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Dear Clem,

HELPING CONSUMERS MAKE INFORMED CHOICES – PROPOSED CHANGES TO RULES AROUND TARIFF COMPARABILITY AND MARKETING

Thank you for the opportunity to respond to the above consultation, which seeks views on Ofgem's proposals to a more principles-based approach to tariff comparability and sales and marketing activities within the supply licence.

We are supportive of Ofgem's general approach to removing prescription from the Licence and introduce principles, to allow greater innovation from suppliers while continuing to provide effective consumer protection. We think that Ofgem has correctly identified the key aspects of prescription to remove from the Licence, and that the proposed replacement principles are appropriately designed to facilitate tariff comparability and ensure effective protections for consumers in sales and marketing activities.

Our responses to the specific consultation questions are contained in Annex 1 and we have included some comments on the consequential amendments in Annex 2. However, we would like to make the following points:

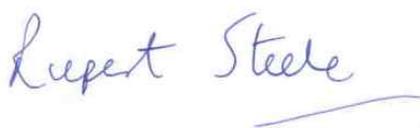
- While we agree that the Personal Projection methodology should be internally consistent as far as practicable, there may be cases where using the standard methodology for a particular or innovative tariff would be inappropriate (eg because it risks being misleading), and we believe suppliers should have the flexibility to adopt a different methodology, provided that it does not lead to a misleading comparison with other tariffs. Suppliers should also be able to offer their customers a choice of methodologies for online comparisons, so long as the chosen methodology is applied consistently to all tariffs. The consistency "over time" requirement suggested by Ofgem needs to be drafted in a way that does not prevent suppliers evolving their methodology to reflect changing tariffs or customer needs.
- In recognition of the risk that a number of different methodologies for estimated costs might surface across the market, we think it is important that suppliers (and other third parties) are required to ensure that methodologies are transparent and a clear explanation is provided to customers, including via their website. Currently suppliers are required to provide this explanation on customer communications, but we think suppliers should have the option of

providing signposting to their website for a more detailed explanation of the methodology, to help customers understand any differences between the methodologies used by suppliers and by third parties. It would otherwise be challenging to provide sufficient detail in the restricted space available within some communications.

- We are unclear as to why Ofgem proposes to depart from the current licence approach and remove the 'all reasonable steps' test from the principles. This proposal is not fully explained in the consultation document and we think it requires further consideration. In particular, it would be helpful to understand why Ofgem thinks this step is necessary and what Ofgem believes a supplier should do beyond 'all reasonable steps' in order to meet these principles? We also are concerned that this could have unforeseen unintended consequences, as a result of suppliers becoming more risk-averse, which could undermine Ofgem's wider objectives.
- We think that there may be further opportunities to make improvements that could benefit consumers, which have not been considered in the document. Our own customer research indicates that in some cases, customers can be confused by being provided with two different tariff options within the Cheapest Tariff Messaging (CTM), for example if they don't understand the difference between the two options. Therefore simplifying the CTM to only show one tariff option could be more successful in encouraging customers to engage.
- Under current SLC 25 rules, a Third Party Intermediary (TPI) needs to be able to satisfy the compliance requirements of every supplier whose products it wishes to sell, and this would continue under Ofgem's proposed principles. Given that different suppliers adopt different approaches to compliance, this is unlikely to be practicable and there is a real need for an alternative, more flexible framework. This is particularly relevant under the proposals to extend the application of the sales and marketing principles to all routes to market, including online sales, as this effectively creates a new obligation for suppliers under SLC 25 in relation to Price Comparison Websites (PCWs).
- We have previously suggested that a "safe harbour" principle be created, providing comfort for suppliers who deal with accredited multi-party TPIs such as PCWs. Suppliers would be exempt from enforcement action in respect of any contravention by the TPI provided that the TPI was accredited under the appropriate Code of Conduct (eg the Confidence Code) and the contravention was not as a result of any act or omission by the supplier. This would give suppliers greater comfort when considering engaging with TPIs in new routes to market, bringing more innovative routes for engagement to consumers.

We would be pleased to discuss these points, or any others contained within this response, further if that would be helpful. If you would like to do this or have any questions, please contact me on the details above.

