Vulnerable Customers & Codes Workgroup – Final Report to the Supply Licence Review Steering Group

This report summarises the views of the Vulnerable Customers and Codes Workgroup regarding the following SLCs:

SLC 26 – Record of and report on performance
SLC 27 – Preparation, Review of and Compliance with Codes
SLC 35 – Code of Practice on Payment of Bills and Guidance for Dealing with Customers in Difficulty
SLC 36 – Code of Practice on the use of Prepayment Meters
SLC 37 – Provision of Services for Persons who are of Pensionable Age or Disabled or Chronically Sick
SLC 37 (Gas) – Pensioners not to have supply of gas cut off in winter
SLC38 – Provision of services for persons who are blind or deaf
SLC39 – Complaint handling procedures
SLC43 – Contractual Terms – Methods of Payment
SLC45 – Security Deposits

The report follows on and incorporates comments from the initial consultation (dated 7 March 2006) which can be referred to for further background on the licence conditions[1].

It is broadly structured in the same format as the workgroup meetings and the initial consultation i.e. the following chapters:

- Chapter 1 – Debt and Disconnection
- Chapter 2 – PSR and services for the blind and deaf
- Chapter 3 - Structure of requirements, communication, compliance and reporting
- Chapter 4 – Other licence conditions

There is a high level overview of responses and a summary of the current position. Where there is consensus on an issue this is indicated. Where there have been differing opinions Ofgem has also included its current view on the issue.

A list of the respondents to the consultation is included at appendix 1. Full copies of responses to the consultation can also be found on Ofgem's website[2].

[1] http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/14157_4206.pdf?wtfrom=/ofgem/whats-new/archive.jsp

[2] http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/supplylr&leveliddavids=.1_13166#top13166

Executive summary

Nearly 30 responses have been received to the consultation document on implications for vulnerable customers in the supply licence review. Of these, the Energy Retail Association (ERA) submitted an overall response on behalf of the six main suppliers. Responses were also received from the principal consumer organisations, including energywatch, NCC, Citizens Advice, Age Concern, NEA and PUAF.

While all respondents generally supported Ofgem's objectives in undertaking the supply licence review, there was a wide spectrum of opinion on the approach that should be adopted. The ERA recognised that there is a need to maintain a level of protection for vulnerable customers, given the essential nature of gas and electricity supplies. However, it did not accept as a general principle that such protection must be in the licence in all cases. Consumer organisations however put a much greater premium on protection in the licence, since this is seen as ensuring clarity and enforceability in relation to essential elements of consumer protection. Having a clear statement of consumers' rights in this area is seen as particularly important in the context of DTI's proposed changes to consumer representation.

Ofgem considers that the appropriate structure for the regime is licence based obligations supported by self regulation and voluntary initiatives. This paper sets out further thoughts on whether particular protections continue to be necessary and if so whether they should be addressed through regulatory or voluntary means.

Debt and Disconnection

In this area, there was consensus from all parties that it is essential to avoid disconnection of vulnerable customers. Industry stressed that they have a commercial incentive to minimise debt and disconnection, and hence that there is a role for self regulation and good practice guidelines in addition to licence obligations. Most consumer organisations wanted to see the licence moratorium not to disconnect vulnerable groups in winter extended to all year round. Some consumer groups also favoured the retention of process steps, including distinguishing between "can't pay" and "won't pay" customers.

Generally Ofgem considers that the essential protections for vulnerable customers who are having payment difficulties should remain in the licence in order to ensure that disconnection only occurs as a last resort. Ofgem also proposes that the winter moratorium in gas applying to all-pensioner households should be replicated in the electricity licence.

However, Ofgem recognises that suppliers have a commercial incentive to prevent debt build-up and has sought to minimise the procedural obligations which apply to suppliers in dealing with customers in debt. Ofgem welcomes the introduction of self-regulation arrangements such as the ERA safety net on disconnection, which is working well at present. In view of this success and to avoid removing industry incentives to apply self-regulatory principles to issues of customer protection Ofgem does not consider that this voluntary arrangement should be replaced with direct regulation. Ofgem will however continue to monitor this important area and will take further action if necessary.

On PPMs consumer groups wanted the information requirements retained. Ofgem recognises that it will not be in suppliers' commercial interests to provide information on the disadvantages and the removal of PPMs, but wants to consider further the appropriate scope and format of such information. Ofgem is also minded to introduce a requirement to take "all reasonable steps to recalibrate PPMs in a timely manner" but will be first interested to see whether this will be dealt with in the forthcoming billing code and to understand the suppliers' plans for removal of token PPMs.

Priority Service Register and Services for the Blind and Deaf

The PSR is the area with the widest spectrum of views. While all of the consumer organisations wanted to see the PSR retained, and in some cases expanded, industry favoured a much more limited approach in terms of what is specified in the licence.

Suppliers considered that the PSR should be limited to customers with special medical needs, which is far narrower that the current focus, and that it is inappropriate to specify particular services in the licence. Suppliers argued that their voluntary initiatives are more targeted at helping genuine vulnerable customers than the existing licence conditions and that suppliers in addition have to meet requirements to make reasonable adjustments under the Disability Discrimination Act 1995 ("DDA").

On the other hand, some consumer groups regarded the PSR as an under-utilised facility, with the potential for suppliers to play a more active role in identifying vulnerable customers and ensuring their needs are catered for. For example, energywatch suggested that eligibility for the PSR should be more focussed on vulnerability, to include any customers experiencing an energy related problem or difficulty that has arisen as a result of psychological or mental illness or incapacity or financial insecurity. This is a more dynamic concept of energy related vulnerability as customers can be vulnerable at different stages of their lives. Other consumer groups wanted more action to help those on low incomes as part of the PSR.

Balancing these views, Ofgem's preferred approach is that the focus of the PSR should remain as it is on vulnerable customers with access, safety and communication needs. However, Ofgem see potential for some changes in qualifying services (on meter moves and special adaptors where the DDA provides a proportionate obligation on suppliers and on free gas safety checks where Ofgem is looking at a broader obligation to provide advice with the provision of free checks being more tightly targeted). Removal of these more costly services coupled with clear obligations to publicise the PSR will in Ofgem's view increase the usefulness of the PSR as a means of protecting vulnerable customers.

Ofgem welcomes the introduction of Corporate Social Responsibility ("CSR") initiatives by suppliers which can provide valuable assistance to customers in difficulty. Outside of this licence review Ofgem intends to continue to work with suppliers to develop best practice on assisting all vulnerable customers (including the targeting of CSR offerings). Ofgem will also continue to consider whether there is a case for an obligation to provide information on sources of help where a customer has payment difficulties.

In relation to the DDA, a number of consumer groups commented that the DDA is not an acceptable alternative to specific licence requirements due to lack of enforcement powers. Having regard to its statutory duties Ofgem does not

consider that it would be appropriate to rely, in all instances, on the broad provisions of the DDA. That said, there are residual issues such as special controls, adaptors and meter moves for PPMs where Ofgem considers that the DDA's approach of considering the specific circumstances of each case should provide a proportionate obligation on suppliers to meet the individual circumstances of the vulnerable customer.

In relation to the transfer of PSR registration between suppliers Ofgem can see the benefit of requiring such transfer but wishes to understand further the costs and practical implications of such transfer as well as any potential barriers to such transfer. Ofgem recognises that one alternative solution might be for suppliers to remind PSR customers who switch supplier of the need to re-register for the PSR. Ofgem intends to consider these matters further and seeks further information from suppliers and or distributors on the possible issues raised by such a proposal.

Methods of Payment, Security Deposits and Complaint Handling Procedures

On payment methods, suppliers agreed that there should be an obligation to accept payment by Fuel Direct or PPM as an alternative to disconnection but consider that cash payment and other payment methods will be delivered by competitive forces. Consumer organisations saw a need to maintain all methods of payment currently specified in the licence.

Generally Ofgem considers that frequent cash payments can help customers on low incomes manage their finances to avoid getting into debt. This payment method, being more expensive to provide, may not be delivered by the market. However there was no support from respondents to limit the availability of frequent payment to customers on low incomes, which was felt to be impractical and unnecessary given that these customers would be self-selecting.

Accordingly, Ofgem proposes to retain frequent cash payment as a licence obligation, along with payment by Fuel Direct and PPM. Ofgem also proposes an exemption for smaller suppliers or a facility for an exemption "where the Authority otherwise consents". It should be noted that Fuel Direct and payment by PPM will remain as backstop protection in all cases as an alternative to disconnection.

On security deposits suppliers did not think that it was necessary to retain specific protection for vulnerable customers. Ofgem considers that some limited protection is still needed to ensure that the provision of a PPM is an alternative to the payment of a security deposit, as well as retaining Ofgem's backstop power to determine disputes.

Suppliers supported Ofgem's initial view that the existing obligations on suppliers to have a code of practice on complaint handling arrangements is no longer necessary and should be removed. However, consumer groups generally favoured the retention of a requirement in the licence to provide guidance to customers on how to make a complaint. This was seen as particularly important in the context of proposals from the DTI to restructure consumer representation. In view of these concerns, while Ofgem remains of the view that a code of practice is no longer required, Ofgem proposes a minimal obligation on suppliers to publish their complaint handling procedures prominently on their website, and to send a copy of this procedure free of charge to anyone who requests it.

Structure of Obligations, Communication, Compliance and Reporting

There was unanimity that the current licence regime requiring approval of codes of practice is overly bureaucratic, and is not the best means of giving information to customers. In principle subject to legal drafting there was also a preference for bringing together core obligations for vulnerable customers into a unified licence condition.

Suppliers are happy to prepare a more accessible version of the licence requirements for customers and their advisers. Suppliers also would accept an obligation to publish such a "policy statement" on their websites, drawing customers' attention to this once a year, and providing a copy free of charge to anyone who requests it.

1. Debt and Disconnection

SLC35: Code of practice on payment of bills and guidance for dealing with customers in difficulty

Requirement for a code

1.1. SLC35(1) requires the licensee to submit to Ofgem for approval a code concerning the payment of bills by domestic customers, including those in difficulty.

Summary: In view of the general consensus on the appropriate structure for the regime (chapter 3) this obligation can be **removed**.

Distinguishing between "can't pays" and "won't pays"

1.2. SLC35 (2) requires suppliers to include in their code procedures for distinguishing between customers in difficulty and others in default. In the initial consultation views were expressed that this requirement is impractical and does not add anything to the overall obligations, and could therefore be removed.

1.3. ERA considered that this is unnecessarily prescriptive regulation that does not comply with the principles of Better Regulation. They mentioned that suppliers' procedures had already been reviewed in detail by Ofgem and energywatch as part of work undertaken on the disconnection safety net. ERA also commented that suppliers have a strong commercial and social incentive to distinguish between "can't pays" and "won't pays".

1.4. A number of consumer groups (energywatch, CAB, National Pensioners Convention, Energy Action Scotland and National Consumer Council "NCC") agreed that this licence condition could be removed. energywatch and CAB supported the approach taken by some suppliers, which starts from the assumption that a consumer in arrears can't pay and proceeds on that basis. National Debtline welcome a move to assume that everyone is a "can't pay" without trying to distinguish between can't and won't pays.

1.5. A number of consumer groups (Centre for Utility Consumer Law University of Leicester, National Right to Fuel Campaign, PUAF, NEA, CAB) recommended that Ofgem should consider introducing an obligation to encourage suppliers to increase their knowledge of customers' circumstances so that they can help ensure that customers maintain realistic repayment arrangements. energywatch also recommended an obligation which would require suppliers to "get behind the account number" and obtain a better picture of the circumstances of customers.

