

Corporate Response Form 'Third Package' Consultation
URN 10D/727 Open: 27/07/2010 Close: 19/10/2010

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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 believe that a number of the proposals detailed in the consultation go beyond the scope of implementation and are concerned that DECC may be using the Third Package opportunistically to gold-plate EU requirements. This is particularly with regard to implementing a raft of new licence conditions against processes which are already compliance with EU requirements.

However, if DECC are determined to impose such licence conditions, it is critical that the drafting of these conditions is fit for purpose and that they do not introduce any unintended consequences.

Our comments regarding specific proposals are as follows:

1. GB is already compliant with the requirement to send customers a final bill within 6 weeks. Suppliers have made significant progress in recent years in ensuring accurate final bills for customers and it is imperative that this recognised and the current status maintained. Therefore, we expect that if a licence condition is imposed, it will oblige suppliers to issue a final bill within 6 weeks of an actual final reading. If suppliers are obliged to issue a final bill without an accurate final reading, it can only result in a negative experience for the customer and we do not believe that this is the intention of the EU Directive, and is certainly divorced from what suppliers are currently trying to achieve.
2. The customer already has enforcement rights against the supplier through the Ombudsman and the CEAR Act and therefore GB is compliant in this regard. The proposals to include three week switching in customer contracts certainly

goes beyond what is required and leads to a confusing legal position for the customer. We do not believe that this is either in customers interests or necessary to prove compliance.

3. Customers already have access to "all relevant consumption data" as it is detailed on their bills and on their annual statements. Furthermore, suppliers provide this information to customers on demand – either by telephone, mail or online. This fulfils the requirements of the EU Directive as customers have open access to their data and are free to use that information as they see fit. Additionally, the move to smart metering will ensure that customers have real time access to this data. The proposals in the consultation go beyond the scope of implementation and, furthermore, have the potential to introduce data protection issues which are not recognised in the consultation document. These questions over data protection have been raised in the recent joint DECC/Ofgem consultation on Smart Metering and we have responded, in detail, to this consultation.

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| 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> |
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It is clear that the existing GB customer transfer process already allows customers to move to a new supplier within three weeks of the commencement of the transfer process. As such, no change is required to existing industry processes in order to comply with European legislation.

Given the current positive status of GB compliance, we question whether there is a real need to impose new licence conditions on suppliers and suggest that this goes beyond the scope of the Directive. However, if new licence conditions are insisted upon, it is critical that they support the existing processes and highlight how GB already complies with the EU legislation.

In this regard, we believe that the following must be considered -

1. Although DECC do not mention non-working days in the consultation, we expect that, in line with European legislation, all other existing GB licence conditions and the Government's Better Regulation agenda, any timed processes imposed will recognise and exclude non-working days, such as bank holidays.
2. The EU Distance Selling Directive is the legislation which places an obligation on suppliers to provide a cancellation period to customers. This cancellation

period is 7 working days. Following recent discussions with DECC, we understand that the proposal outlined in the consultation does not seek to provide customers with any additional cancellation period and DECC have confirmed that they do not intend to change existing legislation. Therefore, it is our understanding that the cancellation period, during which customers may change their mind, remains at 7 working days.

3. Once this cancellation period has expired, and providing that the customer has provided sufficient and correct information to the supplier and has no outstanding debt, the customer will transfer to the new supplier within three weeks. In around 90% of customer transfers, the transfer happens without any additional customer intervention. However, in around 10% of transfers, the customer is required to either provide additional or clarify existing information, or resolve the outstanding debt, before the transfer can commence. In these cases, the supplier will attempt to contact the customer by phone, in the first instance, and then by mail. As resolution of the transfer issue is usually dependent on customer contact, it is not possible for suppliers to specify exactly how long this process will take. However, it is clear that once the issue has been resolved, the customer will transfer to the new supplier within three weeks.

