent's view, inter-dependencies between the various licence conditions and the potential need for iteration meant that it would be important for the redrafted licence modifications not to begin to be raised until the policy review stage is completed.
- 5.13. One supplier, who supported the approach of themed tranches, commented that the Review should facilitate the production of an Impact Assessment at an early stage rather than one that accompanies and hence justifies the final proposal. Such an Impact Assessment should form an important part of the policy making process, not a simple justification for policy.
- 5.14. One customer representative agreed that the Review should be divided into themed tranches, but cautioned against the creation of a "silo effect" whereby information is not shared between work streams.

- 5.15. Two suppliers commented that the Review should be carried out section by section. One commented that it would be unwise to assemble groups of licence conditions together under new labels for the purpose of the Review. This respondent's view was that the existing four sections of the supply licence are self-themed and the Review should address these sections concurrently. The other stated that breaking up the SLCs into themes would inevitably cause a loss of focus on the needs of specific market sectors.
- 5.16. One supplier proposed a step by step review with intermediate deliverables which would allow simple and generally supported changes to be made quickly. As a result, complex or contentious issues could be covered without delaying delivery of the project.

Ofgem's view

- 5.17. As set out in the February document, Ofgem is seeking to group the obligations in the supply licence into separate work areas for analysis. Ofgem considers that a themed approach will provide the most suitable way forward.
- 5.18. The Steering Group will be asked to demarcate the areas to be reviewed and to establish workgroups to discuss these work areas. It will be the role of each workgroup to consider the policy implications for their specified work area and to report back to the Steering Group. Once the policy has been reviewed, further workgroups may then need to be constituted to develop the legal drafting. This is discussed in more detail in the next chapter.
- 5.19. The Steering Group will consider the subject areas for individual workgroups Ofgem anticipates that the following work areas will need to be covered:
- ◆ vulnerable customers and codes of practice
 - ◆ industry codes
 - ◆ contracts and information
 - ◆ Section D issues
 - ◆ Section B issues (in particular supplier of last resort)

- ◆ duty to supply, and
- ◆ metering issues.

Timetable

February document

5.20. The February document considered two approaches for setting a timetable for the project and their implications in terms of regulatory uncertainty, resources and the requirements for consultation. Appendix 4 of the February document therefore outlined two possible timescales for completing the Review. Both of these divided the Review into tranches of related SLCs:

- ◆ Option 1 proposed to consult on each tranche consecutively; changes to SLCs would be made to each tranche before moving on to the next one. The timescale for this option is around 20 months, and
- ◆ Option 2 also proposed to consult on each tranche consecutively; however changes to all SLCs would be made at the end of the project. The timescale for this option is around 12 months.

Respondents' views

5.21. Eleven respondents commented on the proposed timetable for the Review. Of these respondents, six supported option 1 and a timetable of approximately 20 months, while four supported option 2 and a timetable of around 12 months. One respondent commented that that the scope and timetable of the Review must meet the demands of this important exercise. It added that the Review should be comprehensive and the timetable should reflect this.

5.22. However, one customer representative commented that the timetables proposed by Ofgem assumed acceptance of the approach Ofgem suggested (i.e. the approach of reviewing all SLCs in tranches). They considered that Ofgem should look at what is failing consumers first and then consider whether a review was appropriate.

Ofgem view

5.23. Ofgem considers that having determined to conduct a comprehensive review then the longer timescale (i.e. 18 months to two years) is appropriate. It is proposed that the workgroups should be allowed to run concurrently with each other and that, whilst consultations on interim proposals for different work areas may happen at different stages, a single set of SLC modifications will be proposed at the end of the Review. Given the significance of the two main consultation stages, firstly on policy and secondly on legal text, Ofgem will aim for a twelve week consultation period in each instance, in accordance with Cabinet Office guidelines. An indicative timetable is set out in Chapter 6, highlighting the key milestones that Ofgem proposes for the period of the Review.

6. Way forward

Project management

- 6.1. Ofgem will conduct the project in an open and transparent way. Project documentation, including minutes of meetings, consultation documents and occasional policy papers will be published on the Ofgem website. The established process for proposing licence modifications through the collective licence modification procedure will apply.
- 6.2. Ofgem anticipates that the consideration given by the Steering Group and workgroups to policy changes will incorporate the disciplines, where appropriate, of an Impact Assessment of proposed changes. These assessments will be included in the consequent consultation document.

