

Supply Licence Review

Industry Codes Workgroup

Conclusions and recommendations

Report to Steering Group, May 2006

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Introduction

This paper summarises the views of the Industry Codes Workgroup (the Group) in relation to the licence conditions set out in its terms of reference¹. These conditions contain a number of obligations as well as other provisions which do not place requirements on licensees. This paper presents the obligations that are currently contained in the relevant licence conditions and details the Group's recommendations on whether they should be retained, redrafted or removed. It also summarises the Group's discussions on the non-obligation-related issues and sets out a recommended way forward in each case.

Background

The trading arrangements in the gas and electricity markets are, to a large extent, defined by a number of agreements and codes². These were typically developed by holders of certain licences which contain obligations to set up and maintain them.

Certain of these codes are referenced in the gas and electricity supply licences. These licences place obligations on suppliers which dictate how they are required to interact with the industry codes. For example, in many cases, suppliers are required by their licence to become a party to and comply with certain codes and agreements.

In addition, there are certain other obligations contained within the supply licences. Some of these require licensees to implement consequential changes to industry codes in order to facilitate changes made to other codes. Other obligations have been introduced to the licence to facilitate the implementation of NETA and BETTA. Finally, in respect of one code, there is an obligation in the gas supply licence to set up and maintain the code.

The codes that are referenced in the supply licences, and which were subject to consideration by the Group are:

Electricity Supply Licence

Grid Code – *SLC³ 5*

Distribution Codes – *SLC 6*

Settlement Agreement for Scotland (SAS) – *SLC 8*

Connection and Use of System Code (CUSC) – *SLC 9*

Distribution Connection and Use of System Agreement (DCUSA) – *SLC 9A*

Balancing and Settlement Code (BSC) – *SLC 10 and 11*

Gas Supply Licence

Supply Point Administration Agreement (SPAA) – *SLC 34A*

¹ These conditions are additionally set out in Appendix 1

² For the purpose of this report, all such industry codes and agreements are referred to as codes.

³ Standard Licence Condition

Electricity Supply Licence

Gas Supply Licence

Master Registration Agreement
(MRA) – *SLC 20*

Structure of this document

Each of the obligations considered by the Group is set out in Section 1 below. For each obligation, a summary of the Group's discussions is set out together with a recommendation as to whether the obligation should be retained, redrafted or removed.

While not specifically the purpose of the Group under its Terms of Reference, it has also given consideration to the parts of the licence conditions which are not obligations on suppliers but which define the relationships between the licence and the codes. The Group's discussions and recommendations on these issues are set out in Section 2.

Section 1: Supply Licence Obligations

As a general principle, the Group agreed that, whichever obligations were to be retained, redrafted or removed, there was merit in amalgamating all the obligations that relate to the electricity codes into a single condition in the electricity supply licence⁴. As such, although the Group proposes to retain the effect of a number of obligations, they are defined as obligations to be redrafted because of this amalgamation exercise. This is explained in each case below.

A full list of each obligation under consideration by the Group is included in Appendix 1. This summarises, for each obligation, the way forward proposed by the Group.

1. *The obligation to be a party to a code*

Applicable codes and description of obligation:

SAS	The licensee is required to be a party to the SAS insofar as it supplies or offers to supply electricity to any premises situated in Scotland
CUSC	The licensee is required to be a party to the CUSC insofar as it supplies or offers to supply electricity to any premises situated in Great Britain
DCUSA	The licensee is required to be a party to the DCUSA Accession Agreement ⁵
BSC	The licensee is required to be a party to the BSC insofar as it supplies or offers to supply electricity to any premises in Great Britain
MRA	The licensee is required to be a party to the MRA
SPAA	The licensee is required to be a party to the SPAA

The Group considered the obligations to be a party to the codes listed above. It was noted that, in the case of the Grid Code and the Distribution Codes, there was no regulatory obligation for suppliers to be a party. However, in the case of the majority of codes, there was such a requirement in the licence. The Group noted that a distinction may perhaps have been drawn between codes to which a supplier must become a party as a prerequisite of operating in the market and codes where a supplier could potentially operate and supply premises without becoming a party to them. In addition, a distinction was also drawn between those codes which are contractual and those which are technical in nature (such as the Grid Code and Distribution Codes). It considered that these were reasons behind the difference in treatment in the current licence drafting.