Yours sincerely,



Rupert Steele
Director of Regulation

**HELPING CONSUMERS MAKE INFORMED CHOICES – PROPOSED CHANGES TO
RULES AROUND TARIFF COMPARABILITY AND MARKETING
SCOTTISHPOWER RESPONSE**

Changes to the RMR rules

Question 1:

- a) **Do you agree with the proposed requirement that any calculation by a supplier of the estimated annual cost figure should be internally consistent (ie calculated in the same way by any given supplier for all tariffs and for all customers over time)?**
- b) **Are there any circumstances in which suppliers should have the flexibility to provide an estimated annual cost figure to customers based on different assumptions or methodologies? Please explain your answer.**

We agree that any calculation by a supplier should be internally consistent, as far as practicable, for all tariffs that the supplier offers. It is important that customers can clearly identify which tariff is best for them, and while other non-price features of a tariff may influence a customer's choice, allowing a consistent comparison based on price will support the customer's assessment of the best tariff for them from that supplier.

There is a risk however that the benefits of removing the prescriptive methodology will not be fully realised, if suppliers are required to keep the methodology consistent "over time". The inclusion of such a requirement suggests that the methodology a supplier uses from Day 1, will need to be the same methodology used 2 years later – this could preclude suppliers from amending their methodology on occasions when required to take account of a more general shift towards innovative tariffs that are offered to meet evolving customer needs in a changing market, or when customer research or feedback signals that the methodology should be updated.

Based on the above, it is reasonable to expect that the methodology that a supplier uses in the current environment may need to evolve over time. We understand that the drafting is still to be discussed, but we think that any consistency condition should not be drafted so narrowly as to prevent such evolution.

Beyond this, we think that there will be cases where suppliers should have the flexibility to provide an estimated annual cost figure for a particular tariff or tariffs without the need to change the underlying methodology used for all tariffs. We believe that Ofgem's proposed principles should enable suppliers to choose a suitable methodology, taking into account the following considerations:

- There may be cases in which suppliers may want to offer alternative options to the customer for calculating their estimated costs, and therefore we believe that Ofgem should ensure that any principle does not preclude this. For example, for tariffs that are shorter than 12 months, or have less than 12 months remaining, then customers may want to see the impact to them of alternative options for their estimated costs for the remainder of the 12 month period. This is likely to become more relevant if the obligation to move customer to the cheapest evergreen tariff at maturity is removed.
- There could be circumstances where the development of an innovative tariff could result in the need for a supplier to take an alternative approach to calculating estimated annual costs for that tariff compared to the methodology used for its other available tariffs. This may be a rare occurrence, however we believe that, as long as

the supplier can justify the need to apply a different methodology than that which they currently use, that the use of differing methodologies leads to a comparison between the supplier's tariffs that is not misleading, and this is communicated appropriately to customers, there should be sufficient flexibility within the principle to ensure there is no undue barrier to innovation.

Question 2: Do you support our proposal to require that, in the absence of a prescribed methodology, the estimated annual cost must be personalised, transparent, fair and as accurate as possible, based on reasonable assumptions and all available data?

Recognising the risks associated with the absence of a prescribed estimated annual cost methodology (which we consider in our response to question 5), we agree that the estimated cost must be personalised, transparent, fair and as accurate as possible, based on reasonable assumptions and all available data.

There is a potential that a number of different methodologies might surface across the market, particularly taking into account the interactions between suppliers and Price Comparison Websites (PCWs). We therefore think it is important that suppliers (and third parties) are required to ensure that methodologies are transparent and a clear explanation provided to the customer, including via their websites. Currently suppliers are required to provide this explanation on customer communications. We think that suppliers should have the option of providing signposting to their website for a more detailed explanation of the methodology which would allow customers to understand better any differences between methodologies used by suppliers and third parties which may be challenging in the restricted space within some communications.

Question 3: Do you support our suggestion that, at the end of a fixed-term contract, consumers could be rolled onto another fixed-term (rather than evergreen) tariff, if the consumer were able to exit this tariff with no penalty and at any time?

Yes, we are supportive of Ofgem's proposal to remove the obligation to roll a customer onto the cheapest evergreen tariff where they take no action at the end of a fixed term contract. Allowing a customer to be moved to a fixed term tariff will ensure that they will receive a further prompt to engage which would not be the case if they were moved to a supplier's Standard Variable Tariff (SVT) equivalent. We also think it allows suppliers to move customers to a similar tariff to the one they previously chose, therefore it is likely to better meet the customer's needs.