Steering groups

- 6.3. Ofgem will establish a Steering Group to help conduct the Review. The Steering Group will be chaired by Ofgem and consist of representatives of industry parties (primarily suppliers) and customer representative groups (in particular energywatch). Where necessary, the Steering Group will commission workgroups to tackle specific policy areas. Where workgroups are established, their terms of reference will be published on the Ofgem website. Ofgem anticipates that membership of the workgroups will be determined by the topic for that workgroup and that subject specialists will be nominated by Steering Group members or other interested parties.
- 6.4. Membership of the Steering Group and workgroups will be open to suppliers, energywatch and other customer representatives. However, Ofgem expects that where a party notifies Ofgem that they wish to be a member of the Steering Group, they do so on the basis that they are making a commitment to fully participate for the duration of the Steering Group.
- 6.5. The Steering Group will have two distinct phases. Firstly, policy development; identifying the set of obligations that the new supply licence will contain. Secondly, legal drafting; preparing the text for the new supply SLCs that will be consulted on as part of the licence modification process.

6.6. Where the Steering Group, or workgroups reporting to the Steering Group, are not able to reach a consensus on a policy issue then this will be noted in the report to Ofgem together with a summary of the arguments. Ofgem will consider the arguments raised and reflect them in the consultation stage of the Review. Ofgem recognises that some of the issues that need to be tackled as part of the Review will give rise to differing opinions and has taken this into account in setting the timetable for conducting the Review.

6.7. The terms of reference for the Steering Group are:

- ◆ the Steering Group will be chaired by Ofgem. Representatives of industry parties, energywatch and other customer representatives will be invited to attend. Ofgem will act as secretariat to the group.
- ◆ the role of the Steering Group is to:
 - ◆ advise Ofgem on policy recommendations for changes to the standard conditions of the gas and electricity supply licences
 - ◆ where consensus on policy recommendations for changes to the standard conditions of the gas and electricity supply licences has not been achieved, provide a summary of the arguments for further consideration by Ofgem
 - ◆ advise Ofgem of the role and scope of workgroups to consider particular issues arising for the Review
 - ◆ review the output of workgroups against the objectives and principles of the Review
 - ◆ review the output of workgroups to ensure consistency in policy between these groups
 - ◆ consider specific legal drafting of proposed licence conditions, and
 - ◆ advise Ofgem of the impact of any external factors (for example, developments in general consumer law or industry governance) that may be expected to impact the Review.

6.8. The Steering Group will not be a decision making body. It will not replace the standard consultation arrangements that Ofgem employs when proposing changes to licence conditions which includes licence holders voting on proposed changes through the established collective licence modification arrangements. This process includes publishing notice of proposed licence modifications in such a manner as to bring it to the attention of interested parties and consideration of any representations or objections made in accordance with Section 11 of the Electricity Act 1989 and of the Gas Act 1986.

Workgroups

6.9. As set out above, it is intended that the Steering Group will determine the role and scope of any workgroups. Minutes of meetings will be published on the Ofgem website.

6.10. Workgroups are expected to operate broadly as follows:

- ◆ workgroups will be chaired by Ofgem. Representatives of industry parties, energywatch and other customer representatives will be invited to attend. Ofgem will act as secretariat to the groups.
- ◆ the Steering Group will establish a clearly defined scope and set of requirements for each workgroup,
- ◆ the Steering Group will establish a timetable for delivery of recommendations to the Steering Group for subsequent presentation to Ofgem, and
- ◆ where appropriate the workgroup will present its recommendations in accordance with the principles of an Impact Assessment.

6.11. Ofgem anticipates that the workgroups will cover the following areas: vulnerable customers and codes of practice, industry codes, contracts and information, Section D issues, Section B issues (in particular supplier of last resort), duty to supply and metering issues.

6.12. The inaugural Steering Group will establish the task of each workgroup and will nominate individuals to serve on them (alternatively nominations can be

proposed directly to Ofgem). It will also establish the timetable to which each workgroup should deliver its output, consistent with the overall project timetable set out in this document.