⁴ There is only one industry-code-related obligation in the gas supply licence and hence this will not be subject to the amalgamation mentioned. The issue of amalgamation of licence conditions is set out in Section 2.

⁵ Note that the DCUSA is not yet a live document

For the codes where there is an existing obligation to be a party to a code, the Group concluded that it was appropriate for these obligations to be retained in order to ensure interoperability of the industry baseline.

For the codes where there is currently no requirement to be a party to them, the Group did not propose introducing one. The draft licence condition wording put forward by the Group therefore aims to preserve the current distinctions between codes which the licence requires a supplier to be a party to and those it does not.

The Group noted that the nature of the current obligations to be party to the codes is not consistent. For example, the requirement to be a party to the BSC and CUSC only applies where a supplier supplies or offers to supply premises. However, in the case of the MRA, the licensee is required to be a party irrespective of whether it is active in the supply market.

The Group concluded that there was merit in greater standardisation between codes, considering that the differences between treatments of codes were a result of them being drafted at different times by different people. The proposed drafting of the licence condition would therefore require licensees to be a party to the codes set out above from the moment their licence is granted, rather than only where they chose to supply or offer to supply customers. The Group discussed whether, with the different accession arrangements in the codes, this may result in licensees typically being in breach of the obligation to be a party to certain codes where they have been unable to accede in advance of the licence being granted. Since it is undesirable in principle for suppliers to be in breach of their licence immediately after being granted it, this issue of potentially non-material breaches by new entrants undertaking market entry process arrangements should be covered in published enforcement guidance.

The group also noted that the obligation to become a party to the SAS was no longer relevant as this agreement ceased to have effect from 31 March 2006. The group concluded that this obligation should therefore be removed from the licence.

Summary and recommendation:

The obligations to be a party to the CUSC, BSC, and MRA should be retained in their general effect. However, in amalgamating the obligations into a single licence condition, it is recommended that the differences between the treatments of the codes set out above should be removed to bring greater standardisation. These obligations should therefore be **redrafted** as set out in the proposed drafting in Appendix 2.

The obligation to be a party to the SPAA will not be subject to the amalgamation of licence conditions and so the recommendation is for this to be **retained**⁶.

The obligation to be a party to the SAS should be **removed** as, following BETTA implementation and SAS run-off, the SAS ceased to have effect from 31 March 2006.

⁶ In recommending that obligations be retained, the Group did not preclude some redrafting of format and style to bring them into line with the manner in which the new licence will be drafted.

2. *The obligation to comply with a code*

Applicable codes and description of obligation:

Grid Code	The licensee is required to comply with the Grid Code in so far as applicable to it
Distribution Codes	The licensee is required to comply with the provisions of every Distribution Code in so far as applicable to it
SAS	Where the licensee is required to be a party to the SAS, it is required to comply with its provisions
CUSC	Where the licensee is required to be a party to the CUSC, it is required to comply with it
DCUSA	The licensee is required to comply with the provisions of the DCUSA
BSC	Where the licensee is required to be a party to the BSC, it is required to comply with it
MRA	The licensee is required to comply with the MRA
SPAA	The licensee is required to comply with the relevant provisions of the SPAA

The majority of the Group's discussions concerned these obligations to comply with the various codes⁷. The Group considered the principle of Ofgem's involvement in enforcing compliance with codes and its policy towards doing so. It noted that the current obligation to comply with codes gave Ofgem the power to carry out enforcement action for any code non-compliance at any time. This presented a risk of double jeopardy where a supplier could be investigated for non-compliance separately and simultaneously by both Ofgem and the industry governance processes built into the codes themselves, with the potential for different rulings from each enforcement process (though it was noted that Ofgem's actual practice to date on enforcement matters has been quite cautious).