In their consultation paper, DECC have accepted that, due to the need for customer intervention, in the case of outstanding debt the three week timescale should start once the debt has been resolved. It is essential that DECC recognises both the other issues which can occur prior to the start of the customer transfer process and the fact that they require the same level of customer engagement as the outstanding debt issue. Therefore, we believe that it would be pragmatic for the licence condition to recognise that the three week "clock" starts once it has been confirmed that the customer has provided sufficient and correct information (i.e. there are no issues to resolve) and has no outstanding debt. This would be beneficial for customers as it provides a very clear point at which the three week timescale commences and would additionally facilitate simple reporting.

There is a standard licence condition (SLC 15) in the Electricity Distribution licence which covers a very similar process relating to quotes for connection. The licensee is obliged to give a connection quote within a certain number of working days. If the licensee discovers, within the first 5 working days, that the customer has not provided sufficient or correct information in order to allow the licensee to provide the quote, the clock is stopped until that information has been received. We believe that this is a useful precedent which could be used when drafting a new supply licence condition, if this is required.

Additionally, the idea that "clean up" activity, if required, should be separate and distinct from the actual transfer process is recognised by BIS in their current consultation on Implementing the EU Electronic Framework Directive. In Item 205, BIS note that whilst there may be additional work to ensure that porting can take place, once the porting process has been initiated, it should take no longer than one

working day. As this is already the case, they deem GB to be compliant with EU legislation. It appears that the requirements of the EU Electricity and Gas Directive are no different in this regard and it would seem prudent to ensure consistency throughout the implementation of European Directives.

3 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.

We consider that this requirement is proportionate and should pose no difficulty for these suppliers.

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?

We consider that the proposal for which unbundling models should be made available in the GB market is appropriate. It recognises that the current structure is effective in ensuring that generation and supply interests remain independent from transmission interests and allows the existing arrangements to continue.

5 Do you have any views or concerns with how we intend to apply these new Third Package requirements on TSOs and DSOs?

We support DECC's application of the Third Package requirements on TSOs and DSOs. We believe that the existing GB structure provides robust and effective separation of generation and supply activity from transmission activity through the suite of licences, codes and legislation. We also note that DECC intend to apply unbundling requirements on offshore transmission unless the transmission company has secured a derogation.

Chapter 3 – Gas Infrastructure

6	<p>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 possible.</p>
	<p>Given that both storage and LNG activity in the UK is currently governed under existing legislation rather than licence, it would seem pragmatic to continue this approach and simply add the few additional requirements into legislation. This would meet the requirements of the Third Package without introducing additional regulatory burden and complexity into the market.</p> <p>We consider that moving to a licensing regime for this merchant activity goes beyond what is required by the Third Package and would have a detrimental effect on investment in this sector. The implementation of a licence for non-licensed activity would significantly increase regulatory uncertainty and send the wrong signals to potential investors. As many current, early-stage storage projects are marginal at best, any increased risk to investment should certainly be avoided. As such, we urge DECC to avoid licensing this activity and continue governance through primary legislation.</p>
<p>Chapter 4 – Role of the National Regulatory Authority</p>	
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>

It is clear that DECC's proposals to remove the collective licence modification process and replace it with an ex-post appeals process goes far beyond the scope of implementation and proposes a fundamental change to the nature of the regulator's relationship with government and industry. This is not a requirement for compliance with the Third Package.

The existing collective licence modification process does not prevent Ofgem from implementing binding decisions. Instead, it encourages Ofgem to fully engage with industry and allows for the possibility of independent scrutiny prior to a decision being implemented. This is particularly important in circumstances where industry does not, in principle, object to the Regulator's decision but believes that the way in which the licence condition has been drafted does not match the intention of the Regulator and may introduce some unintended consequences. Within the current process, there is scope for industry to request that Ofgem review the drafting of the licence condition prior to publication. However, if DECC's proposals are implemented, this simple situation of a redraft could turn into a full-blown, ex-post Competition Commission appeal. This approach seems neither cost-effective nor proportionate.

Although the proposals give all parties the right of appeal, in reality, the cost of mounting an appeal, which can be in the region of £0.5m - £1m, may be prohibitive to all but the largest market participants. Additionally, any costs which industry must bear are ultimately factored in to consumer prices. Increasing consumer costs on the back of an unnecessary proposal appears contrary to what the EU Directive is trying to achieve.

