

Supply Licence Review Steering Group meeting 1 March 2006

Update on progress of working Groups

Vulnerable customers

The Group held its fifth meeting on 20 February. This considered papers from EON on non-licence measures for protecting vulnerable customers, from EDF Energy on a Consumer Protection Code, and a draft consultation document by Ofgem on options for new licence arrangements. In discussion there was broad consensus that a number of core protections should continue (such as those around debt and disconnection) and on the need for simplifying current arrangements. There was more debate on the role and scope of the Priority Service Register, overlap with the Disability Discrimination Act, and options for restructuring licence obligations. It was agreed that Ofgem's document should reflect discussions to date and balance the options. Ofgem proposed to publish its document around the end of February, and to allow two months for consultation, particularly among consumer organisations which had been unable to participate in the Working Group. The Group will meet again on 8 May to consider responses and a report to the Steering Group. An interim meeting will be held on 27 March to consider other issues, including issues overlapping with other Working Groups.

Duty to supply

The Group met on 9 February.

The main business of the day was to review the obligations in the licence on deemed contracts. There was broad agreement that, due to the uncompetitive nature of deemed contracts, regulation was required to protect the interests of customers. In particular, this related to the terms of deemed contracts including restriction on price, information provided to deemed contract customers and the ability of such customers to switch the supplier or contractual terms of their choice.

Comments on the duty to supply issues had been received from energywatch, ScottishPower and Centrica. The group reviewed a draft summary provided by Ofgem on the views of the group on these issues. There was broad agreement although Centrica asked that it be recorded that they did not consider that there should be an obligation in the licence on suppliers to offer terms to domestic customers. An amended summary of the workgroup views is appended to this paper

Ofgem tabled a further paper at the meeting which aimed to draw together previous discussion on contractual issues. The paper was the first draft of the report to go to the Steering Group. Comments were requested for discussion at the next meeting.

Ofgem has commissioned ILEX to prepare a report on domestic debt objections. Terms of reference have been disused and agreed with the ERA and energywatch. ILEX are due to complete their report early in April.

The next meeting of the group on 8 March will consider the licence obligations on suppliers to provide information to customers. The meeting will also review draft reports to the Steering Group on Contracts and Deemed Contracts.

Metering

The Metering workgroup had not met since the last Steering Group meeting.

Ofgem has published a consultation document on innovative metering. The issues raised in that document touch on the supply licence obligations.

Ofgem has met with the HSE in respect of the safety element of the two-year meter inspection rule. HSE have indicated a willingness to consider a risk assessment of the value of a fixed two-year meter inspection, and a meeting between suppliers, Ofgem and HSE is to be arranged.

Industry codes

The meeting due to be held on 17 February was postponed at short notice. Ofgem apologises for any inconvenience caused. The relevant Ofgem policy team concluded the issues proposed by the workgroup required more considered analysis of the implications of the options, in respect of the legal and regulatory implications. Ofgem will propose a date to re-convene the workgroup at the Steering Group meeting on 1 March.

Section B (inc SoLR) issues

The first meeting of the group was held on 13 February and focussed on the obligations relating to Supplier of Last Resort. Broadly, the group agreed that basic principles contained in the existing licence conditions should be retained, although simplified and redrafted. The exception was SLC 33 (requiring domestic suppliers to maintain security) which will be removed.

Next meeting of the group is scheduled for 13 March.

Section D issues

The inaugural meeting of the workgroup will be held on 2 March. Ofgem will issue a discussion document covering all of the current obligations set out in Section D of the licence. Section D is only currently in effect in the licences of the ex-monopoly suppliers and in each case only for their ex-monopoly areas.

Appendix. Duty to supply – DRAFT summary of the views of the Duty to Supply, Contracts and Information workgroup.

The purpose of this document is to summarise the views of the workgroup on the duty to supply issues and set out the high level conclusions for inclusion in the report to the Steering Group.

1. Obligation to offer terms to domestic customers (SLC 32)

The broad consensus of the group is that it is sensible to retain an obligation to make an offer of terms to a domestic customer as this will ensure that all customers (including vulnerable customers and new connections) will be offered terms. It also appears sensible to require suppliers to give supply on those terms if accepted by the customer.

It is intended that this obligation be significantly streamlined by the removal and revision to other related obligations which detail the terms that suppliers must offer.