The Group considered how compliance with agreements and codes is treated in other industries, including the rail and aviation industries. It noted that the aviation industry places greater emphasis on self-regulation and voluntary codes of practice. The Civil Aviation Authority increasingly relies on competition law rather than licence obligations and its role is one of a backstop, with the industry taking the lead in ensuring appropriate behaviour. In the rail industry, the Group noted that the Office of Rail Regulation has recently undertaken a licence review. Its conclusions were that the obligation to comply with certain codes and agreements should be retained, with the support of most of the industry who felt this approach provided greater clarity and transparency, and that guidance should be produced about how this obligation would be enforced.

⁷ The group noted that the obligation to comply with the SAS was no longer relevant as this agreement ceased to have effect from 31 March 2006. The group concluded that this obligation should therefore be removed from the licence.

The Group discussed whether the current obligation to comply represented a disproportionately large burden for suppliers and whether self-governance could achieve compliance without the need for regulatory intervention. It was agreed that self-governance, if it could be effective, was the preferable method for enforcing code compliance. It was noted that the codes currently varied in the complexity of their self-governance arrangements and that, for Ofgem's role to be reduced, considerable work might need to be done in developing these arrangements to ensure their effectiveness. Such changes would impact all licence types, not just suppliers, and should therefore be considered in conjunction with the work of the ICCR project.

However, even with greater emphasis on self-governance, it was agreed that there was a need for a body to retain a role in the process to hear appeals. The group concluded that Ofgem was, as matters stand, the only appropriate body to fulfil this function, although the Group did not preclude the possibility of other formulations where an alternative appeal body could be appointed. In addition, it was agreed by the Group that there was a requirement for Ofgem to retain a role in enforcement compliance, perhaps as an enforcer of last resort where self-governance proved ineffective. This was due to the requirement to ensure interoperability between market participants in order to secure effective operation of the market rules and therefore competition.

Given this view that Ofgem should retain a role, much of the Group's deliberations therefore related to whether greater clarity or certainty could be brought to the issue of enforcement of compliance by the regulator in order to reduce the perceived burden of the licence obligations to comply with codes. It considered ways in which this greater clarity and certainty could be brought about by changes to the licence wording and discussed two principal options.

Enforcement by invitation in predetermined areas

The first option proposed to formalise Ofgem's enforcement role by allowing the regulator to take action in respect of code non-compliance only at the invitation of an industry code panel or board. The obligation to comply with the codes would be retained in the licence but would only be investigated if industry self-governance could not remedy an issue. This, it was argued, would make Ofgem's role as an enforcer of last resort clear and encourage greater emphasis on self-governance. It was agreed that under this option there may need to be a mechanism for picking up non-compliances where the injured party was not a code party (a customer, for example) and allowing them to be considered by industry code panels. There was unanimous agreement that a suitable appeal mechanism would need to be developed.

This option also included a proposal that this enforcer of last resort role for Ofgem should be limited to certain pre-determined areas within each code which were of particular interest to the regulator. Non-compliances in these pre-determined areas would, it was proposed, be considered by industry code panels and then, if they could not be remedied, escalated to the Authority to determine whether to enforce an obligation to comply with the code. Where there was a non-compliance with a code obligation that was outside the predetermined areas, self-governance alone would provide the remedy.

Course of conduct

The group considered a second proposal, inspired by SLC 3 of the gas shipper licence. This does not require shippers to comply with gas Network Codes, but instead requires them not to pursue conduct which is likely to prejudice the safe

and efficient operation of the pipeline system by a transporter. The group discussed whether a similar principle could be applied to suppliers in respect of other industry codes.

The group agreed that such a course of conduct test reduced the potential burden of the regulatory obligation as it could only be enforced by Ofgem in cases of material and significant non-compliances. The main concern about the current obligation to comply was that it could theoretically be enforced for minor non-compliances. To enforce a course of conduct obligation, a higher burden of proof would be needed.

The group discussed potential draw-backs of the shipper licence obligation. These included the requirement for Ofgem to demonstrate intent on the part of the shipper. In addition, as noted above, the obligation on shippers relates to a course of conduct, which potentially precludes the possibility of enforcement for a single, albeit material, transgression. While this shipper licence obligation has successfully been enforced in the past, it was considered that its current drafting makes enforcement problematic, so the group produced some supply licence drafting to address these difficulties. This drafting proposed that the Authority could consider a declaration of a breach by an industry code panel as equivalent to a licence contravention and removed the requirement to demonstrate intent.

