

## **Section B issues –Report to Steering Group.**

This document sets out the views of the workgroup on a range of SLCs set out in Section B of the licence and SLC 48A in Section C of the gas supply licence. The specific SLCs being considered are:

**SLC 12A (electricity only) - Prohibition of Discrimination in Selling Electricity**

**SLC 12B (electricity only) - Prohibition of Cross-Subsidies**

**SLC 13 – Change Co-ordination for the Utilities Act 2000**

**SLC 14 - Security [and Emergency]\* Arrangements (\*gas only)**

**SLC 16 – Exchange of Information Between Licensee and Relevant Transporter or Shipper for Operation, Development or Maintenance of Pipe-Line System and Detection and Prevention of Theft**

**SLC 19 - Provision of Information to the Authority**

**SLC 22A – Restriction or Revocation: Securing Continuity of Supply**

**SLC 30B (electricity only) – Assistance for areas with high distribution costs scheme: payment to system operator**

**SLC 48A – (gas only) Transfer of Domestic Customers of a Supply Business**

### **1. SLC 12A (electricity only) - Prohibition of Discrimination in Selling Electricity**

Under SLC 12A(1) a supplier must not, and shall procure that any affiliate or related undertaking does not, sell, or offer to sell, electricity to any one purchaser or person seeking to become a purchaser on terms as to price which are materially more or less favourable than those on which it sells, or offers to sell, electricity to comparable purchasers. In determining these charges regard must be had to the circumstances of the sale to such purchasers including (without limitation) volumes, load factors, conditions of interruptibility and the dates and durations of the relevant agreements.

SLC 12A(2) excludes consideration of the sale of electricity by way of supply to premises and provides further guidance on what is to be included when considering the meaning of selling or sale of electricity.

The group agreed that this SLC was no longer necessary. The provisions were originally put in place to prohibit ex-monopoly suppliers and distributors from selling electricity to new suppliers on terms different to those offered to their own supply businesses, and are no longer relevant to the present trading arrangements. The group considered that any issues of discrimination or other types of misconduct arising from the sale of electricity are more properly dealt with by the application of competition law.

Summary: SLC 12A should be **removed** from the electricity supply licence. Concerns about discrimination in the sale of electricity should be addressed by other means, such as under the Competition Act.

### **2. SLC 12B (electricity only) - Prohibition of Cross-Subsidies**

Under SLC 12B(1) a supplier is required to procure that their supply business does not give any cross-subsidy to, or receive any cross-subsidy from, any other business of the supplier or an affiliate or related undertaking of the supplier.

The group considered that this licence condition was wide-ranging (it does not allow cross subsidy from any other business, including those which are not licensed) and was not appropriate. Where cross-subsidies had the potential to adversely impact on competition in the market, it would be more appropriate to use other powers such as those under the Competition Act. It is noted that there is no equivalent provision in the gas supply licence. The group also noted that there are equivalent provisions in the generation licence. They requested that, for the sake of consistency across licences, this condition should also be considered for removal,

Summary: SLC 12B should be **removed** from the electricity supply licence. In relevant circumstances, cross-subsidies should be considered under the Competition Act or any other relevant law.

### **3. SLC 13 – Change Co-ordination for the Utilities Act 2000**

This condition required changes to industry documents to give effect to the Utilities Act 2000. SLC 13(5) requires that the condition ceases to have effect on 30 June 2002 or earlier if specified by the Authority.

Summary: SLC 13 should be **removed** from the electricity supply licence. The condition is no longer in operation as it contains a sunset date which has now passed.

### **4. SLC 14 – Security [and Emergency]\* Arrangements (\*gas only)**

The content of SLC 14 in the gas and electricity licences differs significantly between both markets and is looked at separately below:

#### Gas

SLC 14(2) of the gas supply licence requires the supplier to use best endeavours to comply with requests from GTs for the purpose of averting or reducing danger to life or property or securing the safety of the pipe-line systems or the safe conveyance of gas. SLC 14(1) defines the cases where SLC 14(2) will apply.

The group noted that these obligations were also covered under the Gas Safety (Management) Regulations 1996 (see regulation 6(4)). However, given the potential severity of the issue, and the commercial incentives that suppliers may have not to comply with the request, it was considered that this requirement should be retained.

SLC 14(3) of the gas supply licence requires a supplier to include within non-domestic contracts a term that, for the duration of a pipe-line system emergency:

- allows the supplier to discontinue supply at the request of the GT or shipper, and
- requires the customer to use best endeavours not to use gas when told by supplier or GT.