Summary: The requirement to distinguish between 'can't pay' and 'won't pay' customers in SLC35(2) should be **removed** because in practice it is impractical. In any event Ofgem considers that suppliers will need to have appropriate systems in place to identify customers who are in difficulty in order to comply with the payment arrangement obligations which are set out below. The starting presumption should therefore be that a customer who is in arrears is having difficulties, unless the contrary can be established.

Ofgem has taken into account comments that suppliers should have a better understanding of the circumstances of customers. A number of consumer groups considered that suppliers should be subject to a more proactive duty to acquire knowledge of a customers' circumstances in order to provide ongoing assistance to the customer. Ofgem considers that the existing obligations in this regard are sufficient. All suppliers are required, through SLC 35, to take individual circumstances into account in providing assistance to customers in difficulty and as such compliance with this licence obligation requires that suppliers have arrangements in place to capture this information. Furthermore suppliers can be expected, as part of their debt management strategies, to monitor the progress of customers and to make adjustments to repayment plans where customers are having further difficulties.

Energy efficiency information

1.6. SLC35(2)(a) includes an obligation to provide general information as to how customers with payment difficulties might reduce their bills through energy efficiency. The initial consultation suggested that this obligation could be removed as energy efficiency is covered as a broader issue under SLC25.

1.7. PUAF, NEA, and HSE considered it essential that suppliers should continue to be required to provide energy efficiency advice to customers in debt. energywatch also suggested that debt should serve as a trigger for the supplier to initiate a dialogue with their consumer on improving the consumer's energy efficiency.

1.8. ERA commented that any specific licence obligation is inappropriate as there is already coverage under the Debt and Disconnection good practice guidelines and also under SLC25.

Summary: There are differing views on this topic. To the extent that this obligation duplicates SLC 25 then it could be removed. However, in Ofgem's view the obligations are different. The existing obligations set out in SLC 25 require the provision of energy efficiency information to customers on request whereas SLC 35 is more proactive in requiring suppliers to provide such information to customers who are having payment difficulties. In view of the importance of information on energy efficiency as a mechanism for helping customers in difficulty reduce consumption and therefore avoid further debt problems Ofgem considers that this more proactive obligation should remain in place. Ofgem will consider whether SLC25 can be redrafted to include this more proactive requirement for customers with payment difficulties.

Fuel Direct

1.9. SLC35(2)(b) imposes a requirement to accept payment which is deducted at source from social security benefits. This provision relates to the Department of Work and Pension ("DWP")'s Fuel Direct scheme.

1.10. All consumer groups and the ERA supported the retention of this licence obligation. energywatch believed that Fuel Direct remains a vital lifeline for those

customers who are receipt of the qualifying benefits and at risk of disconnection. Energy Solutions pointed out that the most vulnerable customers do not have bank accounts. National Pensioners Convention considered it a better option than the installation of a PPM. NCC urges Ofgem to continue to work with Government to expand and adapt the Fuel Direct scheme to become a payment option of choice rather than a last resort. National Debtline consider fuel direct to be absolutely vital for vulnerable customers.

1.11. ERA and a number of consumer groups also supported the extension of the scheme to a wider group of customers.

1.12. Good Energy argued that the obligation should not be applicable to niche suppliers. For example, where, as in their case, the supplier provides renewable energy at a premium price, any customer on benefit should change to a cheaper supplier and that therefore it would not be necessary for them to make arrangements to accept Fuel Direct.

Summary: The requirement in SLC35(2)(b) to accept payment by Fuel Direct should be **retained**. Ofgem notes Good Energy's comments and recognises that customers of niche suppliers who provide a more expensive service are unlikely to be users of Fuel Direct. However, in Ofgem's view this licence obligation, in requiring that a supplier cannot disconnect a customer (or require installation of a PPM) where Fuel Direct is available as a collection mechanism, provides an essential protection for customers against disconnection and should apply, as of right, to all suppliers. In respect of comments that Fuel Direct, should be extended, Ofgem would welcome such extension but notes that this is a matter for the DWP.

Detecting failures by customers to maintain repayment arrangements

1.13. SLC35(2)(c) requires suppliers to detect failures by customers to maintain repayment arrangements. Read with the obligations under SLC35(2)(d), (e) and (f), the original intention behind this requirement was that there should be a step in the process which gives customers the opportunity to clear a debt before a PPM is installed, although the current licence does not specifically require it. The initial consultation suggested that SLC 35(2)(c) did not appear to add anything to the overall requirements of taking into account ability to pay and protections from disconnections.

1.14. energywatch were concerned that if this obligation were removed more PPMs could be installed. They considered that it was important to maintain the existing intention that consumers who do not wish to have a PPM installed should first have the opportunity to pay by other means. energywatch's preference was for sustainable repayment arrangements that are realistic and reflect the circumstances of consumers.

1.15. PUAF commented that removal of this requirement would lead to suppliers installing PPM as the primary alternative to disconnection.

1.16. NEA were not persuaded that suppliers have a natural incentive to detect failures to maintain repayments as part of the credit management procedures, and are still likely to offer a PPM. National Right to Fuel Campaign believed that increased pressure to monitor debt, along with a maximum for debt repayment, should encourage suppliers to reduce the number of customers in debt.

1.17. ERA and Good Energy argued that the obligation could be removed as suppliers would clearly do this as part of good debt management processes.

Summary: There was a range of views, with suppliers supporting Ofgem's initial position and some consumer groups arguing that it is important to ensure suppliers are proactive in identifying customers in difficulty at an early stage. On balance Ofgem recommends that the requirement in SLC35(2)(c) be **removed** as Ofgem does not consider that the regulatory requirement encourages suppliers to be more pro-active in avoiding the build up of debt. In response to energwatch's comment that more PPMs could be installed Ofgem notes that SLC35(2)(f) relates to the provision of a PPM where customers have failed to comply with such arrangements (see discussion below).

Ability to pay

1.18. SLC35(2)(d) requires debt repayment arrangements to take into account the customer's ability to pay (SLC35(2)(e) also requires suppliers to ascertain the position with the assistance of other organisations). In addition Ofgem's guidance on Codes of Practice makes it clear that for customers on benefits the debt repayments should not exceed the Fuel Direct rate i.e. £2.85 a week, unless the customer agrees to pay more.

1.19. Suppliers and consumer groups agreed that the obligations relating to the customer's ability to repay debt should remain in the licence.

1.20. energywatch also wanted to see SLC35(2)(e) modified in such a way as to require suppliers "to give due consideration to representations made by third parties". CAB considered that generally in practice this obligation worked effectively. EDFE also suggested that the wording of SLC35(2)(d) and (e) could be combined "to take account of the ability to pay with due regard to representations from third parties on behalf of consumers".

1.21. There were differing views as to whether the guidance on maximum repayment levels for customers on benefits should be included in the licence.

1.22. CAB commented that a more prescriptive approach would be more transparent for consumers and is likely to be more cost-efficient for suppliers. Others agreed and made additional comments. energywatch stated that repayment rates should be capped in line with Fuel Direct for customers on benefits, unless the customer explicitly agrees to pay more and they can afford to do so. Some consumer groups (Energy Action Scotland, Centre for Utility Consumer Law University of Leicester, National Right to Fuel Campaign) argued that the fuel direct rates for debt recovery should be appropriate for all customers on low or fixed incomes. NCC considered it important for Ofgem to monitor how the price rises affect the levels of debt and disconnection in the months to come. NCC also considered it useful to include the fuel direct rate as a reasonable benchmark for repayments. National Debtline do not feel it appropriate that suppliers should be able to accept payments of higher weekly amounts than the fuel direct unless there are very specific exceptional circumstances.

1.23. ERA argued that suppliers should be free to assess ability to pay on a case by case basis. They did not support the inclusion of more detail on what constitutes a customer's ability to pay in the licence as this would lead to

inflexible procedures, and referred to further guidance already included in the Debt and Disconnection good practice guidelines.

Summary: All respondents agreed that the requirements in SLC35(2)(d) and (e) to take into account the customer's ability to pay should be **retained**. energywatch suggested that SLC35(2)(e) should be amended to require suppliers "to give due consideration to representations from third parties". Ofgem intends to tidy up the legal drafting in combination with SLC35(d) and similar requirements for PPMs. Ofgem has also noted the range of views about the need for Ofgem to formally prescribe a standard rate or maximum for debt recovery. At present Ofgem has, through its existing guidance on the Codes of Practice, given guidance on the appropriate level for debt recovery from customers on benefit and has stated that this should not exceed the Fuel Direct rate (unless the customer agrees otherwise). On balance Ofgem prefers to continue to provide guidance on how a customer's ability to pay should be assessed rather than to formally set a repayment rate in the licence and Ofgem intends that its existing guidance in this area will continue to apply.

Provision of PPMs in preference to disconnection

1.24. When read with SLC35(3), SLC35(2)(f) requires the provision of a PPM in preference to disconnection subject to the caveat "where safe and practicable to do so".

1.25. All respondents agreed that PPMs must be provided in preference to disconnection and should remain in the licence as a mandatory requirement.

1.26. energywatch suggested that there should be clarity on what "where safe and practicable to do so" means and suggested that this could be replaced with "where the supplier can demonstrate that this is in the consumer's best interest". RNIB also commented that PPMs may not be fully accessible to people with sight loss until they are routinely equipped with speech output. Although some PPMs have audible warnings when credit is running low, it would be more beneficial if there was spoken output of the visual display.

Summary: The requirement to provide a PPM in preference to disconnection should be **retained**. Ofgem does not agree that suppliers should be required to demonstrate that a PPM is in the consumer's best interest. What is required is that suppliers carry out a proper assessment to determine whether it is safe and practicable (for both the supplier and the customer) to install a PPM. Such an assessment by the supplier must include consideration of whether the customer is likely to be able to cope with a PPM. Ofgem intends to consider the legal drafting on this issue and provide further guidance to suppliers on what factors apply to the caveat "where safe and practicable to do so", and whether a requirement to have regard to the guidance shall be part of the licence obligation. Ofgem also intends to provide further guidance relating to an ongoing need to reassess whether a PPM is appropriate linked to the obligation to provide information on the removal of a PPM.

No disconnection other than following compliance with preceding requirements

1.27. SLC35(3) (Gas) includes a requirement not to cut off the supply otherwise than following compliance with paragraph (2) (i.e. the procedural steps outlined above). In electricity, this is dealt with in SLC35(3)(a).

1.28. ERA stated that the preceding requirements are binding on the licensee to the same extent as any other licence condition and that in operational terms each of the conditions is a condition precedent to any exercise of the right to disconnect.

1.29. The Centre for Sustainable Energy commented that if the requirement to provide information to Ofgem is retained then this obligation is no longer necessary.

Summary: Ofgem considers that the protection provided by SLC35(3) of the Gas Licence and SLC35(3)(a) of the Electricity Licence is important when a supplier is revisiting the process immediately prior to disconnection. However, to the extent that this protection is delivered through the suppliers' obligations to take into account a customer's ability to pay and other protections from disconnection, the precise wording may no longer be necessary and it **may be possible for this provision to be removed**. This will need to be considered further as the legal drafting of these provisions is taken forward.

Moratorium on disconnection in winter months

1.30. SLC35(3)(b) (Electricity) and C35(4)(b) (Gas) effectively require suppliers to avoid, so far as practicable, disconnecting in winter premises occupied by elderly, disabled or chronically ill customers who have payment difficulties.

1.31. SLC37A (Gas) places a stronger obligation in terms of not disconnecting during the winter months, but applies only to "all-pensioner households"[3] (rather than premises where the occupants include a pensioner or someone disabled or chronically sick) who are in default of their obligations to pay through misfortune or inability to budget.

1.32. There is an overlap with the ERA safety net on disconnections, which covers the whole year and has a wider definition of "vulnerable customers".