Ofgem's view and future work plan

Ofgem noted to the group that its ability to take enforcement action is already guided by a requirement to adhere with the principles of Better Regulation. In deciding to take action, it must therefore consider that to do so would be a proportionate response to any non-compliance. It considered that the obligation to comply with industry codes would not, in reality, be enforced for non-material non-compliances.

The group's work on the obligations to comply with industry codes raised profound and difficult questions about the relationship between Ofgem and codes and the discharge of Ofgem's duties. Ofgem considered that these questions, which affect all types of licence, would merit detailed consideration across all codes and licence types. Accordingly, its Executive Committee approved the setting up of a project to look into this question of code compliance in detail for all licences. A new project, the Industry Codes Compliance Review (ICCR), has been established. This is expected to last around 18 months and include a detailed analysis of the obligations contained within codes with the aim of assessing whether the current enforcement and change control roles that Ofgem has are appropriate. This would include consideration of the parts of the codes where Ofgem's role should be retained and where alternative arrangements, in particular industry self-governance, should be adopted. Ofgem welcomed the interest expressed by group members in contributing to this piece of work.

In the meantime, while this project is carried out, Ofgem has undertaken to consider producing guidance as to how it will enforce the supply licence obligations to comply with industry codes. The issue of guidance, particularly for other types of licensee, is something which the Group believed could usefully be considered as part of the ICCR.⁸

Further information about the Group's consideration of enforcement guidance is included in Section 2.

⁸ The Industry Code Compliance Review set out in Ofgem's Information Note of 21 April 2006

Summary and recommendation:

The obligations to comply with the Grid Code, Distribution Codes, CUSC, DCUSA, BSC, MRA and SPAA are to be considered further across all licence types in the ICCR. As such, the recommendation of the group under the Supply Licence Review is to maintain the effect of the obligations to comply with these codes. As before, the group proposes to produce an amalgamated drafting for the electricity codes and the recommendation for the obligations to comply with the Grid Code, Distribution Codes, CUSC, DCUSA, BSC and MRA is therefore to **redraft** them into a single licence condition, as set out for illustrative purposes in the proposed drafting in Appendix 2.

The obligation to comply with the SPAA will not be subject to the amalgamation of licence conditions and so the recommendation is for this to be **retained**, subject to minor redrafting of style or format.

The obligation to comply with the SAS should be **removed** as, following BETTA implementation and SAS run-off, the SAS ceased to have effect from 31 March 2006.

3. *The obligation to establish and maintain a code*

Applicable codes and description of obligation:

SPAA	The licensee is required, in conjunction with other suppliers, to prepare and maintain the SPAA
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Industry codes are typically set up and maintained through a licence obligation. For example, the transmission licence contains an obligation to establish the BSC⁹ and Grid Code¹⁰. Similarly, the MRA was set up by distribution companies in accordance with SLC 37 of the distribution licence. The SPAA is the only code that was set up in accordance with a supply licence condition¹¹. This requires domestic suppliers to prepare and maintain the SPAA.

Having licensed parties identified as code owners or maintainers is a potentially important element in ensuring the effective operation of a code, its obligations and its effective governance.

The Group saw no reason to change this obligation in respect of the SPAA.

Summary and recommendation:

The obligation to prepare and maintain the SPAA should be **retained**.

⁹ SLC C3

¹⁰ SLC 7

¹¹ SLC 34A of the gas supply licence

4. *Obligations relating to BETTA¹² run-off arrangements*

Applicable codes and description of obligation:

BETTA run-off The licensee must comply with the BETTA run-off arrangements scheme.

The licensee must also comply with any Direction issued by the Authority to modify the BETTA run-off arrangements.

If there is any conflict between the requirements of the scheme and other SLCs, the licensee will comply with any direction made by the Authority in relation to this.

