

Corporate Response Form 'Third Package' Consultation
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Consultation Questions

Chapter 1 – Consumer Protection

1 Consultees are invited to comments on Government proposals to implement the consumer protection measures of the Third Package.

We welcome DECC's decision to send the Commission a list of PSOs and to notify any changes every two years. We trust that this may encourage other Member States to do likewise.

We will comment on switching within three weeks under Q2.

DECC's proposal to enable customers to take legal action against suppliers where switching does not take place within three weeks is disproportionate and unreasonable given that an individual supplier does not have full control of the process. In addition, there are already well established consumer protection measures for redress under the CEAR Act 2007. We would propose that this issue is dealt with through that process. Inevitably, contracts will require customers to provide the required information. Furthermore, we would expect this to be a requirement of the switching process. Lastly, suppliers will have to expend resource on determining fault and may have to take action against other suppliers which will not improve industry-wide co-operation to make the process work well.

We consider that the proposed Licence Condition for domestic supply to require suppliers to pass on consumption data to another supplier is over-prescriptive. We believe that providing the customer with the data for him to pass on to the new supplier will work better than a complex, and so costly, set of arrangements to transfer data between suppliers and fulfils the overall purpose of the provision.

We believe that the proposed obligation to update a domestic customer's bill where they provide a meter read is already current practice.

We believe that the current GB arrangements under the CEAR Act fulfil the requirement to inform customers of the means of dispute settlement with a supplier of domestic and micro business customers and are already more extensive than the Directive's requirements which cover only electricity.

We continue to advocate our proposed approach to make the Energy Consumer Checklist, which is by and large a reference document, as widely available as possible to domestic customers on suppliers', Ofgem's and Consumer Focus's or other relevant consumer body's website as well as sending it upon request to customers. We will continue to work with relevant parties to disseminate this information.

Whilst the record keeping requirements are primarily aimed at wholesale market participants, given the breadth of the definition of "supply undertaking" we accept that suppliers may be within the scope of this requirement. We believe that it is current practice for suppliers to retain such information.

Consumer protection measures in EU consumer law do not relate to transactions in the course of business. Therefore, the "cooling off" period which derives from the EU distance selling and doorstep selling directives does not apply to business customers. Furthermore, for the same reason the provisions of Annex I Measures on Consumer Protection do not apply to business customers.

As the requirement under Annex I 1(a) to provide customers with contractual information does not include business customers if it is included in Supply Licence Condition 1 that needs to be stated; if not, there will be implications for the fulfilment of certain aspects of Supply Licence Condition 7A. Furthermore, we would look to flexibility on how suppliers convey consumer rights information when conducting telesales to domestic customers as part of the contractual information that they provide to customers when making the sale.

With regard to the requirement for domestic customers to receive final closure of account within six weeks, we regard the ERA's Code of Practice for Accurate Bills as the appropriate form of regulation. We would be surprised if suppliers which have not signed up to this Code did not prefer it to a new Licence Condition. However, we would stress that it is in every supplier's own interests to submit a final closure of account as soon as possible. We would suggest the Code of Practice's wording as a model for any future Licence Condition:

"Your supplier will provide a final bill within 30 working days of the supply end date. Where this is not possible the supplier will provide you with an explanation as to why the bill has not been issued."

2	<p>In respect of the requirement to switch customers within three weeks, subject to contractual terms, we propose to put in place a new Licence Condition requiring the new supplier to give new customers a 14 calendar day period after the contract has been entered into, to consider whether they wish to proceed with this. Unless the customer notifies the supplier they do not wish to proceed, the Licence Condition will require the new supplier to give customers the right to change their mind within 14 calendar days and then be switched within three weeks, subject to outstanding debt (and, in the case of non-domestic customers, contractual conditions). Do consultees agree with this proposal?</p>
	<p>With regard to DECC's proposed Licence Condition, we consider that the approach to start the three week period after a cancellation period is appropriate given that we would not consider that the customer has made his decision to switch until that point.</p> <p>However, in contrast to the proposal, it is our view that "while respecting the contractual conditions" can be reasonably interpreted as requiring that the correct information (including customer data) and the position related to customer debt or any other reasons for objection to transfer are established and resolved before the three week period begins, which will enable suppliers to meet the Directives' switching requirements.</p> <p>Given the complexity of the existing systems and the work in place to implement smart metering which may cause disruption in the future, we believe that any Licence Condition requirements need to be in terms of reasonable endeavours</p>
3	<p>Do consultees consider that the requirement on supply undertakings which are not registered in Great Britain, to provide a GB address for the service of the documents, poses any difficulty for these suppliers? Evidence of costs to these suppliers would be particularly welcome.</p>

We are not aware of any difficulties providing a GB address would pose for suppliers registered outside GB.

We would make the general point that any supplier operating in GB needs to meet all the regulatory requirements i.e. there needs to be a level playing field in accordance with the Electricity and Gas Directives Article 3(1) .