- 6.13. Ofgem suggests that the inaugural Steering Group meeting give particular consideration to the running order and sequencing of the workgroups. Ofgem's initial view is that the workgroups on vulnerable customers and codes of practice, and duty to supply, should begin as early as possible, since these groups in particular are likely to be faced by a range of complex issues requiring full consideration.
- 6.14. Some workgroups may be able to run concurrently and indeed may need to do so for the work programme as a whole to deliver according to the project schedule. However, other workgroups may in practice need to follow a certain sequence, given the linkages between the issues under consideration. Clearly, the ability of stakeholders to make available resources to give the necessary input to the process throughout will also be a critical factor for the Steering Group to consider in devising the work programme.
- 6.15. Ofgem hopes that, with the guidance and support of the Steering Group, the workgroups will be able to reach a consensus on the main policy issues with which they are confronted, within the timescales allotted to them. In the event that they cannot, the workgroups' final reports to the Steering Group will have to be presented in a way that reflects the areas of agreement and disagreement between workgroup members. The Steering Group and Ofgem will then have to take forward the issues for further consideration, with the issues ultimately referred to Ofgem in the event that the Steering Group also fails to reach a consensus.

Communication

- 6.16. **Please contact Andrew Wallace at Ofgem (Tel: 020 7901 7067, email: andrew.wallace@ofgem.gov.uk) if you wish to:**
- ◆ **participate in the Steering Group**
 - ◆ **participate in workgroup discussions on a particular subject area, or**

- ◆ **be included on the SLR mailing list to receive information about progress of the Steering Group and workgroups.**

Timetable

6.17. Ofgem intends to deliver this review according to the timetable below.

Achieving the goal of a significantly revised supply licence by mid-2007 will make significant demands on the resources of all stakeholders. However, the timetable we present seeks to strike the right balance between effective project execution, and full and proper consideration and consultation on the issues. Given the preparatory work that has gone into the planning of this timetable, Ofgem does not believe the project will need to be allocated further time to reach an effective conclusion.

First meeting of the Supply Licence Review Steering Group.	28 September 2005
Steering Group will oversee the activity of the workgroups (e.g. vulnerable customers, industry codes, contracts, Section D issues, Section B, duty to supply, and metering issues.) to develop a rationale for each licence obligation.	October 2005 –May 2006 Steering Group to meet at least monthly Workgroups expected to meet fortnightly
Ofgem to complete initial view on main policy proposals for changes to the SLCs with advice from Steering Group and workgroups.	May 2006
Ofgem issues consultation document on policy proposals for changes to the SLCs, including a 12 week period for consultation.	June 2006
Legal drafting for proposed SLCs commences. Ofgem will seek advice from the Steering Group on how key stakeholders can best participate in process of legal	September 2006

drafting.	
Ofgem consults on legal text for amended SLCs, including a twelve week consultation period.	November 2006
Ofgem issues final decision document and proposals for collective licence modification process. Licence holders vote on proposals	March 2007
Implementation of new licence conditions	<p>June 2007</p> <p><i>Note that if the new licence conditions have any significant impact on industry systems and procedures, implementation of those changes will need to be timed to permit implementation of these changes.</i></p>

Appendix 1 Issues Register

1.1 The following table sets out those issues raised by respondents to the February document that are relevant to the Review but were not directly related to the questions asked in that document. This log will be presented to the Steering Group so that they can ensure that the issues are considered during the life of the Review.

Reference	Date raised	Raised by	Issue	Status	Action
1	20 May 2005	energywatch	Supply licence should provide small and medium sized non-domestic customers with protection similar to that of domestic customers.	Ofgem does not consider that non-domestic customers will benefit from the extension of domestic customer protections in the licence. Principle 1 sets expectation that the degree of protection should be appropriate for the circumstances of particular groups of customers.	To be reviewed by Steering Group.
2	20 May 2005	Good Energy	Split of the single electricity supply licence into wholesale and retail licences	Out of scope. The Review is not intending to consider the creation of new licence types.	No further action
3	20 May 2005	Good Energy	Resources available to small suppliers are limited. Ofgem should therefore provide thorough guidance on the impact of any change in the licence.	Minutes of meetings to be published on Ofgem website and to SLR circulation list. Proposed changes to SLCs will be fully consulted on at the end of the Review's policy phase and later using the formal licence modification process.	Keep under review