To facilitate the introduction of BETTA, SLC 31B provides for the designation of a BETTA run-off arrangements scheme by the Secretary of State. The purpose of this scheme was to set out the steps to be taken by suppliers to achieve run-off of the pre-Great Britain trading arrangements to ensure that there was no hindrance to the introduction of BETTA under Chapter 1 of Part 3 of the Energy Act 2004. The licence condition allows changes to be made to this scheme by the Authority by Direction but not after the BETTA go-live date.

The group considered that, following the implementation of BETTA in April 2005, the run-off arrangements set out in this condition were no longer relevant and should be removed.

Summary and recommendation:

All of the obligations contained in SLC 31B should be **removed** as they were transitional in nature and are no longer needed following BETTA go-live.

5. *Obligations relating to NETA¹³ implementation*

Applicable codes and description of obligation:

BSC The licensee must comply with the NETA programme implementation scheme.

The licensee shall use reasonable endeavours to do such things necessary to give full and timely effect to modifications made to the supply licence by the Secretary of State under section 15A of the Act.

In a similar way as with the BETTA run-off obligations discussed above, the electricity supply licence, in SLC 10, contains obligations relating to NETA implementation. These require suppliers to comply with the NETA programme implementation scheme and provides for this scheme to be designated by the

¹² The British Electricity Transmission and Trading Arrangements

¹³ The New Electricity Trading Arrangements

Secretary of State. The condition sets out details of what the scheme may contain, including steps necessary for modifications to the licence and for amendment of core industry documents. The licence also enables the Secretary of State to modify, by Direction, the programme implementation scheme and suppliers are required to comply with any such modified scheme.

The group considered that, following NETA implementation in March 2001, these provisions of the licence are no longer relevant and should be removed.

Summary and recommendation:

The obligations and provisions contained in SLC 10 relating to NETA implementation should be **removed** as they were transitional in nature and are no longer needed following NETA go-live.

6. Obligations relating to consequential changes required to other codes

Applicable codes and description of obligation:

DCUSA	The licensee is required to take all reasonable steps to secure and implement and not unduly delay changes to core industry documents required to give full and timely effect to changes to the DCUSA
CUSC	The licensee is required to take all reasonable steps to secure and implement and not unduly delay changes to core industry documents required to give full and timely effect to changes to the CUSC
BSC	The licensee is required to take all reasonable steps to secure and implement and not unduly delay changes to core industry documents required to give full and timely effect to changes to the BSC
SPAA	The licensee is required to take all reasonable steps to secure and implement and not unduly delay changes to core industry documents required to give full and timely effect to changes to the SPAA

The group gave consideration to these obligations which require the licensee to make and implement consequential changes to other core industry documents which are required to give effect to changes to the CUSC, DCUSA, BSC and SPAA. It determined that these obligations were sensible to help greater co-ordination of the industry's rules across its various codes and agreements.

It noted that this obligation only exists in relation to the four codes set out above. Currently, there is no requirement in relation to the MRA, Grid Code and Distribution Codes. The group felt that this may reflect the different times at which the obligations were drafted and considered that this obligation should apply equally to all industry codes.

Ofgem representatives considered that these obligations were deliberately not made standard across all codes in order to reflect a required hierarchy of codes. It was argued that it is only appropriate for consequential changes to flow in one direction in this hierarchy and not upwards from codes which are considered subordinate. They suggested that it might not be appropriate to extend this obligation to raise consequential changes to cover all codes as set out in the Group's proposed drafting.

The Group noted these views expressed by Ofgem. Their view was that this hierarchy of codes is not reflected in the co-equal legal status which the various codes have. They considered that the incorporation of an obligation in relation to consequential changes was done to address a perceived deficiency in the change co-ordination of the codes and that this may explain why the newer codes have this obligation associated with them. Certain codes where there is no licence obligation, such as the MRA, have provisions within their governance arrangements to secure co-ordination between codes, implicitly having the same effect as the licence obligation. The Group considered that the addition of a licence obligation to make or facilitate, and not unduly delay, consequential changes across all codes was an appropriate way to ensure co-ordination.

Summary and recommendation:

The obligations to make consequential changes on other codes to give full and timely effect to changes made in the CUSC, DCUSA and BSC should be retained in effect. However, due to the proposed amalgamation of the electricity supply licence conditions, these obligations should be **redrafted**.