The group also notes that the removal of the obligation to offer terms is likely to conflict with the Universal Service Obligation requirement (in the electricity market only) under the Internal Markets Electricity Directive 2003/54/EC (IMED) Article 3(3), unless replaced by equivalent requirements.

BGT have asked that this note record that they did not agree with the view of the group BGT maintained the view that there was no longer any justification to place suppliers under such an obligation. All customers were able to access a supply and the recent evidence from both Ofgem and energywatch indicated that the competitive market was working well.

2. Methods and frequency of payments (SLC 43)

The group agrees that the current obligations to offer a prescribed range and frequency of payments to all domestic customers should be significantly reduced.

For the generality of domestic customers suppliers will seek to meet customer requirements for payment methods and frequencies. As noted above, suppliers will be required to offer terms to domestic customers. It is expected that customers will be offered either credit or prepayment arrangements. The group notes that the IMED and Internal Markets Gas Directive 2005/55/EC (IMGD) (Annex A) both require that customers are offered a wide choice of payment methods. Ofgem will further pursue its discussions with the DTI on this issue and the group will need to consider the outcome of these deliberations.

The impact on vulnerable and low income customers is being considered further in the VCCOP. The VCCOP workgroup is seeking to identify whether there are specific requirements to provide payment methods that meet the needs of vulnerable customers. If the VCCOP workgroup decides that only one group should benefit from those specific requirements, it is likely that that group would need to be clearly identified and defined in the licence.

3. Processing contracts (SLC 43(4))

The group considers that the requirement to process all contracts for an energy supply to domestic premises without undue preference or undue discrimination should be removed. Under competition law dominant suppliers may in certain

circumstances be caught by the requirement not to discriminate between different customers.

4. Publishing principal terms (SLC43 (6) and (7))

The group considers that the obligation under SLC 43(6) and (7) to publish principal terms should be removed. Customers should have the information that they require to allow them to make informed decisions but suppliers would be expected to market as they see fit and if customers want price comparison services then suppliers would be free to submit their prices for consideration.

In terms of the information available to customers, the licence (SLC 44(1)) requires that suppliers make reasonable efforts to provide customers with the principal terms of their domestic supply contracts in advance of the customer entering into the contract. However it is for further discussion whether the obligation under SLC 43(5)(a) to provide copies of contracts on request should be retained.

5. Providing copies of contracts to Ofgem and energywatch (SLC 43(5)(b))

The group considers that the obligation to provide copies of contracts to Ofgem and energywatch should be removed. These contracts are not approved by either body. It would be expected that, if the obligation under SLC 43(5)(a) is retained as suggested above, that suppliers would be required to provide Ofgem and energywatch with copies of contracts on request.

6. Security deposits (SLC 45)

The group notes the significant overlap between the SLC 45, Common Law and arguably the UTCCRs on the amount that can be required as a security deposit. Neither the common law nor the UTCCRs prescribe a limit on the amount that suppliers may charge consumers for a deposit. However, under the common law and arguably under the UTCCRs, the deposit is required to be a reasonable estimate of the loss which a supplier is likely to suffer in consequence of a default. The licence restriction on the level of security deposits may therefore be removed.

Other restrictions on security deposits, set out in SLC45, which limit the length of time that a security deposit can be held and require it to be paid back with interest once certain conditions have been met should be removed from the licence. It is the group's view the gas and electricity industry is not sufficiently different to other markets where credit is offered in this instance.

The group agrees that it would be in customer's interests for them to have access to an effective dispute resolution mechanism. It is considered that Ofgem should retain its role in resolving disputes which arise under this condition for the time being. Other alternative dispute resolution mechanisms may develop in the future. However, if as stated above, the intention is to significantly lessen the scope of SLC45 then this will reduce the basis upon which Ofgem could be required to resolve a dispute. It is therefore agreed that the provisions in the licence should set out that, where the supplier requires a security deposit to be given, any dispute with the consumer over the reasonableness of the value of the deposit and associated terms should be determinable by Ofgem.

Finally, the group agrees that a security deposit can not be required where the customer is prepared to be supplied through a prepayment meter (and it is

reasonable to provide such a meter) or where it is otherwise unreasonable to do so. This would allow customers who are not able to afford the security deposit demanded the opportunity, in normal circumstances, to access the supply market through a prepayment meter.