In this case, we agree with Ofgem that the customer must be able to leave the tariff at any time with no penalty. While in general the proposition that any such "default" must be cheaper than the supplier's SVT for that customer seems reasonable, there may be cases where this would preclude suppliers from continuing to meet particular customer needs where they have chosen a specific tariff, for example a bundled option with additional services such as boiler care, or where a rising wholesale market results in fixed term tariffs being priced at a premium to the SVT. Therefore a rigid requirement for the default tariff to be cheaper than SVT may not make sense in all situations and we would ask Ofgem to consider this in its consideration of this suggested change.

We would note that the removal of this requirement will have an impact on the chosen methodology for estimated annual costs, as suppliers may not know in advance of the End of Fixed Term Notices being sent what tariff the customer will be moved to if they take no action at the end of the tariff. This will also impact on third parties providing estimated

annual costs to customers as they will generally not know what tariff the customer will be moved to at the end of their fixed term tariff. As such, we would highlight that in most cases, we think it likely that customers will be provided with estimates based on 12 months on their current tariff even where there are less than 12 months remaining on that tariff. We believe that this is reasonable as long as a clear explanation is provided to the customer of how the estimated costs have been calculated.

If Ofgem does decide to proceed with this suggestion, a number of consequential amendments will be required to the Licence Conditions, which do not appear to have been considered at this stage within the consultation document.

Question 4: Do you agree with our overall approach to managing the consequential impacts on the Clearer Information tools arising from the removal of the relevant Simpler Tariff Choices rules?

We generally agree with Ofgem's approach to managing the consequential impacts on the Clearer Information tools of the removal of the relevant Simpler Tariff Choices rules, but have comments in the following areas:

Cheapest Tariff Messaging (CTM)

We agree that there should be consistency in the methodology used by suppliers for both the estimated annual costs and the CTM. As suppliers offer more innovative tariffs, it is important that customers can continue to identify the best option for them and the CTM is an important prompt in this regard.

Our recent research on customer bills is consistent with Ofgem's view within the consultation document that customers generally like the CTM. There are two areas where we believe the CTM may benefit from further consideration:

- i. Whether or not changes to the criteria used to assess a customer's Relevant Cheapest Tariff would prompt greater engagement from consumers. In particular, we think SVT customers could be more readily encouraged to consider alternative tariffs if the Relevant Cheapest Tariff messaging pointed to a fixed term tariff, rather than a different payment method on the same type of tariff. We think changing the type of tariff is a simpler change for most customers as compared to changing payment method, which may require a bigger behavioural change, which the customer may be less comfortable with;
- ii. Whether or not simplifying the CTM to only show one tariff option could be more successful in encouraging customers to engage. Our own customer research suggests that, in some cases, customers can be confused by being provided with two different tariff options within the CTM, for example if they don't appreciate the difference between the two options. While improved presentation can mitigate this risk to some extent (and we are taking action to improve how we present the CTM to customers in our communications as a consequence of this research), we believe there could be benefit in considering whether displaying only one of the Alternative or Relevant Cheapest Tariff options could work for customers. We are open to discussion on which option it would be preferable to display, and we would suggest that further customer research in this area may be helpful.

We would be happy to work with Ofgem on testing these points above as part of its work to implement the CMA remedy on trialling different prompts for engaging with customers.

Tariff Comparison Rate (TCR)

We agree with Ofgem's proposal to remove the TCR and all references from the supply licences. We agree with Ofgem's assessment that the TCR is of limited value due to its use of a typical customer's consumption. This view was reflected in our own research.

Tariff Information Label (TIL)

We agree with Ofgem's approach to amending the TIL. We believe that having suppliers and third parties display tariff information in a consistent manner helps customers to compare tariffs easily, and therefore we agree with Ofgem's assessment that the TIL should be retained but in an amended format to allow the display of more innovative tariffs, and take account of the removal of the TCR and related information.

Further Consequential impacts

We generally agree with Ofgem's approach to the further amendments to the Licence as a consequence of the changes noted above. We agree with the proposed removal of SLCs 22CA and 22CB, as we do not consider there will any longer be a requirement for these provisions.