1.33. energywatch recommended:

- an obligation to ensure that no customer is disconnected as a result of an inability to repay;
- non-ERA members should be encouraged by Ofgem to have regard to the safety net;
- retention of the winter moratorium as a backstop;
- a trigger clause in the disconnection licence conditions if the ERA safety net becomes ineffective; and

[3] SLC37A(1)(a) applies to a domestic customer who, to the knowledge and reasonable belief of the licensee "is of pensionable age and lives alone or with other persons all of whom are also of pensionable age or under 18 years of age".

- harmonisation of the winter moratorium across both gas and electricity licences.

1.34. A number of consumer groups (Energy Solutions, Energy Action Scotland, HSE, EAGA, UNISON, National Right to Fuel Campaign, PUAF, CAB, Age Concern and National Debtline) wanted the moratorium extended to cover the whole year. CAB also supported extending the licence to cover all vulnerable households.

1.35. CO Gas Safety considered that there should be either be no disconnection during the winter months except on safety grounds, or a wider definition of vulnerable customers.

1.36. A number of other consumer groups (National Pensioners Convention, Centre for Utility Consumer Law University of Leicester, NEA and National Debtline) wanted the ERA safety net incorporated into the licence on the basis that its advantages may be lost in a harsher economic climate. NCC considered it not appropriate to delegate the provision of a safety net for vulnerable customers to the voluntary and altruistic actions of suppliers in a competitive market.

1.37. NEA regarded disconnection as such a serious issue that it warranted regulatory intervention rather than voluntary action. PUAF wanted to see disconnections banned altogether.

1.38. ERA supported the retention of the winter moratorium in the licence. ERA highlighted the success of the voluntary safety net, and expressed concern that if it were incorporated into the licence this would undermine self regulation and would have a negative impact on future voluntary initiatives.

1.39. Good Energy supported the extension of the moratorium to all customers who by reason of disability or age would be particularly vulnerable to the effects of cold during winter. However, Good Energy was against extending this to customers who were financially vulnerable as the removal of the threat of disconnection could lead to these customers running up a larger debt.

Summary: There was agreement from suppliers that as a minimum the current winter moratorium should remain. Ofgem proposes that the most proportionate approach is to **retain** the existing obligation in **SLC35(3)(b) (Electricity) and SLC35(4)(b) (Gas)** requiring suppliers to avoid, so far as practicable, disconnecting in winter premises occupied by people of pensionable age, disabled or chronically ill customers who have payment difficulties. Ofgem is **also minded** that the existing obligation in **SLC37(a) (Gas)** not to disconnect "all- pensioner households" during winter months should be **replicated in electricity**.

Ofgem agrees with the industry that the incentive to apply self-regulatory principles would be lost if the ERA safety net on disconnection was to become a regulatory requirement.

Ofgem does not consider that it is necessary to include a trigger clause in the licence if the ERA safety net became ineffective as energywatch has suggested. Ofgem has already made clear that it can review the licence requirements at any time if this is appropriate.

SLC36: Code of practice on the use of prepayment meters ("PPMs") - Specific licence obligations

Requirement for a code

1.40. SLC36(1) requires the supplier to submit to Ofgem for approval a code concerning the use of PPMs, including appropriate guidance for the assistance of those of its PPM customers who wish to take supply on other terms.

Summary: In view of the general consensus on the appropriate structure for the regime (chapter 3) this obligation can be **removed**.

Provision of information on PPMs

1.41. SLC36(2)(a) covers the provision of information on the operation of PPMs, including the advantages and disadvantages of PPMs, details of token outlets or charging facilities, actions where the PPM malfunctions, and standards of performance. The initial consultation suggested that the existing codes may not be the most useful way of providing information to customers on how to use their PPMs. It also questioned whether the current guidance on distance to purchase top-up credit for PPMs should be included within the licence.

1.42. energywatch recommended that as an absolute minimum the following information should be provided by suppliers:

- additional costs associated with PPMs that is explicit in stating that cheaper payment methods are available;
- arrangements for the removal of PPMs;
- steps to take if debt repayment level proves too onerous;
- what to do if the PPM develops a fault;
- details of charging outlets; and
- standards of performance.

1.43. In addition energywatch recommended that the annual statement issued to PPM customers should include a clear reference to the availability of this information and how to obtain it.

1.44. A number of other consumer groups (Energy Action Scotland, EAGA, National Right to Fuel Campaign, PUAF, and NEA) also commented that the licence should require the provision of information before a PPM is installed. CAB considered that it remains essential to provide customers with information about the operation of their PPMs, their advantages and disadvantages, recalibration and removal. CAB also suggested that more innovative and user-friendly ways of delivering this information should be investigated. NCC suggested that suppliers should be obliged to review with the customers on a regular basis, for example annually, the appropriateness of a PPM as their payment method. National Debtline strongly supported supplying “user friendly” plain English information on the pros and cons of PPMs.

1.45. RNIB recommended that information provided to customers using PPMs should be given in the format that meets the customer’s needs (audio, Braille, large print or electronic format).

1.46. ERA did not believe that it was appropriate for the licence to continue to specify what information is provided to PPM customers. They stated that there is strong commercial incentive on suppliers to inform their customers clearly on how to use a PPM to ensure that they are paid in a timely manner and to avoid further debt build up.

1.47. energywatch commented that travelling more than a mile to top up PPMs would cause further inconvenience and cost to consumers who already have the most expensive payment option. energywatch accepted that prescribing the maximum distance to a payment outlet may be problematic, but the inconvenience that could be caused to the consumer particularly if the consumer is frail or disabled should be taken into consideration when deciding upon the installation of a PPM.

1.48. CAB recommended that the guidance should become a licence condition as PPM customers of most suppliers are already penalised for having a PPM through higher prices and should not be further penalised for being forced to travel long distances to top up their PPM cards. NCC and National Debtline considered that minimum standards for availability of recharging arrangements need to be clearly set out for suppliers and customers.

1.49. ERA strongly opposed any new licence requirement or guidance stating that customers should have to travel a maximum of 1 mile to purchase credit for a PPM. They mentioned difficulties arising from the absence of Post Offices in rural areas, and said that it was essential for a supplier to be given flexibility to provide the best service for customers taking into account their particular circumstances. Good Energy also opposed the guidance being included in the licence, and considered that this would prevent new technology PPM's being implemented.

1.50. National Grid supported guidance on charging arrangements which did not inhibit the flexibility of the supplier.

Summary: There were a range of views in this area. Consumer groups were keen to retain or improve requirements to help PPM users. Suppliers wanted greater flexibility outside the regulatory framework to provide information and advice to PPM customers. Ofgem is minded that the requirements in **SLC36(1) and SLC36(2)(a)** to provide information on PPM's should be **retained but re-drafted** in line with the overall restructuring of licence obligations. While Ofgem recognises that suppliers can be expected to inform customers of the practicalities surrounding PPM usage, such as top-up arrangements, it is less clear that suppliers will, in their natural course of business, be incentivised to provide information on the relative disadvantages of PPMs. Given the higher prices associated with PPMs and the relative impact of such prices on vulnerable customers, Ofgem considers that it is appropriate to retain a requirement. This issue will be considered alongside the provision of guidance on the factors applying to the caveat "where safe and practicable to do so" (see paragraphs 1.24 to 1.26).

Calibration of PPMs to recover debt and price changes

1.51. SLC36(2)(b) covers the calibration of the PPM to recover any debt, taking into account ability to pay. In line with views on taking into account ability to pay

under SLC35(2)(d) and (e), the initial consultation suggested that this requirement should remain but be subsumed into a single licence obligation.

1.52. SLC36(2)(c) requires the supplier to arrange for the recalibration of a PPM at the conclusion of any repayment arrangement and generally following price changes.

1.53. ERA and consumer groups agreed that taking into account ability to pay when recalibrating a PPM should remain as a core licence obligation. energywatch were happy for this requirement to be subsumed into a single licence obligation on ability to repay debt, provided that explicit reference was made to PPMs.

1.54. ERA did not support the proposal to amend the obligation to refer to "timely recalibration" as this could penalise suppliers where they have taken all reasonable steps to recalibrate in a timely manner. The Electricity & Gas Acts do not provide for the use of a warrant of entry to gain access to recalibrate a PPM. ERA also believed that a licence condition would increase costs which would ultimately be passed to customers.

1.55. energywatch wanted Ofgem to move beyond a reliance on guidance and make it a mandatory requirement for recalibration to take place within a set timeframe (3 months) following tariff changes. Details of one case was given in which the consumer accrued a debt of £1000 due to the meter having not been reset at the time of unit price increases (despite access not being a problem). energywatch suggested that the licence should explicitly state that PPM tariff changes will only be effective from the date of recalibration and commended two suppliers that have adopted this voluntary approach. energywatch also recommended that timely recalibration of a PPM should also apply to the conclusion of any repayment arrangement.

1.56. Energy Action Scotland and CAB regarded timely recalibration as important as PPM tariffs were generally higher than direct debit tariffs.

1.57. PUAF, NEA, and CAB considered it essential to introduce a cap on recovery of sums if there is a delay in recalibration of PPMs. CAB urged Ofgem to monitor suppliers' actions with regard to the collection of debt in cases where it has built up through no fault of the consumer. CAB presented a number of case studies where customers had been told they had a significant debt despite deliberately opting for a PPM which they believed would prevent them from getting into debt.

1.58. NEA wanted the replacement, within a specific period, of old token meters with modern PPMs that do not require manual recalibration, and standards of performance for recalibration within a specified period.

Summary: Suppliers do not support the proposal to introduce a new requirement on the "timely recalibration" of PPM's, yet consumer groups consider that there is an increasing problem with token meters requiring manual calibration, given rising prices. Ofgem is not convinced by ERA's view that such an obligation would lead to unduly increased costs or to unfair penalising of suppliers where they had taken reasonable steps. One of the real benefits of a PPM from the customer's perspective is that it prevents them getting into debt. The potential impact of such delays on vulnerable customers is very large. While Ofgem recognises that suppliers are making good progress in this area, in particular on the removal of token meters, further action is required. Ofgem is minded to

amend SLC36(2)(c) to include a requirement "to take all reasonable steps to recalibrate PPMs in a timely manner" (Ofgem would not wish to specify a particular timescale as different circumstances could apply to different customers but would issue guidance on the matter). However, Ofgem would first be interested to see whether this issue will be adequately dealt with by self-regulation in the forthcoming billing code and to understand suppliers' planned timescales for the removal of all token meters in Great Britain. In the meantime Ofgem would expect suppliers to deal in a sympathetic manner with any cases where particular hardship is caused due to no fault of the customer, including considering writing off at least a proportion of the debt faced by the customer. In line with respondents' views, it is proposed to **retain** the requirement to take into account ability to pay (SLC36(2)(b)) and subsume it into a single licence obligation on ability to repay debt.

Removing PPMs

1.59. SLC36(2)(d) requires the supplier to provide information on arrangements for removing PPMs, and setting out the timescale and conditions under which removal might take place.

1.60. energywatch considered that there should be a continuing requirement on suppliers to advise consumers of their right to have the PPM removed following the clearance of arrears or when moving to a new premises where a PPM is already present. In addition energywatch commented that all suppliers should be obliged to comply with such requests in a prompt manner without unreasonable resistance.

1.61. As stated above the Centre for Sustainable Energy commented that suppliers should reassess the appropriateness of a PPM if the circumstances of the customer changes.

1.62. ERA argued that the obligation to provide information to customers on arrangements for removing PPMs should be removed from the licence as this would be done as part of a supplier's normal customer service.

Summary: There were differing views on this issue. Ofgem is **minded to retain** SLC36(2)(d) disagreeing with the ERA's view that it will always be in the suppliers' commercial interests to provide information on the removal of PPM. Ofgem wants to consider further the appropriate scope and format of information for PPM customers. As stated above Ofgem intends to provide further guidance relating to an ongoing need to reassess whether a PPM is appropriate linked to this obligation to provide information on the removal of a PPM.