4	20 May 2005	Shell Gas Direct	Definition of "domestic customer" to be amended to a volume based definition.	The definition of a domestic customer was set following the Utilities Act 2000. Ofgem does not intend to revisit this issue as part of the Review.	No further action
5	20 May 2005	ScottishPower	Gas and electricity suppliers should not be subject to financial penalties that are additional to those imposed by other consumer protection legislation.	The enforcement provisions available to Ofgem are allowed for by primary legislation. Ofgem has published guidance (www.ofgem.gov.uk) on the imposition of such penalties.	No further action
6	20 May 2005	Good Energy	Advice was sought on how a supplier could raise a complaint about other licensees that fail to comply with legislation.	SLCs and the obligations that these impose should be clear and effectively drafted so that the regulatory risk that they impose is understood. It is intended that compliance arrangements with industry codes will be taken forward under a workgroup.	For discussion by industry codes workgroup
7	20 May 2005	Centrica, SSE, ScottishPower	An update was requested on how work will be taken forward on whether it was appropriate to remove supplier's Guaranteed and Overall Standards.	Ofgem remain of the view that it is appropriate that the process to consider removing Guaranteed and Overall Standards should be taken forward separately from this Review.	To be reviewed separately
8	20 May 2005	Shell Gas Direct	Proposal that SLC 25 (Efficient use of gas) should be removed from the gas supply licence.	This proposal will be considered by the Steering Group and / or the appropriate workgroup.	To be reviewed at Steering Group
9	20 May 2005	Good Energy	Current arrangements for codes of practice should be amended as they are not the most effective mechanism of monitoring suppliers' performance.	This proposal will be considered by the Steering Group and / or the appropriate workgroup.	To be reviewed at Steering Group

			There should be a single industry wide code so that the minimum level of service is clear.		
10	20 May 2005	Good Energy	Industry wide codes should be held separately from the SLCs and reviews of these codes could be requested by consumer organisations and suppliers.	This proposal will be considered by the Steering Group and / or the appropriate workgroup. Principle 3 is relevant here.	To be reviewed at Steering Group
11	20 May 2005	energywatch	A systematic review of all codes of practice should be carried out as part of the review of gas and electricity SLCs.	Agreement will be sought at the Steering group on the level of detail at which codes of practice required by the SLCs will need to be reviewed.	To be reviewed at Steering Group
12	20 May 2005	energywatch	Proposal that SLCs are only needed where no compliance regime exists could lead to the regulator's loss of accountability and lack of an effective deterrent on suppliers' behaviour.	Ofgem's principles and duties are set out under the Electricity and Gas Acts. In proposing modifications to licences Ofgem will need to satisfy itself that it is compliant with its requirements towards customers. These issues will form a significant aspect of consultation.	No further action
13	20 May 2005	energywatch	Review should facilitate the delivery of energy policy issues such as sustainability.	Agreed. Ofgem must consider its duties in respect of the environment when proposing modifications to licence obligations.	No further action
14	20 May 2005	energywatch	Ofgem should promote a better balance of rights and obligations between suppliers and consumers, e.g. a new SLC requiring suppliers to provide	Such issues will be considered by the Steering Group or appropriate workgroup.	To be reviewed by Steering Group

			transparent pricing information and billing.		
15	20 May 2005	energywatch	Ofgem will need to demonstrate how it will fulfil its statutory duty to protect customers in a way that meets the better regulation principles. Alternative regimes will require proactive and extensive monitoring by Ofgem and the proposal to apply different SLCs to different suppliers will have transitional risks.	Agreed. Such issues will be considered by the Steering Group or appropriate workgroup.	To be reviewed by Steering Group
16	20 May 2005	Gaz de France ESS	Monitoring and reporting should be clearly defined, including making arrangements for transparency of relevant aspects of participant performance.	Consider that this general principle should be considered by the Steering Group and adopted across all workgroups.	To be reviewed at Steering Group