The group agreed that it would be sensible to retain this obligation. It sought to ensure that customers were aware, through their contracts, of the potential consequences of a

pipe-line system emergency. It may also help to prevent particular contractual disputes between the supplier and customer following disconnection.

Under SLC 14(4) of the gas supply licence a supplier must include in all contracts a term which, if a direction under the Energy Act 1976 prohibiting or restricting the supply of gas to specified persons is in effect:

- allows the supplier to discontinue or restrict supply, and
- requires the customer to stop using gas when told by the supplier to do so.

The group similarly agreed that it would be sensible to retain this obligation. It sought to ensure that customers were aware, through their contracts, of the potential consequences of a direction under the Energy Act 1976 prohibiting or restricting the supply of gas. It may also help to prevent particular contractual disputes between the supplier and customer following such a disconnection.

SLC 14(5) of the gas supply licence allows that, where the supplier has a contract with their shipper which was executed prior to 2 March 1995 and it is empowered thereby to secure rights to use the GT's network for the conveyance of gas, the supplier shall exercise that power in conformity with security standards. SLC 14(6), (7) and (8) provide for the definition of security standards and other related terms.

The group considered that this obligation should be removed from the licence in the likely event that the arrangements that it envisaged had expired. Ofgem agreed to include this as a question in the June consultation document.

Summary: SLC 14(1) and (2) should be **retained** in the gas supply licence to require suppliers to comply with requests from GTs for the purpose of averting or reducing danger to life or property or securing the safety of the pipe-line systems or the safe conveyance of gas. SLC 14(3) and (4) should be **retained** to facilitate arrangements under a pipe-line emergency or a direction under the Energy Act 1976 prohibiting or restricting the supply of gas. Finally, SLC 14(5) and related paragraphs should be **removed** if it is confirmed that the arrangements envisaged for use of a GT's network have expired.

## Electricity

SLC 14(1) of the electricity supply licence is more straightforward and requires the supplier, insofar as they supply or offer to supply premises in England and Wales, to comply with the provisions of the Fuel Security Code (FSC) as designated by the Secretary of State.

SLC 14(2) provides that where the supplier supplies or offers to supply premises in Scotland they are required, if directed by the Authority, to enter into an agreement designated by the Secretary of State relating to compliance with directions issued under section 34 (Fuel stocks etc. at generating stations) and section 35 (Provisions supplementary to section 34) of the Electricity Act.

The FSC covers arrangements when the Secretary of State calls a Fuel Security Period (a power under the Electricity Act). In these circumstances, he can ask for certain generation types to preserve fuel (i.e. not generate) or switch to alternative back-up fuels. This is an interventionist power that is only likely to be used in extreme circumstances. The FSC sets out how these instructions will be carried out and how parties will be compensated for doing things they otherwise would not have done. The FSC is currently being considered for revision to make the arrangements GB-wide. Separate arrangements were previously required for Scotland prior to BETTA being introduced. If the amendment to the FSC is made it would be appropriate to amend the licence condition so that reference to “England and Wales” is removed from paragraph 1 and paragraph 2 is removed to achieve consistency with a GB FSC.

Summary: If the changes to the FSC are made, electricity supply licence SLC 14 should be **revised** to extend the requirement to comply with the FSC to make it GB-wide. The reference to separate arrangements in Scotland should be removed to achieve consistency with a GB FSC.

#### **5. SLC 16 – Exchange of Information Between Licensee and Relevant Transporter or Shipper for Operation, Development or Maintenance of Pipe-Line System and Detection and Prevention of Theft (NB: Electricity title is different)**

SLC 16 in the gas and electricity supply licences deals with the detection and prevention of theft. Consideration of the theft obligations is excluded from the SLR for the time being, as a separate review of these arrangements is already taking place. In the gas supply licence SLC 16 also covers a number of other areas which are reviewed below:

##### Proposed meter connection / disconnection

SLC 16(6) and (7) (gas) require that, when a supplier receives a notice or relevant information under the Gas Act in connection with a proposed connection or disconnection of a meter, the supplier must provide their shipper with relevant information.

National Grid considers that the information required to be sent under this obligation is of sufficient importance for it to be included on the face of the licence. The workgroup suggested that it would be more appropriate for this type of obligation to sit elsewhere, for example under SPAA or the Network Code. However, as SPAA arrangements do not cover all non-domestic suppliers, and suppliers are not bound by Network Codes, a supplier may not be obliged to provide the information to the shipper. Given the importance of receiving this information, and problems in securing its transmission through industry agreements, it is therefore considered that SLC 16(6) and (7) should be retained.