2. PSR and services for the blind & deaf

SLC37: Provision of services for persons who are of pensionable age or disabled or chronically sick

2.1. The initial consultation raised a fundamental question as to the overall purpose of the PSR. Accordingly, the obligation to maintain a PSR, and the types of customer who should be registered are dealt with first in this chapter, before further discussion on the separate issue of which services should be specified in the licence.

A: OVERALL FOCUS OF THE PSR

Obligation to maintain a PSR

2.2. SLC37(3)(a) requires the supplier to establish a list of domestic customers who are elderly, disabled or chronically sick and who require any of the PSR services (or have special communication needs or depend on electricity for medical reasons and thus require advance notice of planned interruptions of electricity).

2.3. Ofgem considers that the obligation for suppliers to identify and maintain a list of vulnerable customers should be separate from the obligation to provide special services to some or all of those customers.

2.4. The initial consultation put forward the following options for the potential scope of the PSR:

- Option 1 - to limit it to those customers with extreme physical dependence where the duty to inform the transporter/distributor applies;
- Option 2 - to focus it, as now, on those who are physically vulnerable whilst noting that the current definition which extends to all pensioners is not well targeted;
- Option 3 - to broaden it to include those on low incomes;
- Option 4 - to express it loosely in terms of vulnerability, allowing suppliers to exercise discretion as to whether it is appropriate for a particular customer.

2.5. In its response to the consultation, energywatch advocated changing the scope of the PSR to reflect a more dynamic concept of energy related vulnerability, taking the view that customers can be vulnerable at different stages of their lives as a result of drastic changes in circumstances e.g. through death of a bill payer, unemployment or incapacitation through ill health. energywatch supported the inclusion within this definition of customers who find themselves in debt or at risk of disconnection as a result of financial insecurity. energywatch considered that this would allow relevant obligations (Fuel Direct, taking into account ability to pay, and energy efficiency) to be included in the suite of PSR services or would assist in the provision of those services to these customers.

2.6. PUAF agreed with energywatch that the scope of the PSR should be extended to include customers facing problems paying their bills. National Debtline would prefer to see the ERA definition of vulnerability used to expand the eligibility criteria currently in suppliers' licences.

2.7. energywatch did not propose that suppliers' corporate social initiatives should be captured under the licence. However, it considered that the broadening of registration under the PSR would allow for a better integrated

response (statutory services in tandem with corporate social initiatives) to meet the vulnerable customer's particular circumstances.

2.8. NCC was not convinced that extending the PSR requirements to financial need would be an effective tool to reduce the hardship for low-income consumers, but considers that the proposal should be kept under review rather than dismissed out of hand.

2.9. Age Concern stated that it had always considered that the PSR was devised to ensure that people with impairments (and therefore with more particular needs with regard to accessibility) got extra help, rather than to assist low income households. Therefore, Age Concern considered that the current criteria for registration on the PSR remained appropriate. NEA commented that whilst it sympathised with the idea of using the PSR as a means of identifying and assisting the fuel poor, it did not believe that this was a realistic or practical ambition. RNIB stated that whilst a great many disabled people live in poverty, the issues of disability and low income are distinct. NCC favoured a term such as "Eligible for assistance" which more accurately describes the status of the customer. NCC also considered that the obligation needs to rest with the supplier to ask customers about any particular needs they may have, rather than relying on customers to take the initiative themselves.

2.10. ERA stated that it was widely accepted that much of the voluntary work undertaken by suppliers is far more effective and targeted at helping genuinely vulnerable customers than the existing licence obligations relating to the PSR. ERA considered that Ofgem should seek to maintain (and indeed boost) this momentum by removing as many of the prescriptive requirements as possible. ERA believed that the obligation to maintain a PSR should be limited to include only customers with severe dependence where the duty to inform the transporter / distributor applies. Suppliers would still have the discretion to include other customers on the PSR as a means of targeting additional help and assistance.

2.11. Good Energy and Central Networks East also supported a more limited focus in the PSR to allow network operators to identify which customers are particularly vulnerable to loss of supply. Good Energy commented that if the PSR were extended to customers on low income this would dilute the importance of the PSR to suppliers and network operators, and genuinely vulnerable customers might begin to avoid the scheme because of negative connotations.

2.12. Central Networks East argued that it should be the responsibility of the supplier to provide distributors with data for the register as they have the contractual relationship and should be aware whether or not their customer is eligible for the PSR. National Grid commented that increasing the scope of the PSR would create administrative complications for transporters that would impact on their ability to meet obligations to support the vulnerable.

Summary: There were different views as to which customers should be included on the PSR, with suppliers and distributors wanting the definition narrowed to include only those customers with physical vulnerability in the event of loss of supply, and some consumer groups wanting the definition broadened to include those with financial vulnerability. On balance Ofgem considers that the focus of the PSR should remain on customers with access, safety and communication needs, with additional measures to protect vulnerable customers more generally or to address fuel poverty being addressed through other measures, including suppliers'

corporate social responsibility ("CSR") work. Therefore, the current definition under SLC37(3)(a) should therefore be **retained**.

Ofgem considers that those respondents who called for the extension of the PSR generally sought to ensure that all vulnerable customers (i.e. including those who are financially vulnerable) are identified by suppliers, dealt with appropriately and provided with ongoing support and assistance. Ofgem agrees that more needs to be done to ensure that all vulnerable customers are able to access available help. Outside of this licence review Ofgem will continue to work with suppliers to develop best practice on assisting all vulnerable customers, including the targeting of CSR offerings. Ofgem will also continue to consider whether there is a case for an obligation to provide information on sources of help where the customer has payment difficulties.

Ofgem also intends to review again the interactions between the suppliers' PSRs and those of the distributors/transporters and how they operate in practice. Ofgem published guidance to DNOs and suppliers on inclusion of relevant customers on distribution priority registers in May 2004. This is available on the Ofgem website.

It should also be noted that eligibility for services under the PSR is dealt with as a separate issue.

"Mobile" registration on the PSR

2.13. energywatch suggested an additional obligation on suppliers to transfer PSR information when a customer switches supplier, which was supported by other consumer groups (CAB, RNIB, HSE, Energy Action Scotland, National Pensioner Convention, Energy Solutions). energywatch suggested that whilst data protection might be seen as a hurdle, customers could be required to give positive affirmation that they were happy for suppliers to share information. However, energywatch noted that such PSR information is already shared with distributors and transporters as part of existing obligations. energywatch also acknowledged that an alternative solution might be for suppliers to remind PSR customers who switch of the need to re-register for the PSR.

2.14. ERA did not support such an obligation as this could potentially raise a number of practical, system and cost implications for suppliers which could be made worse if the PSR were extended beyond those customers with severe physical dependence.

2.15. Good Energy believed that the transfer of PSR data would add more information to an already complex process, and proposed no action, given that it is in the customer's interest to re-register each time they change supplier to ensure that their personal information is correct.

2.16. Central Networks East stated that distributors do not have systems and resources in place to update suppliers on customer details or to pass details from supplier to supplier when a customer switches. In addition Central Networks East thought that, potentially, there would be a data protection issue if customer details were passed from supplier to supplier.

2.17. As regards the transfer of information between suppliers EDFE commented that including an obligation in the licence would make it exempt from the requirements of the Data Protection Act.

Summary: There were different views on this issue. On balance Ofgem considers that there is considerable scope for improvement in this area. While Ofgem can see the benefit of requiring the transfer of PSR information between suppliers when a customer switches it is necessary to consider further the costs and practical implications of such transfer, including any systems issues for suppliers and distributors. An alternative solution might be for suppliers to remind PSR customers who switch supplier of the need to re-register for the PSR.

Obligation to notify customers annually as to the existence of the PSR

2.18. SLC37(3)(b) requires the supplier to notify its customers at least once a year of the existence of the PSR and how to be included on it. SLC37(3)(c) requires the supplier to maintain the PSR and provide relevant customers with information about the services available.

2.19. energywatch considered that suppliers should notify customers and their representatives of the mix of statutory and voluntary services provided through a unified customer charter (which energywatch recommended for the general information for vulnerable customers – see paragraph 3.11 below). energywatch further supported requirements to inform customers experiencing problems as to how to access these services, and once vulnerable customers are registered to advise them of the available measures that are relevant to their requirements.

2.20. RNIB mentioned that PSRs are often promoted on the back of bills, but arrangements for bills in alternative formats sometimes omit this information.

2.21. Unison commented that more information on services should be available in languages other than English.

2.22. A number of consumer groups advocated that PSR services should be branded under a single name used by all suppliers. Energy Solutions considered that a standard name for the register would make its availability more obvious if the customer wanted to switch.

2.23. CAB stated that marketing activity in relation to the PSR has been disappointing. They mentioned that generic branding might make it easier for customers, but then each supplier may be unwilling to dedicate any more than minimal resources to advertising it. CAB put forward an alternative approach, allowing flexibility for suppliers but with the requirement for an annual report to Ofgem on activities taken to publicise PSR offerings. CAB also recommended that there should still be a back stop for enforcement action if insufficient promotional activity had been undertaken.

2.24. NCC considered the important issue to be the low level of awareness of the various services on offer.

2.25. On marketing of PSR services Charis believed that there should be scope for individual companies to create their own brands as an incentive to do more,

providing that the message remains clear and accessible to all those who might benefit.

2.26. ERA commented that the means and frequency with which suppliers choose to inform customers about the PSR should be a matter for each individual supplier.

2.27. ERA did not agree that a suppliers' PSR scheme should be marketed under a similar name or provide a standardised package. Its view was that it goes against the central concept of competition which is for suppliers to offer a range of services and for customers to choose which best suits their needs. ERA also considered that such an approach would remove incentives on suppliers to provide services over and above the necessary requirements.

Summary: There have been different views on this issue. Ofgem considers that whilst it is not necessary to be prescriptive as to how suppliers market them, prominence must be afforded for PSR services as well as the other obligations discussed in this report. Accordingly, this obligation should be **amended** to require that suppliers publish a policy statement setting out their obligations to customers in plain English. Suppliers will need to prominently publish the document on their websites, to draw customers' attention to it in a prominent manner once a year, and provide a copy free of charge to anyone who requests it.

Interruptions of electricity supply

2.28. SLCC37(3)(c)(ii) (electricity) requires the supplier to provide PSR customers with information on interruptions to supply, subject to using all reasonable endeavours to obtain such information from the relevant distributor. The particular purpose of the obligation is to protect those customers who are electricity dependant e.g. those customers on dialysis machines. However, in the initial consultation it was noted that there are obligations on distributors to provide notice of supply interruption to all customers under Regulation 29 of the Electricity Safety, Quality and Continuity Regulations 2002.

2.29. energywatch recognised that there are obligations on distributors, but highlighted that the supplier will usually be the first port of call if interruptions to supply take place. energywatch considered that it is important that the exchange of information on interruptions between the distributor and supplier continues and the suppliers remain capable of relaying that information to consumers.

2.30. British Lung Foundation highlighted the problem of people who require concentrators and the paramount importance of a continuous supply of electricity. NCC considered the obligation on suppliers to inform customers in advance of supply interruptions and providing alternative means of cooking and heating could be passed to the distribution companies.

2.31. ERA supported the initial view that this obligation duplicates the requirement on distributors to inform all customers in advance of supply interruptions.

2.32. Western Power Distribution agreed that it is inefficient to require suppliers to provide customers with information about planned interruptions as distributors already have the requirement to provide notice.