We do have some comments on the consequential amendments which we do not think have been adequately captured in Ofgem's consultation document. These are set out in detail in Annex 2 to this document. In particular, we would highlight the following points:

- We note Ofgem's proposal to remove the definition of Estimated Annual Costs in SLC 1 and decapitalise all references to Estimated Annual Costs within the licence conditions. However, Ofgem's reasoning within the table on p43 of the consultation suggests amending the definition rather than removing it, with the amendment setting out the principles suppliers must meet in calculating estimated costs for a customer. We think it may be clearer to retain an amended definition within SLC 1 as above, and retain the capitalisation of Estimated Annual Costs throughout the licence conditions to ensure it is clear that the principles would apply to all instances where estimated costs are required to be provided to customers.
- With the removal of the prescription of the Estimated Annual Costs methodology, there is more scope for differences in calculation between different suppliers and third parties. This then makes it more important that customers and other parties are provided with a clear explanation of the methodology used. The current obligation in SLC 31E.9 requires suppliers to provide a brief statement setting out what is included in the Estimated Annual Costs in all communications – we think that suppliers should be required to include this information on their websites, and should have the option of providing signposting to their website for a more detailed explanation of the methodology rather than having to provide this within communications and that SLC 31E.9 should be amended to reflect this. A more detailed explanation would allow customers to understand better any differences between methodologies used by suppliers and third parties, the restriction of space within a communication may make it challenging to provide sufficient information for customers to understand the differences.

Question 5: Have we identified the right benefits and risks associated with our preferred approach to managing the impacts of removing the relevant Simpler Tariff Choices rules on each of the Clearer Information tools?

Broadly speaking, the benefits and risks that Ofgem has captured within the consultation document reflect those we have identified. There are however some further risks which merit consideration, which we have set out below.

Estimated Annual Cost methodology

As Ofgem has noted, the removal of prescription around the Estimated Annual Cost methodology will likely lead to different approaches being taken by different suppliers, PCWs and other TPIs. This could give rise to the risk that a customer who seeks to compare prices obtained from multiple websites could receive non-comparable messages around potential savings. It is therefore important that customers are provided with a clear explanation of how their estimated costs have been calculated to ensure they can understand any differences in costs or calculated savings presented to them across different sales routes. Current requirements within both the licence conditions and the Confidence Code should be sufficient to mitigate this risk, albeit as previously noted we believe suppliers should have the flexibility to provide a signpost to the methodology within communications rather than a full explanation of the calculation. Subject to this point, we do not believe that Ofgem need take further action here, but should be alive to the risk and take action to monitor the impacts on consumers.

End of Fixed Term Tariff Default Option

The requirement to move the customer on to the supplier's cheapest equivalent SVT at the end of a Fixed Term Tariff is a key point of consistency in the current methodology for calculating estimated annual costs where tariffs have less than 12 months to run. This is most likely to be relevant for consumers who are triggered to consider switching supplier or tariff by their Fixed Term tariff ending.

The proposal to remove this obligation means that third parties will not always know which tariff a consumer will move to at the end of the current tariff, giving rise to the likely number of cases where the consumer will be provided with estimates based on 12 months on their current tariff (which may or may not differ from that provided by their supplier). We think this is reasonable, as long as clear information is available to the consumer on the basis for any estimated annual cost calculation. As mentioned in our response to question 1, in such a scenario it might be helpful for a supplier to have flexibility to offer the customer options to compare the estimated annual costs based on different inputs.

Cheapest Tariff Messaging (CTM)

We think that there could be a benefit to reviewing the current criteria for calculation of the CTM and its presentation, which could prompt greater engagement from consumers.

In relation to the criteria used to assess a customer's Relevant Cheapest Tariff would prompt greater engagement from consumers, we think SVT customers could be more readily encouraged to consider alternative tariffs if the Relevant Cheapest Tariff messaging pointed to a fixed term tariff, rather than a different payment method on the same type of tariff. We think changing the type of tariff is a simpler change for most customers as compared to changing payment method, which may require a bigger behavioural change, which the customer may be less comfortable with.

We also think that there could be opportunities to simplify the CTM to highlight one tariff option to customers, rather than two, which may mitigate some confusion as to the difference between the Alternative and Relevant Cheapest Tariffs.

Question 6: Are there any potential unintended consequences associated with our proposed approach?

We have not identified any further unintended consequences, beyond those already captured by Ofgem in the consultation document.

Informed Tariff Choices: Principles

Question 7: Do you agree that our proposed policy objective is the correct one? Please explain your answer.

Yes, we agree that Ofgem's proposed policy objective is the right one. Ensuring that customers are able to make appropriate choices will be key to empowering consumers, leading to increased engagement in the energy market.

The primary way to drive this will be by ensuring customers have the information they need to make those choices. Ofgem's proposed objective puts the onus on suppliers to provide the tools to help customers make those choices, taking into account their own characteristics and preferences, and ultimately putting customers in control.

