

Ofgem's Review of the Energy Supply Licence

The Consumer Protection Code

A discussion paper from EDF Energy

1. This paper has been prepared by EDF Energy for consideration by both the Duty to Supply Workgroup and the Vulnerable Customers Workgroup, as part of Ofgem's supply licence review process.
2. The paper outlines the possible contents of a future Consumer Protection Code, in the form of a single licence condition applying uniformly to gas and electricity suppliers in the domestic market. This condition would effectively replace almost all of the current contents of Part C of the supply licence, which covers domestic supplier obligations (but see paragraph 7 below for a caveat).
3. The preparation of this outline reflects the view advanced by EDF Energy in both the workgroups since the beginning of the supply licence review process:
 - (a) That domestic supplier obligations under a restructured supply licence must be restricted to those which can be shown to be necessary because the level of the protection they offer is (i) fundamental to consumer interests, but (ii) is not sufficiently provided for under alternative legal provision, or (iii) cannot be guaranteed to be delivered by market forces.
 - (b) That all such obligations in relation to the regulation of supply contracts and the protection of (in particular) vulnerable consumers could, and should, for reasons of public transparency, enforceability, and speed and flexibility of governance and amendment, be consolidated into a Consumer Protection Code entrenched in the form of a single standard condition which sets out those obligations on the face of the licence.
4. The possible contents of such a Code are summarised below for discussion against that background. EDF Energy attaches great importance to the search for a broad consensus in both the workgroups, not as a balancing exercise but in terms of what can be seen to be objectively and proportionately necessary for domestic consumer protection. We would like to invite discussion of the draft on that basis.
5. While we have aimed for reasonable precision in the drafting, the paper is certainly not a legal text, nor is EDF Energy necessarily committed to all of the suggested items. However, we do believe that the illustrative contents, as they stand:
 - (a) would satisfy, in the round, the criteria laid out above;
 - (b) are broadly consistent with what is beginning to be crystallised in both of the workgroups as essential requirements for consumer protection; and
 - (c) reflect the clear distinction drawn by ERA members in their recent paper for the VCCOP workgroup between matters which should be made legally binding on the face of the licence, and those which can be better or more appropriately achieved through non-licence measures.

6. Three paragraphs are in square brackets in Parts 1, 3 and 11 of the draft. This is to indicate that while those matters have not yet been explicitly considered in either of the workgroups, they should – in our opinion – be addressed as soon as possible in the ongoing review process. EDF Energy’s provisional view is that each of these three matters would be an appropriate potential candidate for inclusion in a Code designed to meet the criteria stated above.
7. The outline as currently drafted does not deal with:
 - (a) requirements for provision of information to domestic consumers (because the issues arising under SLC 40 not only impinge to some extent on issues before the Metering Workgroup, but may also need to be considered in tandem with energy efficiency information issues, which currently sit in Part B of the licence);
 - (b) marketing and sales activities (because SLC 48 issues are being managed separately from the formal review process, at least at present); and
 - (c) debt-assignment issues (because of their links with the Ofgem-sponsored ILEX study of debt-management activities and debt-blocking rights in competitive energy markets).
8. EDF Energy hopes that this paper will stimulate further discussions in both of the workgroups, and urges them to consider adopting this model, in principle, as the optimal way forward for these areas of the supply licence review.

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Condition XX: The Consumer Protection Code

Part 1: This licence condition

- **Statement of purpose:** to protect fundamental domestic consumer interests, particularly those for which Ofgem must have special regard.
- **[Application:** the licence condition applies to any licensee supplying more than 10,000 domestic consumers].
- **Scope of obligations imposed by the condition:** the licensee is bound by all of them unless and to the extent that Ofgem consents otherwise.
- **Compliance:** to be interpreted in accordance with any enforcement guidance issued by Ofgem for the purposes of the condition.

Part 2: Duty to give supply

- **The licensee must:**
 - offer contractual terms for supply when asked to do so by any owner or occupier of domestic premises;
 - give supply on those terms if accepted unless there is reasonable cause not to do so (such as potential breach of ESQCR);
 - draw the consumer’s attention to the principal terms of supply (mainly prices and termination rights) before entering into the contract; and
 - send a copy of the full terms of the contract to the consumer within seven days of entering into the contract.