Summary: There were different views here. As indicated, distributors already have a requirement to notify planned interruptions (and suppliers in any case are reliant on distributors to provide this information to them). Ofgem is **minded to remove** this obligation, but before it does so it would like to check whether there are any differences between the way that suppliers notify those customers who are electricity dependent and the way that distributors notify all customers of an interruption to supply. Ofgem notes that there are certain situations where the distributor can discontinue supply without notice under the Electricity Safety, Quality and Continuity Regulations 2002. These can apply if the distributor considers it necessary to undertake essential emergency repairs and if there is an urgent need relating to safe and proper operation of the network.

Obligation to provide the distributor with information on the PSR

2.33. SLC37(3)(d) requires the supplier to provide the distributor with information in the PSR relating to those needing special adaptors, passwords and advance notification of supply interruptions on electricity (or more generally in gas) in an appropriate form and at appropriate intervals. Given that suppliers have access to the relevant customer information on their database, and given the need for distributors to comply with parallel requirements, Ofgem's initial view is that this should be retained as a licence obligation.

2.34. ERA and consumer groups (energywatch, Age Concern, EAGA) recognised the need to retain this obligation in the supply licence to allow distributors to comply with parallel licence obligations. NCC considered that the obligation on suppliers to inform distribution companies should be separate from the obligation to provide services.

Summary: There was agreement that SLC37(3)(d) should be **retained**.

Requirement for a code

2.35. SLC37(1) and (4) requires suppliers to prepare a code detailing the services to be made available to customers who are of pensionable age or disabled or chronically sick.

Summary: In view of the general consensus on the appropriate structure for the regime (chapter 3) this obligation can be **removed.** However suppliers will, as discussed further in section 3 of this paper, be required to provide customers with information about the PSR, eligibility for the PSR and the range of services that are available to customers registered on the PSR (or in the case of gas safety checks are available to all customers who are eligible for the PSR).

B: ADDITIONAL SERVICES FOR VULNERABLE CUSTOMERS

General views and overlaps with the Disability Discrimination Act 1995

2.36. There were a number of broad comments on the additional services for PSR customers which are specified in the licence and the potential overlaps with the Disability Discrimination Act 1995 ("the DDA").

2.37. A number of consumer groups (energywatch, CAB, PUAF, RNIB, Energy Action Scotland, and National Right to Fuel Campaign) commented that the DDA was not an acceptable alternative to specific licence requirements, due to the lack of enforcement powers for Ofgem.

2.38. energywatch pointed out that the DDA requires individual disabled consumers to pursue cases through the courts which would be an expensive and protracted process. energywatch considered that if Ofgem divested itself of enforcement powers this would be at odds with its statutory duty to have regard to the interests of disabled customers. energywatch also mentioned that older customers who were frail could well be unwilling to label themselves as disabled in order to obtain services.

2.39. RNIB commented that a court ruling that a particular adjustment is reasonable for one large supplier does not automatically place the same obligation on a smaller one, whereas a licence condition provides the same minimum level of support for disabled customers.

2.40. CAB considered that detailing the additional services under the PSR as a licence requirement provides customers with clarity as to what services they can expect.

2.41. NCC cautioned against using the DDA as a regulatory tool to protect vulnerable customers, and commented that the main advantages of the licence are that its application is clear and there is a straightforward route for enforcement.

2.42. Energy Action Scotland suggested a two tier service under the PSR with primary obligations covered by licence conditions and secondary obligations delivered under market conditions.

2.43. UNISON wanted Ofgem to clarify who is eligible for statutory protection under the DDA, and urged suppliers to shift their focus from just blind and deaf customers. UNISON noted changes to DDA from December 2005 which recognised within the definition of "disability" people with cancer, MS and HIV. Unison also stated that Ofgem should ensure that suppliers are making efforts to meet their General Disability Equality Duty from 5 December 2006.

2.44. UNISON further reported that arrangements suppliers make to engage directly with disabled customers are poor. UNISON also highlighted the lack of information on supplier websites in respect of the DDA, and advice for the disabled or deaf.

2.45. As stated above, ERA highlighted a number of self regulatory and voluntary initiatives, and recommended that Ofgem should seek to maintain (and indeed boost) this momentum by removing as many of the prescriptive requirements currently in the licence as possible. ERA did not believe that specific services for vulnerable customers and gas safety checks should be prescribed, and that

suppliers should have the discretion to offer such services, and on what basis e.g. free or at a charge.

2.46. EDFE supported ERA's overall policy view that it is inappropriate to prescribe specific services for vulnerable customers. However, EDFE stated that if as a consequence of the review process and consultation it is considered necessary to prescribe such services, they would recommend that these should be restricted to the password scheme, special meter reads and third party billing arrangements, as these are the services most supported by market research.

2.47. Good Energy agreed that additional services should not be specified and that suppliers may find more attractive solutions for vulnerable customers if given a free hand to be innovative. However, Good Energy considered that the existing obligations (with the exception of meter moves) were not in practice overly onerous on small suppliers. Their view was that smaller suppliers should provide services to vulnerable customers, but be exempt from detailed reporting to Ofgem (see paragraph 3.22).

2.48. ERA supported the initial view in the consultation that it would not be appropriate to include a direct link in the licence to compliance with the requirements of the DDA. ERA commented that this would create potential double jeopardy and significantly increase the regulatory risk for suppliers.

2.49. Good Energy commented that there was a need for a balanced approach when considering the DDA. Where customers were adequately covered under the DDA by "reasonable adjustments" such as Braille bills, Good Energy did not feel that it was necessary to have additional licence conditions. But Good Energy felt that some obligations, such as password schemes, should be maintained if the DDA is unspecific.

2.50. EDFE suggested that it would be possible to have a limited link in the licence to the DDA for the supplier "to have regard to any provisions of any code of practice issued by the Disability Rights Commission". EDFE explained that this formulation could not be objected to on the grounds of double jeopardy, as the codes of practice are not enforceable by the Commission and failure to comply with such guidance does not itself make the supplier liable to legal proceedings. EDFE considered that this would allow Ofgem a proportionate enforcement role consistent with its statutory duties.

Summary: Ofgem has taken into consideration concerns from consumer groups as to the different enforcement mechanisms under the DDA. Having regard to its statutory duties Ofgem does not consider that it would be appropriate to rely, in all instances, on the broad provisions of the DDA. That said, there are residual issues such as special controls, adaptors and meter moves for PPMs where the DDA's approach of considering the specific circumstances of each case should provide a proportionate obligation to meet the individual circumstances of the vulnerable customer.

Ofgem has also considered the suggestion by EDFE that the licence should include a provision "to have regard to any guidance or code of practice produced by the Disability Rights Commission". Such guidance is not binding in law and can be overturned by a court. In addition, what are reasonable adjustments by one supplier are not necessarily reasonable for another supplier in meeting the needs of an individual customer. In view of these considerations Ofgem does

not consider that it would be appropriate to include such an obligation in the licence. Suppliers should, in any event, be paying due regard to such publications in taking forward their individual DDA compliance programmes.

Ofgem notes the comments made by Unison as to eligibility under the DDA, but since Ofgem does not intend to broadly rely on the DDA it does not intend to respond further on the issue. Any definitive interpretation of the DDA is a matter for the DRC and the courts. Suppliers also need to satisfy themselves that they are taking all necessary action under the DDA in terms of their own compliance. Ofgem is aware of its forthcoming duties as a public body to take account of the "Disability Equality Duty" created under the Disability Discrimination Act 2005. These duties will come into effect on 5 December 2006 and Ofgem will be considering further the extent to which any further action may be required by Ofgem as a result of these new responsibilities.

Generally, Ofgem considers it necessary to retain specific services in the licence if it cannot be guaranteed that the market will deliver or where it is necessary to ensure prominence of the service.

Free gas safety checks

2.51. SLC37(2)(a) (Gas) requires free gas safety checks to be carried out on request and at intervals of not less than 12 months, for elderly or disabled people living alone (or with others who qualify for the PSR) where a landlord inspection is not required under Health and Safety Legislation. It should be noted that this service is not dependent on these qualifying customers being registered on the PSR.

2.52. The initial consultation put forward the following options:

- Option 1 - The status quo;
- Option 2 - Allowing suppliers to raise a charge for the safety checks, subject to the customers' ability to pay;
- Option 3 - Narrowing the eligibility criteria but requiring suppliers then also to provide assistance in maintaining heating and cooking facilities if necessary;
- Option 4 - Requiring (instead of ,or as well as, checks) suppliers to provide carbon monoxide alarms or to offer advice to consumers on the safety issues associated with gas;
- Option 5 - Moving the obligation onto another party. Suppliers had suggested that safety matters fit better with the responsibilities of gas transporters. Ofgem's initial view was that this would be complicated to effect as among other things, it would involve re-opening price controls.

2.53. energywatch noted that the issue of gas safety applies to all gas users not just vulnerable customers. energywatch believed that a governmental working group should be initiated in this area involving HSE, Ofgem, suppliers, consumer bodies, to provide a comprehensive response on this issue. energywatch expressed concern that fear of having appliances condemned can act as a disincentive to registration for these services. However, it recognised that gas safety checks are a potentially costly service for suppliers to provide for all currently eligible customers. energywatch recommended preserving the status quo, until a specific debate on gas safety has been progressed.

2.54. NCC urged Ofgem to set out clearly in guidance minimum requirements for carrying out checks. Suppliers should also be prevented from selling servicing contracts to households that are eligible for free checks without first informing customers of their entitlement. NCC also urges Ofgem to discuss with DEFRA the case for allowing a small fund within Warm Front and its devolved equivalents to be ring-fenced for use when faulty gas appliances are discovered during the course of an annual check.

2.55. CO-Gas Safety stated that every customer is vulnerable to carbon monoxide poisoning, and that there were more cases than reported. It considered that the gas safety check is not specific enough as there is no check for carbon monoxide. Tests for carbon monoxide are expensive, and it is impossible to know how effective checks are, and the risks involved.

2.56. CO-Gas Safety also raised a number of issues in respect of appliances being condemned. It recommended that the current obligation should be replaced by a free and full service of appliances. It also recommended advice on having a regular service, the dangers of carbon monoxide poisoning and the true value of carbon monoxide detectors with an audible alarm conforming to a BS or EU standards. Co-Gas Safety further mentioned that the recommendations made by the Health and Safety Commission in 2000 had not been implemented, in particular a levy on gas suppliers to provide funds for publicity on the dangers of carbon monoxide poisoning.

2.57. Age Concern expressed concern that suppliers do not promote take up of the PSR because they are concerned about the costs of providing annual gas safety checks. Age Concern considered that it may be more appropriate for safety checks to be offered to low income households rather than those eligible for PSR.

2.58. EAGA recommended narrowing the eligibility criteria, but requiring suppliers to provide an annual service visit and assistance if heating and cooking appliances were condemned.

2.59. HSE commented that removing this obligation would effectively lower current safety standards and it would only recommend a change if a suitable alternative could be provided to maintain or improve the current standard. HSE did accept that gas safety checks could be more widely extended by energy companies charging a fee to some customers. HSE would welcome wider availability of safety checks and the servicing of appliances (in particular for those on low incomes). HSE also stated that they would like to see suppliers provide better follow up assistance to vulnerable customers if appliances are condemned e.g. through trust funds. HSE also supported provision of carbon monoxide alarms as another line of defence against carbon monoxide poisoning.

2.60. ERA stated that additional work is required in this area and that it would be pursuing discussions with a number of interested parties. However, as stated ERA's general view was that the licence should not prescribe specific services such as free gas safety checks.

2.61. National Grid supported the initial view in the consultation that there would be complications in transferring the responsibility to gas safety checks to the gas transporter. It stated there was not just the price control issue, but also consideration of the competence of operatives as this would differ from that needed to meet emergency and metering obligations.