In addition, the group apart from Ofgem determined that the amalgamated licence condition should have the effect of making this obligation standard across electricity codes, thereby introducing obligations to make consequential changes in respect of the Grid Code, Distribution Codes and the MRA.

The obligation to make consequential changes to give full and timely effect to changes to the SPAA will not be subject to the amalgamation of licence conditions and so the recommendation is for this to be **retained**, subject to any minor stylistic redrafting required.

Section 2: Non-obligation-related issues

The group discussed other matters that are not specifically related to licence obligations.

1. *Amalgamation of licence conditions*

Early in its discussions, the Group identified that amalgamation of the existing electricity licence conditions into a single one would be a desirable outcome of this review. This approach would add clarity to the obligations and be an opportunity to standardise the approach taken across the various codes. This proposal was unanimously agreed by the Group.

The Group noted that this amalgamation would have the effect of reducing the size of the electricity supply licence by around twenty pages.

SLC 34A is the only gas supply licence considered by the Group. As such, no amalgamation of gas supply licence conditions is possible. Where the Group has recommended that obligations contained in this condition are retained, this does not preclude some redrafting to fit the style and format of the new licence.

Summary and recommendation:

The group recommends that the electricity licence obligations which relate to codes and which are not to be removed (ie. those contained in SLCs 5, 6, 9, 10, 11 and 20 and discussed throughout this report) should be merged into a single condition. Proposed drafting for this condition has been produced and discussed by the Group and is included in Appendix 2.

2. *Statement of Enforcement Policy*

Following the Group's consideration of the obligations to comply with the various codes, the issue of enforcement guidance was discussed. In particular, the Group gave consideration to whether guidance published by Ofgem could provide additional certainty and clarity about its enforcement role. This would be an interim measure while the ICCR project considered the issue of compliance in more detail. It was considered whether Ofgem's duty to be proportionate in its enforcement role in itself provided sufficient clarity about the likelihood of its intervention in respect of non-compliances without the need for guidance. The Group agreed that some form of guidance would be useful.

Some Group members considered that Ofgem is duty bound to enforce licence obligations, with only limited discretion in this area. It was suggested that this pointed to a further requirement for published enforcement guidance.

The Group considered previously published guidance from Ofgem and the extent to which this provided the clarity that was sought. It debated the detail such guidance should have, whether it should be code-specific, and whether it should be referenced in the text of the supply licence.

In terms of detail, some Group members favoured quite prescriptive guidance, aimed at providing a high level of certainty as to Ofgem's likelihood of taking enforcement action. Ofgem raised concerns about publishing prescriptive guidance, highlighting that this could fetter the discretion of the Authority in discharging its obligations. Some Group members considered that there should be

explicit recognition of the principle that Ofgem would normally look first to industry governance arrangements to deal with supplier performance and compliance issues. Further, they thought it would be beneficial to bring clarity to the general types of non-compliance that would be likely to be considered material, and to draw a distinction between these and minor failures.

The Group considered that guidance which was code-specific may help to add extra clarity. Alternatively, separate guidance could be produced for groups of codes, such as those codes which are mostly commercial in nature and those which are mostly technical. Given the discussions on the level of detail that published guidance would contain, it was considered unlikely that code-specific guidance would offer much greater clarity if the guidance were to be high level and principles-based. However, any general guidance published by Ofgem could be more focussed on industry code compliance enforcement than the currently published version which covers all types of enforcement.

Following further discussion, the Group determined that guidance may not be the most appropriate term and that what would be of most use in reducing uncertainty about regulatory action was a Statement of Enforcement Policy. This was because guidance, by its nature, can only guide participants about likely action. On the other hand, a statement of policy, similar to that required by statute in respect of the imposition of a financial penalty, potentially carried greater weight and brought greater clarity.

The Group debated the question of whether a published Statement of Enforcement Policy should be referred to in the licence condition to give it a more formal status in requiring Ofgem to follow it when carrying out enforcement action or in stating that licensees could have regard to it in considering their compliance. Some Group members considered that reference to such a document in the licence would ensure transparency and give it more weight, with due process and regulatory certainty being reinforced by an explicit requirement on Ofgem to take its policy into account when considering enforcement matters.