Question 8: Do you consider that the proposed principles are a sensible way of achieving our policy objective? Please explain your answer.

Yes, we believe that the proposed principles are a sensible way of achieving Ofgem's policy objective. In general, they strike an appropriate balance between giving suppliers flexibility as to how they engage with their customers, while ensuring that engagement is underpinned by the important level of consumer protection.

We think that the principles cover the right interactions with customers in making their tariff choices and therefore we do not identify any substantial gaps in helping to achieve the objective. We think it is correct to create links between the presentation of tariff information and sales and marketing activities more generally, as the two areas are closely linked and will interact in practice and the principles apply equally across both.

We also think that supplier understanding of consumers' and Ofgem's expectations of sales and marketing practices will have improved substantially since the original introduction of SLC 25, which gives greater scope for the move away from the level of prescription within the current Licence Condition.

We do think that further consideration should be given to how the principles are drafted. In particular, we note Ofgem's proposal to exclude wording that suppliers must 'take all reasonable steps', which moves away from the current approach to applying principles within the supply Licence¹. This appears to represent a shift in Ofgem's approach to Licence drafting and compliance, the rationale for which does not seem to be fully explained in the consultation document. We are concerned that this could have unintended consequences, which could undermine the benefits of a move away from Licence prescription. We think it would be helpful to discuss this approach further with Ofgem.

It would be especially helpful if Ofgem could provide further explanation of what it considers that suppliers can do in certain cases beyond taking 'all reasonable steps.' For example, does it imply that suppliers will have to take steps beyond those which are reasonable to achieve the objective – creating a risk that the costs of compliance will be high (and disproportionate), increasing costs to customers across the board?

¹ SLC 25 currently places a requirement on suppliers to 'take all reasonable steps' to achieve the Objective of the Condition. Similarly the Standards of Conduct in SLC 25A require suppliers to take 'all reasonable steps' to achieve the Standards of Conduct.

This is also relevant in relation to suppliers' contracts with Representatives – suppliers can have in place strict controls both upfront and following a Representative's engagement with customers but will be unable to place 100% control on that Representative's behaviour. What is important is that suppliers take steps to prevent inappropriate or misleading behaviour by Representatives and are able to identify and take swift remedial action after the fact, should something go wrong. The principles as worded do not allow for this kind of situation and it is not clear why Ofgem feels that this move is helpful.

Question 9: Are there any benefits, risks or potential unintended consequences associated with the proposed principles which we have omitted? If so, what are they and how could they be mitigated?

We think that there are some risks and unintended consequences of Ofgem's proposed approach, which haven't quite been captured in the consultation document.

Excluding 'all reasonable steps'

A risk arising from a move away from 'all reasonable steps' language is that it is unclear whether suppliers are required to take 'unreasonable steps' in delivering against the principles. This approach may have the unintended consequence of inhibiting suppliers in their engagement with 'Representatives', specifically those third parties (such as PCWs) that act on behalf of more than one supplier. This has already proven a challenge under the current 'all reasonable steps' requirements, a problem which is likely to be keener if this qualification is removed. Suppliers will naturally face greater challenges in agreeing a compliance approach with third parties who are also in discussions with other suppliers, each of whom might have a different perspective on compliance. Accordingly, suppliers may take a much more 'risk averse' approach to dealing with these third parties, likely choosing not to engage with them and potentially restricting the competitive influence of such parties in the market.

Requiring tariffs to be 'easily understandable'

Requiring tariffs to be 'easily understandable' to all customers could thwart innovation in some cases given that it is such an absolute requirement. This would, for example, restrict suppliers from developing more innovative tariffs that are targeted at a particular group of customers who would understand the tariffs, because they won't be understood by the generality of customers. For example, a particular smart meter tariff directed at customers with a smart meter would require knowledge of the smart meter to understand the tariff – however customers who don't have a smart meter may not understand the tariff, but would not need to. We would suggest that this principle needs some degree of relativity in the drafting to counter this risk (such as tariffs being 'easily understandable having regard to the interests of the customer'). This recognises that what may be reasonable for one customer, may not be reasonable (or necessary) for another customer, depending on their circumstances)

'Recommending' tariffs

We think that there is a risk that the language in principle 6 relating to 'recommending' tariffs could suffer from a lack of clarity. We can see that this will be applicable in relation to face to face or telesales activities where an agent discusses tariff options with a consumer prior to recommending a specific tariff for that customer. However, where this is not so clear is in relation to digital sales, where a customer might see a list of 4 or 5 tariff options available to them from a supplier – not all of those will be suitable for the customer but the digital sales process is unlikely to be able to account for that in all cases. It is unclear at what point the supplier will be seen to be making a 'recommendation'.