Summary: There were a range of views on this obligation, with suppliers suggesting that potentially it should be removed and consumer groups suggesting that the obligation should be maintained or modified. The HSE, which Ofgem is specifically required to consult on safety matters, is of the view that the obligation should be retained unless a better alternative can be found. Ofgem notes that this summer HSE is carrying out research into gas safety in 600 homes covering a range of socio-economic indices (the results of which are due this September). Ofgem in considering the responses and the various options proposed have sought to make proposals which will improve the overall availability and take-up of gas safety checks whilst having regard to the costs of such checks. The following proposals represent Ofgem's further views on the future of gas safety checks under the licence.

Charging for gas safety checks

Ofgem notes that neither consumer organisations nor HSE were opposed to suppliers making a charge to 'able to pay' customers. Ofgem recommends that the obligation to offer a safety check remains but is **minded to amend** the obligation so that it is only free for those qualifying customers who are in receipt of certain listed benefits. A number of consumer groups suggested that free checks should be extended to all low income households. Ofgem notes that a significant proportion of this group will already be covered by checks required of landlords. The licence obligation could be amended so that free gas safety are available for all owner occupiers in receipt of benefits, but Ofgem will need to consider the number of potential customers this would apply to and whether this could adversely act as a disincentive to offer further assistance if appliances are condemned.

Ofgem hopes that restricting the availability of free gas safety checks will lead to an overall improvement in the number of people in receipt of such checks. Suppliers will not be prevented from providing gas safety checks more widely, and for charging for such a service, while enabling resources to be better targeted at those customers who cannot afford to pay for such safety checks. Ofgem would expect that suppliers take appropriate and proactive steps to identify these customers and make them aware of the availability of the free gas safety check.

Steps to improve take-up of gas safety checks (free and chargeable)

Ofgem also notes concerns that the potential for condemning appliances deters some eligible customers from requesting a gas safety check. Such instances are of great concern given the danger posed by carbon monoxide poisoning. Ofgem hopes that this reluctance may be overcome by a commitment by suppliers to provide customers with advice and assistance. Consumer groups supported the retention of information on gas safety, and one consumer group recommended further advice on the dangers of carbon monoxide poisoning. Ofgem proposes to **broaden** the requirement under SLC37(2)(b)(v) so that suppliers are required to provide information to **all** customers (not just those on the PSR) on the dangers of carbon monoxide poisoning and the benefits in

fitting carbon monoxide alarms, and where to seek assistance if appliances are condemned. Ofgem will consider further the appropriate format of such information.

Ofgem also hopes that suppliers, as part of their corporate social responsibility initiatives, will be able to look further at providing direct assistance to such customers, for example through part-funding replacement appliances through trust funds. An alternative is to direct customers who are eligible to assistance under the Warm front scheme. Ofgem will discuss this further with DEFRA.

Services provided on request and free of charge where reasonably practicable and appropriate

Specific licence obligations

2.62. SLC37(2)(b)(i) (Gas) and SLC37(2) (Electricity) require certain services to be provided on request and free of charge where reasonably practicable and appropriate. The initial consultation included the following table that shows the total number of customers receiving these services in 2005 (* as at 31 December 2005).

	Electricity	Gas
Special controls/adapters provided free of charge	22,558	10,562
Meters repositioned/replaced free of charge	1,588	1,389
Password Schemes*	113,447	153,983
Third Party billing/bill re-direction *	18,114	13,036
Quarterly reads *	234,465	369,991

Special controls and adaptors for appliances and meters (including PPMs)

2.63. ERA said this obligation was now outdated and should be removed from the licence. ERA also considered that the DDA is able to provide appropriate protection in this area.

2.64. energywatch's initial view was that special controls and adapters should continue to be provided, but encouraged Ofgem to undertake further discussion with disability groups to obtain a better understanding of what was required.

2.65. HSE considered that there needs to be further analysis of what the 33,000 control and adapters provided in 2005 were. Age Concern was aware of problems with customers not using central heating systems efficiently because of their complexity.

Summary: There was a difference in views on this issue. Ofgem considers that on balance that it is minded to **remove** this obligation. There may be a residual number of cases where the supplier should provide help, such as adaptors for PPM's, but the DDA should provide a proportionate obligation to cover the individual circumstances of the customer. However, before Ofgem reaches its final decision it would like further information on what special controls and adaptors are currently being provided by suppliers, which was requested as part of the initial consultation.

Repositioning of meters

2.66. The initial consultation emphasised that meter moves can be expensive and suggested that special quarterly meter reads may be a suitable alternative. It was also noted that the Gas Act 1986 schedule 2B paragraph 6, and the Electricity Act 1989 schedule 6 paragraph 1, prevent a supplier charging a disabled customer for a meter alteration or replacement where this has been carried out to meet that customer's needs. Under section 23 of the Electricity Act, Ofgem has the power to determine defined disputes, but there is no equivalent power under the Gas Act.

2.67. energywatch felt that access to meters was important in order to assess the accuracy of billing, for the customer to provide meter reads and to monitor energy efficiency. While energywatch saw special quarterly reads as a satisfactory compromise for some customers, it was aware of and had supported cases where a disabled customer preferred access to their meter in order to preserve their independence.

2.68. CAB accepted that where meter moves would impose considerable costs it might be appropriate to offer customers quarterly reads instead. CAB added, however, that in such circumstances the customer is unable to monitor usage actively and to make any necessary adjustments to their levels and patterns of consumption.

2.69. Age Concern considered that there is an issue with "reasonably practicable and appropriate" as suppliers are using this as a get out clause on the basis of cost. RNIB commented that the low level of meter moves reported suggested that this is not a burdensome requirement, and that demand may go down with better access in newer premises. Deafblind Scotland regarded quarterly meter reads as an effective alternative but special communication support for customers was also required. NEA and PUAF considered that smart metering will, in time, eliminate the need for credit meter moves. PUAF considered access to a portable display unit would be an acceptable alternative.

2.70. ERA believed that the statutory provisions which prevent a supplier charging a disabled customer for a meter alteration or replacement where this has been carried out to meet that customer's needs, coupled with the DDA, gives customers sufficient protection in this area.

2.71. Good Energy and Wales & West Utilities did not consider that special quarterly reads provided a suitable alternative as the point of a meter move was to allow the customer to read their own meter when they wanted to. Special reads could also be inconvenient for customers as they need to be there to let the meter reader in. Wales & West Utilities did not consider that a special quarterly read met the requirements of the Gas Act Schedule 2B paragraph 6.

2.72. National Grid commented that when one of their metering installers fits a PPM in exchange for an existing credit meter, the installer will check that there is reasonable access for meter recharging and if necessary the meter position will be altered at this time. National Grid also provides a service for suppliers to alter the meter position, which is subject to a standard charge as detailed in its charges statement (£86.71). However, National Grid stated that if alteration to the position of the service pipe is required then this must be requested through the gas transporter.

Summary: This is an area of potentially high cost to suppliers. Ofgem is not convinced, even with the caveat "reasonably practicable and appropriate", that sufficient clarity can be provided in a licence obligation to cover the wide range of circumstances in which meters are moved, and the range of costs. Ofgem considers that generally, special quarterly reads would appear to be a satisfactory compromise for most qualifying customers. Remote display units may also provide a reasonable alternative. A supplier's responsibilities under the DDA include an obligation to make 'reasonable adjustments'. Suppliers (or the courts) may in some instances consider that the moving of a meter is a 'reasonable adjustment' to make. Furthermore, where a meter is to be moved to meet the needs of a disabled person the Gas and Electricity Acts already provide that such a meter move will be without charge (although Ofgem notes that this is a reactive restriction rather than the proactive requirement to provide a meter move on request). Ofgem considers that the above measures provide a sufficient and proportionate response in this area and is therefore **minded to remove** the obligation to move meters from the licence. However, before Ofgem reaches its final decision it would like further information on the cost of meter moves and the circumstances in which they are provided, which was requested as part of the initial consultation.

One area where Ofgem has some further concerns and would welcome views is in relation to elderly customers with PPMs who are no longer able to cope with such meters, for example because they can no longer bend down sufficiently to insert the 'key'. The application of the DDA to such issues is not clear. Ofgem recognises that in such instances switching a customer from a PPM to a credit meter may be a more appropriate solution than requiring a meter move and suggests that it may be more appropriate to make some amendment to suppliers' PPM obligations such that they are required to consider the removal of a PPM where such a meter is no longer safe or practicable for the customer.

Password scheme

2.73. As indicated in the initial consultation, passwords are particularly popular with the elderly and are not expensive for suppliers to provide. It was noted that this scheme is also a requirement under the code on rights of entry for electricity (SLC24). It was also noted that this service is unlikely to be covered by the DDA.

2.74. energywatch believed that passwords serve the interests of suppliers as much as customers, and that they should be provided automatically for all customers as part of standard good business practice. energywatch also wanted

to see suppliers address concerns as to the security of passwords and awareness by doorstep representatives of agreed passwords.

2.75. Age Concern said that given that distraction burglars often pose as employees of utility companies and target older households, they regard this as a valuable service.

2.76. ERA stated that in any case suppliers would continue to provide the service in the absence of a formal requirement, as it is good customer service and popular with customers. ERA did not consider that such an obligation should be retained simply to "provide visibility of the availability of the service" and did not believe that such a justification represents proportionate regulation. ERA also questioned whether an obligation in the licence is particularly visible to the majority of customers.

Summary: Different views were received on this issue. In view of demand for this service, and to provide reassurance to vulnerable customers (particularly the elderly), it is proposed that the password scheme is **retained** in the licence. However, Ofgem will give further consideration to the legal drafting and whether this obligation should fall under SLC37 or more generally under SLC24.

Advice on the use of gas and electricity, and gas appliances and fittings

2.77. Under SLC37(2)(b)(v) suppliers are required to give advice on the use of electricity, and on the use of gas, gas appliances and other gas fittings. One specific aspect is energy efficiency advice, which is covered elsewhere in the licence (SLC25).

2.78. A number of consumer groups (CAB, Age Concern, RNIB, HSE, Energy Action Scotland, CO Gas Safety) supported the continued provision of this information. CAB stated that it is not too difficult for suppliers to provide information to consumers about the safe use of gas appliances and this could be tied into their obligation under SLC25 to provide energy efficiency advice. CAB considered that there could be potential for suppliers to provide carbon monoxide detectors as part of their activities in discharging this obligation.

2.79. ERA noted that energy efficiency advice is covered elsewhere in the licence. ERA also referred to a number of measures that have been undertaken by suppliers on a voluntary basis to inform customers about the safe use of gas appliances and in particular the risks of carbon monoxide poisoning. It did not support a new licence obligation in this area.

Summary: There were differing views on this issue. Ofgem has taken the comments above into consideration in relation to gas safety checks. Ofgem proposes that a **modified version of this obligation is extended to cover all customers not just those on the PSR**. This wider obligation would include the provision of information on the safe use of gas appliances, the benefits of gas safety checks, the dangers of carbon monoxide poisoning and the benefits in fitting carbon monoxide alarms, and advice on where to seek assistance if appliances are condemned. Ofgem also proposes that this obligation would be more proactive than the current requirement "on request", but will consider further the appropriate format of such information. The provision of energy efficiency advice will be dealt with through the other licence obligations that

deal with energy efficiency (SLC 25 and the debt and disconnection obligations).

Sending bills to a third party

2.80. energywatch believed that third party billing serves the interests of suppliers as much as customers, and that this should be provided automatically as part of standard good business practice.

2.81. Age Concern said that this service can help to prevent vulnerable customers from being disconnected for non payment if they go into hospital for some weeks.

2.82. ERA stated that suppliers would continue to do this anyway; particularly since such a service is likely to increase the chances that the bill is paid. For the same reasons as given for the password scheme ERA did not accept that this obligation should be retained simply to provide visibility of the service.