Chapter 2 – Transmission and Distribution Networks

4 Do you have any comments relevant to our consideration of which unbundling models should be available in the GB market?

Whilst not commenting directly on the compatibility of any of the UK market arrangements, we believe that unbundling arrangements in the UK need to be seen to meet the Third Package's requirements and that the process of certification needs to be carried out in a timely manner to reduce uncertainty.

Offshore electricity Transmission

We welcome the introduction of the "generator build" model under the enduring regulatory regime for offshore transmission. However, we seek further clarity in relation to issues identified in developing this model relating to how it may impact on network operation, maintenance and development obligations under the Third Package. Neither the DECC/Ofgem enduring consultation document nor the Ofgem consultation on the certification process for transmission operators has provided sufficient clarity as to exactly what the issues are in relation to the generator build model's compliance with the third package. It is our view that the model is fully compliant with the Third Package's requirements because the assets will be

transferred prior to first generation. Therefore, we request that you confirm its compliance or if required measures are taken to address the issue promptly, either via an exemption or a derogation from the European Commission.

The interconnector certification process needs to be fully compliant with the process for certifying offshore transmission licences. In order to facilitate efficient offshore development, if an offshore generator should seek to connect to both an offshore transmission operator and an offshore interconnector, the regulatory framework needs to be flexible enough to allow for this to occur.

5	Do you have any views or concerns with how we intend to apply these new Third Package requirements on TSOs and DSOs?
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We do not have any comments currently on how DECC intends to apply the new requirements on TSOs and DSOs.

Chapter 3 – Gas Infrastructure

6	Should the Gas Directive requirements for storage and LNG operators be introduced through a new licence regime or by amending existing legislation? Please provide evidence of costs and benefits wherever
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	possible.
	<p>We have no preference for either approach to designating gas storage and LNG system operators and ensuring compliance with the tasks required of these operators by the Gas Directive and Gas Regulation, but merely would opt for the least burdensome.</p> <p>Regardless of whether the provisions of the Regulation are effected by way a new licence regime or by amending legislation it will be important to ensure they are defined unambiguously and implemented consistently across Europe.</p> <p>We are currently aware of a couple of points relating to Article 19 of the Regulation where there appears to be some confusion and these need to be addressed. Firstly it has been suggested that LNG/storage operators (including those exempt from third party access) will not be required to make public the quantity of gas/LNG in each specific facility as this information will be provided in aggregate by the TSO (as is currently the case in GB). Secondly it has been argued that where storage data is deemed confidential by the NRA commercial protection should be afforded by publishing relevant data with a year's time delay as opposed to exempting the facility from publishing the data for one year.</p>
Chapter 4 – Role of the National Regulatory Authority	
7	<p>Implementing binding decisions</p> <p>For the reasons we have set out in the consultation document, the Government proposes to replace the current collective licence modification objection arrangements with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body. This would reinforce Ofgem's power to make decisions in accordance with their powers and duties under the Third Package, and would give all licensees the same right of appeal. Ofgem's decisions, as now, would need to be reached following consultation and subject to the principles of better regulation. This proposal would include all Ofgem licence modification decisions and not only those covered by the Third Package. We would be grateful for your views on these proposals.</p>

Our view is that DECC's approach to implementing binding decisions under the Directives raises at least the following issues:

- i) Whilst Electricity Directive (Article 37(4)) and Gas Directive (Article 41(4)) specifies duties referred to in paragraph 1, 3 and 6, DECC has chosen to apply this to Ofgem's statutory remit in GB. This would imply that all Ofgem's decision making powers both in the Directives and GB regulation need to be reconsidered in the light of the Directives requirements. For example, we would argue that there should be an appeal on the merits rather than procedural or vires grounds for final or provisional orders for securing compliance (Electricity Act 1989 s.27 and Gas Act 1986 s.30).
- ii) Given the requirements for independence of regulators from, amongst other things, any government entity (Electricity Directive (Article 35(4)) and Gas Directive (Article 39(4)), DECC needs to remove its veto on licence modification and also remove any powers of the Secretary of State to make licence modifications on the subjects covered by Article 37 of the Electricity Directive and Article 41 of the Gas Directive. In addition Ofgem's principal objective and duties need to be revised to correspond to those set out in the Directives and Regulations, and in particular Article 37 1(d) of the Electricity and 41 1(d) of the Gas Directive, "complying with, and implementing, any relevant legally binding decisions of the Agency and of the Commission".

We will respond in detail to DECC's Consultation on licence modification appeals.

Chapter 5 - Cross border co-operation

8	Do you have any views or concerns with how we intend to introduce the regional co-operation elements of the Third Package?
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With regard to providing Ofgem with a duty to share information with NRAs in other Member States and the Agency, we would expect to have the measures to safeguard the information's confidentiality in place as a prerequisite for such exchange.

We also welcome DECC's intention to set down in statute Ofgem's requirements to co-operate with other NRAs and the Agency at least at regional level in accordance with Electricity Directives Articles 6, 36 & 38 and Gas Directive Articles 7, 40 and 42.