Question 10: Are these principles likely to result in differential impacts across different types of suppliers (eg large vs. small or medium suppliers)? Please explain your answer.

We think that the use of principles should create more of a level playing field by allowing suppliers of different sizes to apply the principles in the way that best suits their customers and to adapt their systems and processes accordingly, without the need to comply with a particular degree of prescription.

Therefore the differential impact across suppliers of different sizes is likely to be smaller than that which already is in place, due to the scale and prescription of the RMR changes.

Question 11: Do you think that we should introduce a principle about informed tariff choices?

We do not think that an additional principle about 'informed tariff choices' is necessary.

The aim of principles, in addition to encouraging market development through innovation and engagement, should be to reduce administration and streamline the licence burden. Ofgem should take care to differentiate between its policy objective (what it hopes to achieve) and the principles implementing this (what suppliers can practically do to help achieve the objective). The latter should be included within the Licence; the former should form part of the factors that Ofgem should take into account when considering whether enforcement action is necessary (or as part of assessing enforcement action).

We remain supportive of the objective as a policy direction but think that the principles outlined above already sufficiently cover what suppliers can do to help consumers achieve the objective – the rest is up to consumers. If the principles are appropriately designed, they should encourage suppliers to help achieve this objective.

Question 12: Do you agree that we should expand the scope of SLC 25 to apply to all sales and marketing activities? Please explain your answer.

Yes, we think it is appropriate in principle to expand the scope of SLC 25 to apply to all sales and marketing activities, on the basis that much of the prescription will be being removed, which allows suppliers to tailor the principles to the different routes to market. However, one side effect of this change is that suppliers will now become vicariously liable for breaches by PCWs, in circumstances where it would not be appropriate for them to be liable, and we believe that this needs to be addressed before the licence is amended.

The original focus of SLC 25 was around routes to market that gave less control to the customer (through the involvement of a Representative). The level of prescription was therefore better suited to those routes to market. Digital sales however have a different interaction with the customer, and therefore a different level of risk associated with the process. The proportion of sales concluded through a digital route is now likely to continue to be much higher than that for other routes to market. Therefore, it is important that consumers can have confidence that digital sales are also conducted in a fair and transparent way. Removing the prescription within SLC 25 but expanding the principles to all sales and marketing activities can help to achieve that.

As a side note, we are conscious that this change will require a change to the existing definitions of 'Marketing Activities' and 'Telesales Activities' within SLC 25, which has not yet been specifically considered. We are mindful that 'Sales Transactions' and 'Marketing' are

defined terms elsewhere within the supply Licences, for specific purposes in relation to Smart Metering². Care should be taken to avoid confusion with these definitions, while still recognising the synergies between them.

Question 13: Do you support our proposal to extend the requirement to keep records for two years to include telephone sales and marketing? If not, please explain why, including the scope of any potential increase in costs.

Yes, we do support this proposal as a general principle. We expect that there would be some additional costs associated with the requirement, but we are not currently in a position to quantify them.

Question 14: Do you agree with our rationale for not applying the requirement to keep records to include online sales? What would be the implications of extending the requirement to online sales (eg impact on PCWs, increased costs)?

Yes, we agree with the rationale for not applying the requirement to retain records to online sales.

The original rationale underpinning this requirement was to recognise the particular influence that a Representative may have in a customer's decision to enter into a contract, and that information could be provided during the sales process in a range of formats, some less tangible than others. It also recognised the difficulties that may otherwise arise in evidencing the information that was provided to a customer and which would have informed their decision to enter into a sale. This was particularly important in the event of an enforcement issue or to enable a customer to follow up on a complaint.

The issues are not quite the same for digital sales, where the customer is more in control of the process and their choices, and information provided during the process is likely to be presented in a more consistent manner and followed up quickly by email.

We do not foresee substantial implications from extending the requirement to online sales however. More generally suppliers will be expected to retain records to evidence their compliance with the principles as they deem appropriate. We already expect that most suppliers will require PCWs to retain records of online sales for a reasonable period of time, although it is likely that many of these may be for shorter periods than two years.

Question 15: Do you agree with our proposal to remove the prescription from SLC 25? Are there any other areas where you think prescription still needs to be retained to maintain consumer protection?