Summary: This is a valued service which should be **retained**, although suppliers should have discretion as to how they market it**.**

Special quarterly meter reads

2.83. This obligation applies where neither the vulnerable customer nor anyone living with them is able to read the meter. As highlighted above this is the PSR service with the greatest uptake.

2.84. As mentioned above the initial consultation indicated that potentially this is a better alternative than a much more expensive meter move where this is needed. It has also been suggested that it would be unlikely that in most cases special quarterly reads would be covered as an "ancillary service" under the DDA.

2.85. energywatch felt that this service is valued by vulnerable customers and should remain in the licence. In addition energywatch considered that the service could prove particularly reassuring for those low-income customers who have incurred arrears as a result of bad billing practices by their supplier.

2.86. NCC agreed that quarterly meter reads would be an effective alternative to meter moves.

2.87. PUAF commented that the retention of this obligation would help incentivise suppliers to consider smart metering as an alternative to regular accurate billing.

2.88. Age Concern considered that the obligation should be retained particularly if the option to have the meter moved is removed from the licence.

2.89. As commented elsewhere ERA did not believe that the licence should set out specific services that must be offered to customers on the PSR, and this would include special quarterly meter reads.

Summary: There were different views on this issue. Ofgem sees this service as an important and more cost-effective alternative to meter moves, and recommends that it be **retained** as a licence

obligation. However, it will be necessary to ensure that final legal drafting does not preclude smart metering.

SLC38: Provision of services for persons who are blind or deaf

2.90. SLC38(1) requires each supplier to prepare a code of practice detailing the services it will make available to persons who are blind or deaf.

Summary: In view of the general consensus on the appropriate structure for the regime (chapter 3) this obligation can be **removed**.

2.91. SLC38(2) requires the provision, on request and free of charge:

- for blind and partially sighted customers, billing information by telephone or other appropriate means, and
- for these customers and deaf and hearing impaired customers, a facility for enquiring or complaining about bills or any service provided by the licensee.

2.92. As indicated in the initial consultation in 2005 (* as at 31/12/05) the total number of customers receiving relevant services under this condition were:

	Electricity	Gas
Braille / large print Bills *	22,445	20,257
Talking bills *	853	1,288
Minicom / textphone calls	1,707	2,916

2.93. A number of consumer groups (energywatch, CAB, PUAF, RNIB, National Right to Fuel Campaign, Energy Action Scotland, and Deafblind Scotland) did not support any move from licence protection for disabled customers to reliance on the DDA for the reasons stated above (paragraph 2.33 onwards).

2.94. RNIB considered that not only should bills and complaints procedures be in accessible formats, but also all contracts, information on services, safety, and details of payment options. RNIB recommended that Ofgem takes into account British Standard 8463 on Utility Billing which addresses the needs of vulnerable customers and specifies the provision of material in alternative formats.

2.95. Deafblind Scotland commented that the specific communication needs of deafblind people are not being covered by the existing range of services. Deafblind people have specific and individual communication needs depending on the severity, time and order of onset of their dual sensory impairments.

2.96. ERA emphasised the point recognised in the initial consultation that this is the area where overlap with the DDA is most marked. ERA referred to the Disability Rights Commission's code of practice which included the example of utility bills in different formats for customers with visual impairments, and considered that a licence obligation is no longer required.

Summary: This is an area where there is a clear overlap with the DDA. Nevertheless, the majority of consumer organisations, including a number who specialise in supporting hearing or sight impaired consumers, do not support the removal of licence protection. This is an area where Ofgem believes that on balance, there is a real benefit in having a clear and enforceable licence obligation. Unlike the other areas under consideration, where it is more appropriate for suppliers to consider a range of options for meeting the individual customer's needs (e.g. special controls and adaptors, and meter moves), this is, in Ofgem's view an area where broadly there is more certainty. Ofgem considers that it is in the spirit of both the supply licence review and the DDA that the obligations under SLC38 are **retained**. Ofgem intends to take specialist advice on framing the obligation, to ensure that it meets the current legal and technical requirements.

More generally on meeting the individual needs of blind, partially sighted, deaf and hearing impaired customers, Ofgem is intending to facilitate some workshops to identify best practice in this area.

3. Structure of requirements, communication, compliance and reporting

Possible options for delivering the requirements

3.1. The following potential options for the structure of the regime were put forward in the initial consultation. It was also mentioned that the final structure for a regime could include a combination of these options.

- *Option 1 - Licence based obligations*
- *Option 2 - A mandatory code of practice*
- *Option 3 - Principles based licence obligations supported by more detailed guidance*
- *Option 4 - Requirements delivered through self regulation*
- *Option 5 - Requirements delivered voluntarily*

3.2. There was general agreement from ERA and consumer groups that the most appropriate structure is licence based obligations (option 1) supported by self regulation (option 4) and voluntary initiatives (option 5). There was also general agreement that a more accessible version of the licence requirements should be produced for consumers and consumer advisers (this point is discussed further below). However there was a difference in views between the ERA and consumer groups as to which requirements should be prescribed in the licence, and which could be delivered voluntarily or through self regulation.

3.3. ERA considered that the retention of core obligations on the face of the licence would provide legal clarity, transparency and consistency across all suppliers. Consumer groups mentioned enforceability by Ofgem as an important reason for licence based obligations.

3.4. EDFE again mentioned that any obligations fundamental to consumer interests should be consolidated into a Consumer Protection Code via a single standard condition which sets out those obligations. energywatch also supported a unified licence condition for vulnerable customers which should be accompanied by non-binding set of guidance notes.

3.5. ERA again highlighted a number of self regulatory and voluntary initiatives: the safety net on disconnections, Home Heat Helpline, trust funds, and social tariffs. ERA expressed concern that if a co-regulatory approach were adopted with Ofgem having backstop enforcement powers over self regulation, this would significantly extend the scope of direct regulation.

3.6. Consumer groups acknowledged self regulation and voluntary initiatives, but a number raised concerns as to whether self regulation regimes provide adequate protection for vulnerable customers. PUAF stated that self regulation was more appropriate for less crucial, more innovatory, requirements. Age Concern noted that not all suppliers are members of the ERA, and one supplier had not signed up to the proposed billing code. NCC considered that licence conditions need to be clear and unambiguous if they are to provide a level playing field. NCC did not consider that self-regulation is a viable alternative to licence based obligations in most cases.

3.7. NCC could only support Ofgem's proposal for an industry self-regulatory consumer code if it complied with all aspects of a checklist complied by the NCC, and if there were clear arrangements for enforcement built into it. NCC also considered that a competitive market can work against the interests of

consumers, particularly disadvantaged or otherwise vulnerable customers. In these cases, interventions in the market can be justified, even at the expense of some economic growth. General competition legislation alone will not provide an adequate safety net for vulnerable customers. Many of the current requirements will continue to need to be set out on the face of the licence, with clear guidance for suppliers and customers.

3.8. ERA resisted a mandatory code of practice (option 2) and principles based regulation with guidance (option 3) on the basis that it would create lack of clarity, increased regulatory risk for suppliers, and potentially "regulation through the back door" outside the transparent process for licence review. Energy Action Scotland also considered that the two options would not provide the same level of protection as licence based obligations, and that they could make any breaches more difficult to prove.

3.9. EDFE suggested that any guidance produced by Ofgem should be referred to on the face of the licence, for example by way of a licence obligation to "have regard to guidance produced by Ofgem".

Summary: **The appropriate structure for the regime is licence based obligations supported by self regulation and voluntary initiatives.** Ofgem has acknowledged on a number of occasions that self regulation and voluntary initiatives can clearly benefit vulnerable customers; however, protection is still needed in the licence where the market cannot be guaranteed to deliver (Ofgem's views on each individual obligation are reflected in the rest of this report).

There has been considerable growth in voluntary measures over the past few years, including the development of corporate social responsibility packages and the new ombudsman scheme and billing code and Ofgem considers that it is important that existing self-regulation is given the opportunity to work. It should also be noted, as mentioned in the initial consultation, that linking existing self regulatory schemes to licence conditions could act as a disincentive for the industry to come forward with further schemes in the future. However, Ofgem notes the concerns expressed by respondents about the governance arrangements for self-regulation. Ofgem will, of course, continue to monitor this area and will take further steps to ensure the protection of vulnerable customers if necessary.

Ofgem notes EDFE's recommendation that any guidance should be referred to on the face of the licence, and will consider this issue further at time of legal drafting.

Ofgem also considers that in principle, subject to legal drafting, it would be desirable to bring together the core obligations for vulnerable customers into a unified licence condition.

SLC27: The preparation, review of & compliance with codes

Requirement for codes, their approval and review

3.10. SLC27(1) includes a list of the current codes required. SLC27(2 and 3) require the licensee to consult Ofgem and energywatch in drawing up its codes, and gives Ofgem 30 days to notify the licensee of any changes required following their submission. SLC27(4,5,6 and 8) require the licensee to review its codes when requested to do so by Ofgem, consult energywatch in that process, and to resubmit any revised code for approval.

Summary: In view of the general consensus on the appropriate structure for the regime, current obligations relating to approval of codes of practice can be **removed**. [Note that codes for site access (SLC24) and energy efficiency (SLC25) have been dealt with by other workgroups. It is likely for these conditions that the requirement for the Authority to approve a code will be removed].

Communication of codes

3.11. SLC27(7) requires the licensee to provide copies of any code or revisions to that code to Ofgem and energywatch. It further requires the licensee to draw customers' attention to the existence of the code at least once a year (this is generally done through the bill) and then to provide a copy free of charge to any person who requests it.

3.12. As stated above, there was agreement that a more accessible version of the licence requirements should be produced for consumers and consumer advisers. ERA stated that its members would accept an obligation to publish a policy statement on their websites, to draw customers' attention to this once a year and to provide a copy free of charge to anyone who requests it.

3.13. energywatch commented that within such a document (which energywatch referred to as a "consumer charter") suppliers would have the freedom to outline other offered services that went above and beyond the minimum required in the licence.

3.14. Both energywatch and CAB mentioned that such a document should be clearly accessible or prominently displayed on the supplier's website. Energy Solutions also raised issues with print size.

3.15. NCC saw the merit in Ofgem producing a model code to implement the licence based obligations and guidance, which would obviate the need for Ofgem to approve individual supplier codes.

3.16. RNIB stated that customers can only make genuine choices in a competitive market if they are fully informed. Suppliers and regulators should make sure that information is fully and readily available in a range of formats and through a variety of channels.

Summary: This obligation should be **amended** to require that suppliers publish a statement setting out, in plain English, their licence obligations in respect of vulnerable customers and customers in debt. This statement must be *prominently* published on the supplier's website, suppliers must draw customers' attention to it

once a year, and to provide a copy free of charge to anyone who requests it. In view of comments received Ofgem considers it appropriate that, in order to ensure transparency, there is a requirement is to publish *prominently* on the website. Prominence should also be a key feature of the annual communication as that will be the only means of communication with some customers.

Compliance with codes

3.17. SLC27(9) requires the licensee to comply with any arrangements set out in its codes.

Summary: In view of the general consensus on the appropriate structure for the regime, this obligation can be **removed**. Ofgem's enforcement powers would be limited to those requirements on the face of the licence. This removes the current disincentive on suppliers to include in their codes anything beyond what is in their licence.

SLC26: Record of and report on performance

3.18. SLC26(1 and 2) require the licensee to keep records. SLCC26(3) requires the licensee to provide such information Ofgem may request, and is the basis for the data currently collected and published by Ofgem. SLC26 (4 and 5) require the licensee to provide an annual report to Ofgem and energywatch, to publicise it and provide a copy to anyone who requests it.

3.19. In the initial consultation it was proposed that we remove the obligations to keep records and to provide an annual report, as these do not appear to add anything to the information that suppliers are required to provide to us under SLC26(3).