##### Quantities or amount of gas conveyed

SLC 16(9) (gas) requires a supplier to provide their shipper with such information as it may from time to time obtain on the quantities or amounts of gas conveyed to premises to which it supplies gas.

The workgroup and National Grid agreed that this obligation was not required. Shippers require this information from suppliers for business purposes and would be expected to

clearly set out their requirements in a contract. Shipper obligations to provide information to the GT are set out in the gas shipper's standard licence conditions (SLC 8(2)(c)) and Network Codes.

#### Meter inspections

Under SLC 16(10) (gas), the supplier is required to provide details of each meter inspection to the shipper (or, in particular circumstances, the transporter if requested by them). This must include the date of the inspection, the register reading and what, if anything, was found.

The group considered that it would not be in a position to comment on the requirement to provide the GT or shipper with information on meter inspection until the debate on the future of SLC17 had concluded. It was therefore recommended that this issue should be further considered by the metering workgroup.

#### MPRN data use and disclosure

Under SLC 16(11) (gas) where, pursuant to a request under GT SLC 31(2)(d), the transporter has provided the supplier with information that it holds under SLC 31 of the GT's licence on meter point number records, the supplier must restrict the use or disclosure of such information as designated by the Authority. However, it is not clear that a supplier would be able to request data from the GT under GT SLC 31(2)(d). Given that the intent of this licence condition is not clear, it is proposed that it is removed.

#### Non-domestic and domestic premises

SLC 16(12) (gas) requires the supplier to provide information to the shipper (or the transporter if they are also the shipper) on whether a particular premises is domestic or non-domestic. SLC 16(13) (gas) requires the supplier to provide this information within 3 working days of them taking over a site or as soon as reasonably practicable after they become aware of a change to the nature of the premises (for example, domestic to non-domestic). SLC 16(14) and (15) are no longer required as they expired on 1 January 2002 except where consent has been given by the Authority. Such consent was not given by the Authority.

The group considers that it would be preferable for the obligations under SLC 16(12) and 13 not to be included in the licence but to be set out elsewhere, for example in SPAA or under the Network Code. However, as not all non-domestic suppliers are bound by the SPAA and no suppliers are bound by the Network Code, this is not possible. It is important for GTs to receive this information so that they can determine site load shedding priorities and SOLR-related matters.

#### Meter data retention

Where the supplier owns a gas meter, SLC 16(16) (gas) requires the supplier to record the details displayed on the meter register and other relevant particulars of any meter that is disconnected or returned to them. The information must be held for a minimum of two years from the later of the disconnection date or the date the meter was returned.

This is not an obligation that is set out in the electricity supply licence. It is now proposed for removal from gas. Suppliers are required, through their shippers, to provide the GT with an opening and closing read when a meter is exchanged. Further, a supplier would be expected to retain sufficient data to help determine disputes over charges with customers. The extent to which suppliers do or do not retain this data will impact on their ability to enforce charges where a meter exchange has taken place. Were a case to be heard by the proposed ADR ombudsman scheme, then this is an issue that they would need to take into account.

Summary: SLC 16(6) and (7) should be **retained** to ensure that GTs are provided with important connection and disconnection data. The obligation under SLC 16(8) to provide information on quantities or amount of gas conveyed to the shipper should be **removed**. SLC 16(11) which seeks to restrict the use of customer data from the GT should be **removed**. The obligation under SLC 16(12) and (13) to inform the GT of the non-domestic or domestic status of the customer should be **retained** but SLC 16(14) and (15) should be **removed** as they are time bound and have expired. Finally, the requirement under SLC 16(16) to retain metering details following exchange or disconnection should be **removed**.

## 6. SLC 19 - Provision of Information to the Authority

Under SLC 19(1) suppliers are required to provide the Authority with information it may reasonably require or as may be necessary for the purpose of performing the functions conferred on it under the Gas and Electricity Acts and the Utilities Act.

Under SLC 19(2) the supplier is not required to provide the Authority with information under this condition for the purpose of its functions under section 47 of the Electricity Act and section 34 of the Gas Act. These sections relate to the general functions of the Authority in keeping the market under review and collecting information for that purpose.

SLC 19(4) states that suppliers should not be required to provide information that they would not be compelled to provide in evidence in civil proceedings before a court.

Where the Authority intends to publish information under section 48 of the Electricity Act or section 35 of the Gas Act (Publication of information and advice), SLC 19(3) requires a supplier to give reasoned comments on the accuracy and text of such information and advice if requested by the Authority.