Yes, we agree with the proposal to remove prescription from SLC 25. We consider that the principles will provide effective consumer protection in this area by placing the onus on suppliers to deliver protections for consumers, and will reasonably cover the areas already contained within SLC 25 while allowing suppliers to tailor their approach based on their experiences in dealing with customers. Between the revised SLC 25 and the Standards of Conduct, we think that the Licence will continue to provide a robust level of consumer protection in this area. We have not identified any areas where prescription still needs to be retained to maintain effective protection.

² See SLCs 21D, 41 and 47 for example

However, we continue to think it would be sensible for Ofgem to consider our previous suggestion of a “safe harbour” exemption for suppliers who deal with accredited multi-party Representatives (such as PCWs). Under this, a supplier would be exempt from enforcement action in respect of any contravention by the Representative, provided that the Representative was accredited under the appropriate Code of Conduct (ideally the Confidence Code) and the contravention was not as a result of any act or omission by the supplier. This would ensure effective consumer protection while still encouraging suppliers to engage with such 3rd party Representatives, driving competitive pressures across the market.

Question 16: Do you agree with the methodology we intend to employ in our impact assessment?

Yes, we agree with the methodology proposed.

Question 17: Have we captured all expected key impacts? If not, what else should we include in our impact assessment?

We have not identified any further expected key impacts (beyond those considered in our response to the questions above).

Question 18: What costs do you expect to incur as result of the proposed changes (both to the RMR package and to SLC 25)? Please provide a description and a range, if possible.

Whilst we would expect some transitional costs to be incurred, through changes to both systems and processes, we believe that this is likely to lead to more streamlined and efficient sales activity in future and we do not expect overall costs to be higher in the long term.

Question 19: What benefits (including avoided costs) do you expect to realise as result of the proposed changes? Please provide a description and a range, if possible.

We expect that the proposed changes will support innovation, allow us to better meet our customer needs and help us grow our business.

Monitoring the new principles

Question 20: Do you think there are any other indicators we can use to monitor the impact of changes to the RMR rules on consumers?

We think that Ofgem has proposed a useful approach to monitoring the impact of changes to the RMR rules on customers. We agree that a move to more open engagement between Ofgem and suppliers may be challenging, but is important. This is particularly true where the underlying enforcement regime (which was originally designed to support a prescriptive regime) remains unchanged but the impacts of principles have yet to be tested.

In addition to the indicators highlighted, Ofgem could also use information on switching between tariffs and suppliers to give an indication of customer engagement, particularly in

relation to Fixed Term Tariffs. Obviously this could be influenced by other factors over time, including other of the CMA recommendations, but could serve as an indicator of customer comfort with new tariffs.

Another indicator which may be relevant is the use of complaints data from Citizens Advice or the Energy Ombudsman, which could provide a signal of an increase in customers being concerned about tariff comparability.

There may be ancillary factors which could affect some trends indirectly and where these exist, Ofgem should filter its monitoring to ensure results are not unduly influenced. For example, as the energy market evolves with the introduction of smart meters, Ofgem's monitoring must also evolve to ensure it remains relevant.

Question 21: Are there any other sources of information we could use to provide us with an early indication of potential issues with sales and marketing activities?

We have not identified any other sources of information that Ofgem could use to give an early indication of potential issues with sales and marketing activities at this stage.