Ofgem representatives expressed reservations about linking any published guidance or statement of policy into the licence. They stated that, even without a reference to it in the licence, where Ofgem has published guidance it would be required to consider it in determining whether to take any action. They were not comfortable with the idea of guidance having (as they believed, though this was disputed by the Group) a binding effect on Ofgem's actions. They noted to the Group that the publication of a Statement of Enforcement Policy would need the approval of its Executive Committee.

Some Group members considered that effort should be focussed on the ICCR and that the production of detailed guidance might distract attention that could otherwise be given to that project.

Summary and recommendation:

Apart from Ofgem, the Group's conclusion was to recommend that a Statement of Enforcement Policy be produced and published if at all possible, based on previous Ofgem guidance but targeted more specifically at industry code compliance. In the time available to prepare this report for the Steering Group, the Group has been unable to agree with Ofgem the appropriate scope and contents of any such statement.

3. *Ability to relieve compliance obligation by Direction*

It was noted that the Authority is currently able, in respect of the Grid Code, Distribution Codes and SAS, to issue a Direction relieving a supplier of its obligation to comply with a code to the extent specified in the Direction. The group noted that this ability does not currently exist for the other industry codes but considered that, as best practice for the drafting, such an ability should be included.

Summary and recommendation:

The amalgamated electricity drafting should introduce a general ability for the Authority to relieve the obligations to comply with any code (in part or in whole) by Direction. A similar provision should be added to the gas supply licence in relation to the SPAA.

Appendix 1: List of obligations and Group's recommendations

Licence	SLC	Obligation Number	Obligation	Proposed Course of Action
Electricity Supply	5	E.05.01.01	Comply with the provisions of the Grid Code in so far as applicable to it	Redraft
		E.05.02.01	The Authority may [...] issue directions relieving the licensee of its obligation under paragraph 1 in respect of such parts of the Grid Code and to such extent and subject to such conditions as may be specified in those directions	Redraft
	6	E.06.01.01	Comply with the provisions of every Distribution Code in so far as applicable to it	Redraft
		E.06.02.01	The Authority may [...] issue directions relieving the licensee of its obligation under paragraph 1 in respect of such parts of the Distribution Code of any such distributor and to such extent as may be specified in those directions	Redraft
	8	E.08.01.01	If the licensee supplies in Scotland it must be a party to the SAS	Remove
		E.08.01.01	If the licensee supplies in Scotland it must comply with the SAS	Remove
		E.08.02.01	Authority may issue directions relieving the licensee of obligations under this condition in certain circumstances	Remove
		E.08.03.01	This condition shall only apply to the licensee if it is a party to the SAS before BETTA go-live	Remove
	9	E.09.01.01	Be a party to the CUSC insofar as the licensee shall supply or offer to supply electricity to any premises in Great Britain	Redraft
			Comply with the CUSC insofar as the licensee shall supply or offer to supply electricity to any premises in Great Britain	Redraft
		E.09.02.01	Licensee shall take all reasonable steps to secure and implement and not prevent or unduly delay changes which are appropriate to give full and timely effect to any modification made to the CUSC	Redraft
	9A	E.09A.01.01	Licensee shall be a party to the DCUSA	Redraft
		E.09A.01.01	... and shall comply with the provisions of DCUSA	Redraft
		E.09A.03.01	Licensee shall take all reasonable steps to secure and implement and not prevent or unduly delay changes which are appropriate to give full and timely effect to any amendment made to DCUSA	Redraft
	10	E.10.01.01	Insofar as the licensee shall supply or offer to supply electricity to any premises in Great Britain, the licensee shall be a party to the BSC Framework Agreement...	Redraft
			...and shall comply with the BSC	Redraft
		E.10.02.01	The licensee must comply with the Programme Implementation Scheme (NETA)	Remove
		E.10.03.01	The Scheme gives effect to any steps needed bring into effect modifications to this licence under section 15A of the Act	Remove
		E.10.03.02	The Scheme gives effect to any steps needed to bring into effect any conditions imposed by an exemption from the requirement to hold a licence	Remove
		E.10.03.03	The Scheme gives effect to any steps needed to bring into effect to any matters envisaged by such modifications and conditions	Remove
E.10.07.01		The licensee to use all reasonable endeavours to bring into effect all modifications to this licence made under section 15A of the Act	Remove	
11	E.11.01.01	The licensee must not prevent changes to other documents that allow modifications made to the BSC to become effective	Redraft	
20	E.20.01.01	The licensee must be a party to the MRA	Redraft	
		The licensee must comply with the MRA	Redraft	
31B	E.31B.01.01	The licensee must comply with the BETTA run-off arrangements	Remove	
	E.31B.07.01	The licensee must comply with any Direction issued by the Authority to modify the BETTA run-off arrangements	Remove	
	E.31B.08.01	If there is any conflict between the requirements of the scheme and other SLCs it will comply with any direction made by the Authority in relation to this	Remove	
Gas Supply	34A	G.34A.01.01	In conjunction with other suppliers, prepare, maintain and be party to SPAA	Retain
		G.34A.02.01	Comply with SPAA	Retain
		G.34A.06.01	Secure and implement without undue delay any changes agreed to the SPAA	Retain