SLC 19(5) seeks to clarify that the power of the Authority to request information under this licence condition is in addition to the power to request information under any other condition. There is a presumption that the provision of information in accordance with any other condition is sufficient for the purposes of that condition. That presumption will be rebutted if the Authority is of the opinion that further information is necessary.

Ofgem expects to continue to require information from suppliers to enable it to perform its functions. This condition is considered to be broadly fit for purpose, but the drafting of SLC 19(5) could potentially be improved to aid clarity.

Summary: It is the view of the group that the substance of SLC 19 should be **retained**. It is recommended that SLC 19(5) is considered for redrafting.

## 7. SLC 22A – Restriction or Revocation: Securing Continuity of Supply

The drafting of this condition in the gas and electricity licences is significantly different.

SLC 22A(1) of the electricity licence requires that where a supplier is applying for a restriction or revocation of their licence they shall provide the Authority with sufficient information to enable it to determine whether such arrangements have been made as:

- Will secure continuity of supply for all relevant customers, and
- For each relevant customer supplied with electricity in pursuance of a contract, will ensure continuity on terms as nearly as may be as the terms of such contract (SLC 22A(2) defines a “relevant customer”).

SLC 22A(3) of the electricity supply licence and SLC 22A(1) of the gas licence require that where, in preparing for a restriction or revocation of its licence, the supplier is making arrangements for securing continuity of supply for its customers, it shall for its deemed contract customers (unless the Authority consents)

- In making these arrangements, make reasonable endeavours to select suppliers that offer comparable services at the lowest available cost, and
- Use reasonable endeavours to give customers reasonable notice of these arrangements.

These obligations seek to mitigate the risk that a supplier withdrawing from the market will not make appropriate arrangements for the continuity of supply to premises. Although the risk is small, the circumstances in which it may occur can be unpredictable and uncertain. Note that the Authority's consent is required for the revocation of a supply licence. (The grounds for revocation are set out in schedule 2 to each licensee's supply licence.) SLC 22A is the only SLC imposing obligations upon a licensee in respect of the revocation of a supply licence. SLC 22A also imposes obligations in respect of the restriction of a licence. The group concluded that regulation should be retained in this area.

However, the group considered that there was little justification for having arrangements in the electricity licence covering restriction or revocation for contract and deemed contract customers whilst there are only arrangements for deemed contract customers in the gas licence. The group considered that the arrangements should be harmonised. They further considered that the electricity arrangements should be extended to the gas market. It would be appropriate for the Authority to consider the measures put in place by a supplier for their contract and deemed contract customers before consenting to a licence restriction or revocation.

Summary: SLC 22A should be **retained** in the electricity supply licence and SLC 22A of the gas supply licence should be **revised** so that it includes equivalent provisions. This will ensure adequate protection for customers on both contracts and deemed contracts when their supplier wants to restrict or revoke its supply licence.

## **8. SLC 30B (elec only) – Assistance for areas with high distribution costs scheme: payment to system operator**

Section 184 of the Energy Act 2004 allows the Secretary of State, in relation to an area where distribution charges are significantly higher, to issue an order that:

- Requires the system operator to make payments to certain distributors distributing electricity in that area;
- Requires the charges imposed by the system operator on suppliers to be adjusted; and
- Requires the distributors in receipt of a payment under the order to secure that the benefit of the payments is passed on to the suppliers supplying electricity in the area.

SLC 30B seeks to facilitate the payment of charges by suppliers to the system operator in relation to providing assistance with the high costs of distributing electricity in specified areas. It requires payment to be made to the system operator, for these to be quarterly, for interest to be payable if payments are late and for regulatory accounts under SLC 52 (for section D licence holders only) to include payment information.

This condition was inserted into the electricity supply licence by the DTI in April 2005. The condition was further revised by the DTI last month to address residual cost recovery issues arising from the special energy administration arrangements under the Energy Act for insolvent network operators. It is proposed that this condition is retained in its entirety, subject to minor drafting amendments.

Summary: The group considers that SLC 30B, which facilitates the payment of charges by suppliers to the system operator in relation to specific purposes authorised by statute, is **retained**.

**Note: The following two SLCs relate to domestic customers only and are in Part C of the gas supply licence rather than Part B.**

## **9. SLC 32A – (gas only) Security of Supply – Domestic Customers**

*GT failure to convey gas*

Under SLC 32A(1), where the supplier receives a payment from the shipper (received by it from the GT) for a failure of the GT to convey gas to domestic premises, the supplier must:

- set this sum off against any charges that are or may become due from the customer for the supply of gas; or
- use its reasonable endeavours to pay that sum (so far as not set off against the charges) to the customer.