SCOTISHPOWER COMMENTS ON APPENDIX 2 – IMPACT OF CONSEQUENTIAL AMENDMENTS ON LICENCE CONDITIONS

Reference	Comment and/or Suggested Amendment	Rationale
Personal Projection		
<p>SLC 1 – Definition of Estimated Annual Costs</p> <p>(and subsequent references to Estimated Annual Costs within the licence conditions)</p>	<p>Retention of a definition of Estimated Annual Costs within SLC 1 covering the principles that suppliers are expected to meet in their methodology.</p> <p>We are not proposing specific wording at this point, as we expect Ofgem to propose this within a further consultation based on responses to this consultation.</p>	<p>We note Ofgem's proposal to remove the definition of Estimated Annual Costs in SLC 1 and decapitalise all references to Estimated Annual Costs within the licence conditions.</p> <p>However, Ofgem's reasoning within the table on p43 of the consultation suggests amending the definition rather than removing it, with the amendment setting out the principles suppliers must meet in calculating estimated costs for a customer.</p> <p>We think it may be clearer to retain an amended definition within SLC 1 as above, and retain the capitalisation of Estimated Annual Costs throughout the licence conditions to ensure it is clear that the principles would apply to all instances where estimated costs are required to be provided to customers.</p>
<p>Paragraphs S4.15 (q) (ii) (iii) of Part 2 of Schedule 4 to SLC 31A</p>	<p>Retain S4.15(q)(ii)</p> <p>Retain S4.15(q)(iii) and amend to allow suppliers to provide signposting to an explanation of the estimated annual costs methodology (for example on their website) rather than within the Annual Statement itself.</p>	<p>We believe that informing a customer on an evergreen tariff that their prices may vary is sensible therefore we believe that this obligation should be retained.</p> <p>We also do not agree that the removal of prescription in how the estimated annual costs are calculated should result in the removal of the need to explain to the customer how any annual costs displayed to them are calculated. Where there is the potential for alternative approaches to be used by different suppliers and third parties, then we think it more important that customers are informed how any costs have been calculated.</p> <p>We note that Ofgem has not proposed removing this from other parts of the</p>

Reference	Comment and/or Suggested Amendment	Rationale
		<p>licence conditions. However rather than the current obligation to display the full explanation within the body of the Annual Statement (and other communications), we think suppliers should be able to meet this requirement by providing signposting to a website for example.</p>
SLC 31E.7		<p>It is not clear to us what Ofgem's intention is in relation to this licence condition. The table recommendation states that the condition will be removed, but the reasoning proposes an amendment to decapitalise Estimated Annual Costs within the condition.</p> <p>We are not completely convinced that customers understand the term Personal Projection. In light of the move to a more principles based regulatory framework, there may be an argument to allow suppliers to use other terminology for estimated annual costs where evidence supports this.</p>
SLC 31E.9	<p>Amend SLC 31E.9 to allow suppliers to provide signposting to an explanation of the methodology for calculating the estimated annual costs rather than the full explanation being provided within each communication.</p>	<p>With the removal of the prescription of the Estimated Annual Costs methodology, there is more scope for differences in calculation between different suppliers and third parties. This then makes it more important that customers are provided with a clear explanation of the methodology used. The current obligation requires suppliers to provide a brief statement setting out what is included in the Estimated Annual Costs in all communications – we think that suppliers should have the option of providing signposting to their website for a more detailed explanation of the methodology rather than having to provide this within communications.</p>
Tariff Information Label		
SLC 31B.2	<p>Instead of removing SLC 31B.2, amend as follows:</p> <p>Subject to paragraph 31C.6 of standard condition 31C in respect of the Tariff Comparison Rate, where any change or changes will take place that affect the</p>	<p>Ofgem is proposing removing this condition due to the removal of SLC 31C in its entirety, however as the TIL will continue to include other elements of a tariff that could change (for example, the unit rates and standing charges) we believe that the condition should be amended to remove reference to SLC 31C, but the remainder of the condition should remain.</p>

Reference	Comment and/or Suggested Amendment	Rationale
	<p>information required to be included on a Tariff Information label, the licensee must take all reasonable steps to ensure that Tariff Information Label is updated on or before the date the change or changes take effect.</p>	
<p>Paragraph S1.15 – S1.21</p>	<p>We can see two options:</p> <ol style="list-style-type: none"> 1. Removal of S1.15 to S1.21 completely, with the TIL providing no consumption information or estimated costs 2. Retention of S1.15 and introducing a requirement in instances where the TIL is provided to a Domestic Customer within a personalised communication. This requirement would require the supplier to provide the customer's actual consumption information, and the related estimated annual costs within the TIL. 	<p>It is not clear from Ofgem's amendments its intention is with regard to display of information to the customer within the section of the current TIL related to estimated costs.</p> <ul style="list-style-type: none"> - Taking account of the proposed amendments within Annex 2, suppliers would be required to show the heading "Illustrative <fuel> cost on this tariff, and then the typical Ofgem consumption value. <p>We do not think this is Ofgem's intention. We can see two options for this part of the TIL. The first would simply remove the full section from S1.15 onwards and we think this is Ofgem's intention. However our research suggests that customers would like to see their consumption information and estimated costs included in the TIL where it is personal to them (ie within a personalised communication rather than provided on a supplier's website) rather than the current requirement where suppliers must reference that estimated costs and consumption are provided elsewhere in a communication. As such, an option would be to include such information within the TIL only where a customer is receiving a TIL in a personal communication and that information was personal to the customer's own consumption.</p>