Appendix 2: Proposed legal drafting

Condition XX: Obligations in Relation to Relevant Instruments

Part A: This condition

1. The purposes of this condition are:
 - (a) to set out the obligations of the licensee in relation to certain industry codes and agreements; and
 - (b) to provide, on a uniform basis, for certain matters concerning compliance with those codes and agreements and modifications of them.

Part B: The relevant instruments

2. The codes and agreements (each being a ‘relevant instrument’ under this condition) to which paragraph 1 refers are:
 - (a) the Balancing and Settlement Code;
 - (b) the Connection and Use of System Code;
 - (c) the Distribution Code;
 - (d) the Distribution Connection and Use of System Agreement;
 - (e) the Grid Code; and
 - (f) the Master Registration Agreement,

in each case as from time to time modified or replaced, and insofar as applicable to the licensee.

Part C: General obligations of licensee

3. Where a relevant instrument provides for persons to accede to it, the licensee must be a party to that instrument.
4. The licensee must comply with such obligations and requirements as are placed on it by each relevant instrument specified at paragraph 2 or which arise under or pursuant to the provisions of that document.

Part D: Consequential changes

5. This paragraph applies where a relevant instrument under or in relation to which the licensee holds rights of amendment requires to be modified (a ‘consequential change’) in order to give full and timely effect to the modification of another relevant instrument.
6. Where paragraph 5 applies, the licensee must, in accordance with such procedures as are applicable under or in relation to the relevant instrument to which the consequential change applies, take all reasonable steps to secure and implement that change and not take any unreasonable steps to prevent or unduly delay it.
7. Paragraph 6 is without prejudice to:
 - (a) any rights of appeal that the licensee may have in relation to decisions made by the Authority under or pursuant to any of the relevant instruments; and
 - (b) any rights of approval, veto, or direction which the Authority or the Secretary of State may have in relation to proposed changes to any of the relevant instruments.

Part E: Compliance and derogations

8. The Authority may, in respect of any relevant instrument:
 - (a) publish a statement of enforcement policy, for the purposes of this condition generally, concerning the licensee’s compliance with its obligations under paragraphs 3 and 4; and
 - (b) issue a direction relieving the licensee of its obligations under that instrument in respect of such parts of the instrument and to such extent and subject to such conditions as may be specified in the direction.
9. Before exercising either of its powers under paragraph 8, the Authority must have consulted the licensee, the governing body of the relevant instrument, and such authorised electricity operators (if any) as appear to the Authority to be likely to be affected by the proposal.

Part F: Information

10. The licensee must provide the Authority with such information, in such manner and at such times, as the Authority may reasonably request in connection with the licensee's compliance with any relevant instrument or this condition.

Part G: Enforcement

11. Where any provision of a statement of enforcement policy published pursuant to paragraph 8(a) is relevant to any question about the licensee's compliance with its obligations under this condition, the Authority must take that provision into account in determining that question.