There is a link to SLC 23 (Payments Received in relation to Standards of Performance), which requires that any payment received from the GT for failure to meet standards of performance should be paid to the customer as soon as reasonably practicable after receipt. Regulation 7 of the Gas (Standards of Performance) Regulations 2005 applies where the conveyance of gas to a domestic customer's premises is discontinued as a

result of a failure or, fault in or damage to the pipeline system operated by the relevant transporter.

The ability of suppliers under SLC 32A(1) to offset domestic customer payments against charges that are or may become due is different to other GT standards of performance in that it has the potential to affect large volumes of customers. The other GT standards of performance are more targeted at individual customers. In recognition of the potential volumes involved, SLC 32A(1) allows the supplier to provide payment to the customer within their normal billing cycle rather than having to make one-off payments on a tighter timescale. Given the potential costs for suppliers in passing through GT standards of performance payments for failure to convey gas, it is recommended that the flexibility envisaged by SLC 32A(1) is retained.

*“Domestic supply security standards”*

SLC 32A(3) requires that unless by means of its contracts with gas shippers or otherwise, the supplier secures that all gas conveyed by GTs for supply to its domestic customers is conveyed in conformity with those transporters’ Network Codes, the supplier must take steps to secure that the “domestic supply security standards” are satisfied in respect of the availability of gas to its domestic customers. The expression “domestic supply security standards” is defined in the rest of the condition (paragraphs 4 to 6) and covers the availability of domestic gas. SLC 32A(3) also notes the equivalent arrangements set out in SLC 14(5) for suppliers who have in place a contract with a shipper to use the GT’s network which was in place prior to 2 March 2006 and is therefore not subject to the current Network Code arrangements. These suppliers are required to conform with “security standards” on the availability of gas for customers. Given that these arrangements were in place prior to the opening of the market for domestic competition, it is a reasonable expectation that SLC 14(5) is only likely to cover non-domestic customers.

Standard special Licence condition A11 (Network Code and Uniform Network Code), which applies both to the DNs and NTS, sets out at paragraph 1(e) an obligation to facilitate the achievement of an objective to provide reasonable economic incentives for relevant suppliers to secure that the domestic supply security standards (within the meaning of SLC 32A(4) of the gas supply licence) are satisfied in respect of the availability of gas to their domestic customers. SLC 32A(3) therefore seeks to plug any potential gaps where the supplier does not secure by contract with gas shippers or otherwise that all gas conveyed by GTs for supply to its domestic customers is conveyed in conformity with those GTs’ Network Codes. It is not currently clear whether such gaps are evident or possible given current arrangements. Ofgem intends to investigate this further and welcomes the views of the industry.

Summary: The flexibility introduced by SLC 32A(1) to allow suppliers to offset GT standards of performance payments with customer bills should be **retained**. The current drafting of SLC 23 may need to be redrafted to reflect the provisions of SLC 32A(1). The requirement for suppliers to comply with the domestic supply security standards if equivalent arrangements are not secured through Network Codes should be **retained** (unless as noted above it can be clearly demonstrated that it is not required).

## 10. SLC 48A – (gas only) Transfer of Domestic Customers of a Supply Business

SLC 48A(1) requires that the supplier shall not transfer all or part of their domestic supply business to another person unless:

- The Authority is satisfied that it will be transferred to another person that is (or will be) licensed and will have the technical and financial capability to comply with its licence conditions; and
- If the supplier's licence has additional licence conditions which affect the transferred business, and in the opinion of the Authority are required to protect the interests of domestic customers, the new supplier has given the Authority consent to modify its licence in a similar way and the old supplier has given the Authority consent to modify its licence if necessary. In both instances, consent must be given within a time period that will allow the Authority to make the modifications to the licences prior to the proposed transfer date.

SLC 48A(2) notes that this SLC does not prevent a supplier from transferring all or part of its business if it is also transferring its licence either generally or so far as relating to the premises in accordance with section 8AA of the Gas Act.

It is the view of the workgroup that this condition should be removed from the gas supply licence. It was originally put in place in circumstances where suppliers had significantly different conditions in their individual licences. Notably, BGT had conditions which related to price control arrangements. Now that supply price controls have been lifted it is not clear that customers would be exposed to a reduction in protection because of their transfer to another licence holder. The group further notes that this condition has not been included in the electricity supply licence.

Summary: The group considers that SLC 48A should be **removed** from the gas supply licence. Suppliers of domestic customers do not have significantly different conditions in their licence and the protection of customers envisaged by this licence condition is not required.

Note: a proposal by the group to retain an SLC does not prevent that condition from being considered for different (and better) drafting treatment under the SLR process.