3.20. energywatch consider that it is essential that Ofgem continues to require suppliers to keep records of their operations and that Ofgem continues to monitor these. energywatch also felt it important to ensure they would continue to receive information.

3.21. CAB supported the retention of SLC26(3) in its current form as it allows Ofgem recourse to enforcement action if a supplier fails to comply with an information request. A number of other consumer groups also supported the retention of SLC26(3) above. NEA agreed but stated that it would want Ofgem to continue to publish the information which it gathers. If Ofgem undertakes to publish an annual report in which suppliers' comparative performance is set out, NCC agreed that it should no longer be necessary to oblige suppliers to provide an individual annual report.

3.22. ERA's view was that SLC26 could be removed completely, as Ofgem already has powers under Section 34 of the Gas Act 1986 and Section 47 of the Electricity Act 1989 to collect information to keep markets under review, and has information gathering powers under SLC19. ERA also stated that there was no reason to suggest that a supplier would fail to comply with an information request in practice, and that there was no need to retain a licence obligation that is duplicated elsewhere.

3.23. Good Energy stated that providing detailed reporting to Ofgem is an onerous burden on small suppliers as they are required to report to the same standards as larger players, despite the fact that their contribution is statistically insignificant.

Summary: There were a range of views on this issue. On balance Ofgem's view is that an enforceable information gathering power equivalent to SLC26(3) should be **retained** so that Ofgem can monitor performance and overall progress in relation to the provision of services to vulnerable customers and issues of debt and disconnection. Suppliers will continue to be required to provide Ofgem with regular information for the purposes of such monitoring and analysis. Ofgem will continue to direct suppliers regarding the form of such information. Ofgem will need to consider further whether the retention of this obligation is best achieved by amending SLC19 or through retaining a separate obligation. In terms of the ongoing need for obligations on the keeping of records and the submission of an annual report Ofgem is **minded to remove** these obligations. Ofgem notes Good Energy's concerns that detailed reporting is onerous for small suppliers. Generally, Ofgem is also intending to simplify the information it requests.

4. Other licence conditions

SLC39: Complaint handling procedures

4.1. SLC39 requires the licensee to produce a code setting out its complaint handling arrangements, including the timescales for dealing with different types of complaint.

4.2. In the consultation there was an initial view that, given the extent of competition and the proposed Ombudsman Scheme, there were sufficient incentives on suppliers and that regulation in this area was no longer required.

4.3. It was also noted that Annex A of the Electricity and Gas Internal Market Directives ("the Directives")[4] requires that customers shall "benefit from transparent, simple and inexpensive procedures for dealing with complaints. Such procedures shall enable disputes to be settled fairly and promptly with provision where warranted for a system of reimbursement and / or compensation". However, there was an initial view that compliance with the Directives was potentially met by energywatch's remit to deal with complaints and / or the planned ombudsman scheme.

4.4. energywatch and Age Concern have responded that in view of the DTI's review of consumer representation (i.e. the proposal to transfer energy complaints to Consumer Direct who would only provide first tier advice) there will be a continuing need for suppliers to produce clear and concise procedures for the handling of complaints. RNIB also considered that complaint handling procedures should be readily accessible to blind and partially sighted people.

4.5. A number of other consumer groups also felt that there were insufficient commercial pressures on suppliers to resolve complaints.

4.6. energywatch went a step further and recommended that a supplier's complaints procedure should:

- be well publicised and easy for the consumer to access,
- keep the consumer updated and informed on the progress of their complaint,
- make the consumer aware of how to escalate their complaint should they be dissatisfied with the outcome, and
- provide contact details for other sources or resolution.

4.7. energywatch further commented that they had reservations about over reliance on information published on websites, which was suitable for advisers but may not be appropriate for customers without access to the internet. energywatch suggested that further information on complaints procedures should be given to customers at the point that they contact the supplier to make a complaint.

4.8. The University of Leicester Centre for Utility Consumer Law argued that the Directives requirement for reimbursement and/or compensation is not met by energywatch and that the proposed Ombudsman scheme would only deal with billing complaints.

[4] Directives (2003/55/EC) and (2003/54/EC)

4.9. ERA considered that regulation was no longer required given that energywatch and the proposed Energy Ombudsman Scheme (to be established by July 2006) would provide sufficient commercial incentive on suppliers to offer effective and transparent complaint handling services.

Summary: Given the comments on the review of consumer representation and compliance with the Directives, some continued regulation in this area would appear to be necessary. Ofgem considers that a proportionate response would be to **amend SLC39** to require suppliers to publish their complaint handling procedures prominently on their website, and to send a copy of this procedure free of charge to anyone who requests it.

Ofgem is not minded to prescribe the additional requirements suggested by energywatch. Ofgem considers that suppliers should be expected to give customers an appropriate level of information on complaints procedures at the time a complaint is made, as part of good customer service. In addition Ofgem would expect that there would be an overall incentive to prevent cases being escalated to the Ombudsman Scheme. Ofgem also notes the point raised by the RNIB, but these are dealt with under SLC38 in this report.

SLC43: Contractual terms – methods of payment

4.10. SLC43(1) requires suppliers to offer a range of payment methods including PPM, cash or cheque at a range of frequencies including fortnightly or more frequently, monthly or quarterly in arrears.

4.11. In the consultation it was noted that Annex A of the Directives require that customers are offered a "wide choice of payment methods". Options mentioned were:

- Option 1 - to maintain the status quo;
- Option 2 - to require a range of payment methods which must include payment through a PPM, payment by Fuel Direct, and payment at fortnightly (or more frequent) intervals by cash;
- Option 3 - to limit the requirement to provide these prescribed payment methods only to those customers who are vulnerable;
- Option 4 - for those customers who through misfortune or inability to cope have difficulty in paying, offer Fuel Direct or PPM as an alternative to disconnection; or
- Option 5 - to replace the current obligation with a broader obligation to offer a range of payment methods, perhaps supported by guidelines, which would give more flexibility to accommodate new payment methods, such as weekly direct debit, as these develop.

4.12. Views were also sought in the consultation as to whether there should be an exemption in the licence e.g. for smaller suppliers, from any of the payment methods.

4.13. energywatch, CO Gas Safety, Energy Action Scotland, and Energy Solutions considered that the full range of payment methods should be retained in the licence. PUAF also had a concern that quarterly payment in particular might be withdrawn or restricted to quarterly direct debit.

4.14. The National Right to Fuel Campaign highlighted the fact that low income households budget very tightly and need to be able to make regular and frequent payments.

4.15. energywatch, CAB, NEA, and PUAF, considered that it would be impracticable to limit the availability of frequent payment to customers on low incomes. NCC considered it important that suppliers continue to offer a variety of payment methods, including weekly or fortnightly payments, bearing in mind many customers choose not to use automated of cheque based methods.

4.16. PUAF and CAB also suggested an additional obligation that information on payment methods should routinely be included on bills.

4.17. On providing exemptions for some suppliers, and CAB were uncertain whether restricting customer choice aligned with Ofgem's duty to have regard to the interests of vulnerable customers.

4.18. Energy Solutions considered that if exemptions were made for smaller suppliers this would restrict the choice for vulnerable customers. Energy Action Scotland were very concerned about the impact this might have on the customers of smaller suppliers who might need frequent payment methods to enable them to budget in times of hardship.

4.19. NCC commented that they could accept the case for very small suppliers and new entrants offering a more limited range of payment options, so long as these included Fuel Direct and PPM as an absolute minimum. NCC suggested that this exemption could be based on a threshold level of domestic customer numbers.

4.20. ERA accepted that obligations to accept Fuel Direct and offer PPM as an alternative to disconnection should be retained as an essential consumer protection measure. However, ERA considered that cash as a payment method could be delivered through competitive forces. ERA did not support allowing exemptions for some suppliers, since if payment by cash was deemed necessary it should be available to all customers. In addition it regarded any requirement to offer payment methods only to particular customer groups as unworkable in practice and unnecessary.

4.21. Good Energy commented that rather than exemptions for small suppliers, any niche suppliers should be able to apply to Ofgem for exemptions from certain payment methods. Ofgem could consider the impact on vulnerable customers and the market in general when considering the exemption, and any exemption could be time limited and reviewed periodically. Good Energy as a small premium supplier would like the option to decline to take on PPM customers unless they agree to a meter change to a credit meter as recalibrations are expensive and greatly add to the cost of providing PPMs.

Summary: The consultation suggested that as a minimum certain payment methods should continue to be prescribed in the licence. Ofgem considers that **SLC43 should be amended** to require a range of payment methods which must include Fuel Direct, PPM, and frequent cash payments (option 2 above). For these payment methods the licence does not need to restrict availability to customers on low incomes as this would be impracticable and unnecessary in practice. Ofgem would expect a competitive market to be able to deliver the other more popular payment methods.

Finally, Ofgem also propose to include an exemption for small suppliers or the facility to grant an exemption "where the Authority otherwise consents". It should be noted that Fuel Direct and payment by PPM will remain as backstop protection in all cases as an alternative to disconnection.

SLC45: Security deposits

4.22. Under SLC45(1) suppliers may not currently request security deposits from customers where they are prepared to accept supply through a PPM or where it is unreasonable to do so. SLC45(2) also limits the amount of security deposits to "1.5 times quarterly consumption or more as reasonable in all the circumstances".

4.23. The initial consultation noted there had been a fall in numbers of security deposits and suggested that the licence requirements relating to size of deposits could be removed as there was some protection under the Unfair Terms in Consumer Contracts Regulations 1999. However, there was the view that the link to the alternative of supply through PPM under SLC45(1) should remain, as well as the backstop provision for Ofgem to determine disputes under SLC45(7).

4.24. CAB, National Right to Fuel Campaign, Centre for Utility Consumer Law, NEA and PUAF supported the proposed amendment to the licence condition.

4.25. energywatch suggested that the number of security deposits may increase if the rules for debt blocking are changed, and wanted to see restrictions on the size of security deposits remain in the licence condition.

4.26. NCC was not in favour relying on general legislation to provide sector specific outcomes. NCC agreed with Ofgem that the essential elements of the condition should be retained.

4.27. Energy Solutions commented that controls on security deposits were vital and that they help reduce the numbers self disconnections which can happen with PPMs.

4.28. ERA considered that it was not necessary to regulate security deposits as there was sufficient protection under the Unfair Terms in Consumer Contracts Regulations. However, it also mentioned that the assumption that security deposits will remain low might not be robust, should there be any changes to the rules for debt objection.

Summary: There were different views on this issue. Ofgem notes the comment that changes to rules on debt blocking may increase the numbers of security deposits in the future. Ofgem's view is that **SLC45(1) should remain** as it is an important protection for vulnerable customers which ensures that PPMs are available as an alternative to security deposits. **SLC45(7) should remain,** to allow Ofgem to determine any residual disputes regarding the size of deposits. Accordingly **the rest of SLC45 can be removed.**

Appendix 1 – Consultation Respondents

1. Age Concern
2. British Lung Foundation
3. CAB
4. Central Networks
5. Charis
6. Co-Gas safety
7. Comhairle nan Eilean Siar (Western Isles Council)
8. CUCL
9. Deaf Blind Scotland
10. Eaga
11. EDF Energy
12. Energy Action Scotland
13. Energy Retail Association (on behalf of Centrica, EDF Energy, E.On, nPower, Scottish and Southern Energy, and Scottish Power)
14. Energy Solutions (North West London)
15. energywatch
16. Good energy
17. HSE
18. Money Advice Trust combined with National Debtline
19. National Consumer Council
20. National Grid
21. National Pensioners Convention
22. National Right to Fuel Campaign
23. NEA
24. PUAF
25. RNIB
26. Unison
27. United Utilities
28. Wales and West Utilities
29. Western Power