Part 3: Supply contracts

- The licensee must ensure that every domestic supply contract complies with the relevant provisions of the condition.
- **The supply contract must:**
 - contain all of the terms and conditions on which the licensee will give the supply;
 - (where applicable) separately identify charges for the supply from charges for goods or services;
 - provide for that distinction to be maintained in billing for payment pursuant to the contract; and
 - [provide for the back-billing restrictions specified by Ofgem in last year’s Super Complaint decision to have effect].

Part 4: Contract termination

- **Every domestic supply contract must provide:**
 - for the consumer to receive 28 days’ prior notice of the expiry of the contract, the principal terms of the new contract (if required), and the principal terms of any deemed contract that might apply;

- for consumer termination of the contract within 14 days of receiving notice of any price increase by the supplier; and
- for termination of the contract on receipt of two working days' prior notice from the consumer of change of ownership or occupancy.

Part 5: Security deposits

- Every domestic supply contract must provide:
 - where the supplier requires a security deposit to be given, for any dispute with the consumer over the reasonableness of this (including the amount demanded) to be determined by Ofgem; and
 - for the determination to be made by reference to the risk of loss to the supplier and the existence of any suitable alternatives.

Part 6: Payment methods

- The methods made available by the licensee for its consumers to pay their supply charges under a domestic supply contract must include:
 - payment through a prepayment meter (where practicable);
 - payment by sums deducted at source from social security benefits (where such a facility is available); and
 - payment at weekly or fortnightly intervals.

Part 7: Payment arrangements

- For consumers who inform it that they are having difficulty (for whatever reason) in paying their supply bills, the licensee must:
 - offer to enter into payment arrangements (including via prepayment meters) that take particular account of ability to pay (where such information is provided);
 - for the purposes of such arrangements, accept and use (where relevant) personal consumer information provided by advice agencies; and
 - where such arrangements are not maintained, provide and install a prepayment meter (where practicable) for ongoing charges and recovery of debt.

Part 8: Supply disconnection

- The licensee must organise and conduct its payment collection activities in the way that is best calculated to secure:
 - that a prepayment meter is always offered and installed (where practicable) to all domestic consumers as an alternative to disconnection for the non-payment of supply charges;
 - that no such disconnections take place for any such consumers who (by reason of age, disability, or other personal feature) would be particularly vulnerable to the consequences of loss of supply; and
 - that, subject always to the above, any such disconnections take place only as a measure of last resort and in accordance with law.

Part 9: Priority Services Register

- The licensee must maintain, publicise, and provide for consumers to participate in a Priority Services Register (under that name) for all those of its domestic consumers who (by reason of age, disability, or chronic sickness) require the benefit of any of the following:
 - a special passwords service provided by the licensee;
 - special-purpose quarterly meter readings so provided; and
 - third-party billing arrangements so provided.
- The licensee's operation of the Priority Services Register must provide for the timely and accurate notification to network operators of information contained within the register that is relevant to their licence obligations.

Part 10: Recognition of the DDA

- The licensee must by 1 June every year have placed on its website and provided to Ofgem a report, in respect of the previous financial year, detailing:
 - the licensee's operation of the Priority Services Register insofar as relevant to its obligations under the Disability Discrimination Act 2000; and
 - how in other respects the licensee has complied with those obligations.

Part 11: Governance arrangements

- [The licensee must, together with all other supply licensees, consult twice a year, through an appropriate public forum chaired by Ofgem, with representatives of bodies interested in the operation of this Code, with a view to monitoring its effects and considering whether any of its provisions should be modified].

Part 12: Provision of information

- The licensee must provide Ofgem with such information about the operation of the Code, at such times and in such manner, as Ofgem may reasonably require, having regard to:
 - the costs of compliance with this obligation; and
 - the desirability of being able to disclose such information to the public forum mentioned in Part 11.

Part 13: Code publicity

- The licensee must at all times maintain on its website, and make available to the public and consumers through such other means as it considers appropriate, a full and accurate summary, in plain and intelligible language, of its obligations under this licence condition.

Part 14: Interpretation

- An obligation on the licensee to do something under this licence condition is an obligation to take all reasonable steps to do it.