We note that an additional consultation has been commenced on this particular matter and we will submit a more detailed response to that consultation in due course.

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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We support DECC's proposals on regional co-operation. It is important that, in light of the growing importance of regional energy markets, the provisions of the Third Energy Package are implemented consistently across UK and Ireland in order to prevent any regulatory barriers to trade.

Impact Assessment Questions

These are partial Impact Assessments containing our initial qualitative assessment of the costs and benefits. We therefore would welcome any quantitative evidence to support the further development of these impact assessments. Any information provided will be treated with sensitivity and anonymity.

Consumer Switching

9	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with this measure?
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Given that the GB arrangements are already compliant with the requirements of the Third Package with regard to consumer switching, we do not believe that the proposed changes are required. If changes to the existing process are imposed upon suppliers and other parties involved in the switching process, the costs to consumers will undoubtedly increase. Whilst DECC note that there may be additional costs due to changing supplier systems, they do not recognise the significance of these changes. It is not just supplier systems which would need to be changed but also wider industry systems and processes. This requires coordination and is unlikely to be delivered before March 2011.

Given the accelerated time scale for implementation of smart metering and the significant industry change which that requires, to suggest interim change at this point appears inconsistent with the Government's ambition to implement smart metering. It seems neither cost-effective nor prudent to start on the road to smart metering and then divert off to make unnecessary and short term changes to a process which is already compliant with the Third Package. Smart metering will bring very significant benefits to consumers and we do not believe it is sensible to jeopardise the progress of smart meter implementation by imposing any industry change at this time.

10	The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: supplier systems changes, monitoring costs, administrative burdens, the number of extra erroneous switches which may occur as a result of our proposals, the cost of manually stopping the switch and any information regarding the number of customers that currently fall outside the 3 week switching period defined (excluding the cooling-off period).
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Consumer Information

11	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?
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It is clear that customers already have access to all relevant consumption information and can pass this data on to other parties as they see fit. It does not seem cost-effective to create a new process where suppliers are obliged to pass this information between themselves at the request of the customer and we believe that this introduces data protection issues which DECC have not considered.

12	<p>The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: whether the record keeping requirement imposes additional costs (system costs and administrative costs) on industry; an estimate of the scale of these costs; and any evidence regarding the costs associated with passing on consumption and metering data to another supplier.</p>
13	<p>What would be the additional costs to the industry for providing the additional information to consumers in terms of complaints handling/dispute settlement arrangements available by the supplier?</p>

National Regulatory Authority

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| 14 | Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures? |
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With regard to the proposed removal of the collective licence modification process, DECC appear to have entirely overlooked the costs associated with mounting an ex-post appeal against a regulatory decision. As this option limits the opportunity for industry to engage with the Regulator prior to implementation of a decision, it is likely that there will be an increase in appeals. If suppliers are required to mount ex-post appeals, they will require more resource which increases their internal costs. Additionally, the cost of an appeal can be very significant and previous appeals have been in the region of £0.5m - £1m. This will certainly increase costs to consumers. It is also unlikely that smaller market participants could afford to bear costs of this magnitude and we believe that this effectively prevents these players from having a realistic right of appeal.

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| 15 | We would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding; the monitoring, enforcement and administrative costs involved and any evidence regarding the indirect costs on industry of these measures. |
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Transmission and Distribution

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| 16 | Are the Impact Assessment assumptions on the costs to TSOs of complying with the new TSO certification process realistic (both for those seeking derogations and those not doing so)? |
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We believe that DECC has accurately captured the costs of this process.

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| 17 | The Impact Assessment assumes that ensuring the independence of the compliance officer for DSOs requires little additional action on the part of the affected DSOs. Your views including evidence of costs would be appreciated. |
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Gas and LNG Operators

18	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?
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19	What specific changes to current practice will be required to comply with articles 15 (unbundling) and 16 (confidentiality) of the Directive? What are the likely costs of making these changes?
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20	<p>Articles 15, 17 and 19 of the Gas Regulation specify that certain operational information must be made publicly available by 'technically and economically necessary' LNG and storage sites. What are the likely costs involved in making this information publicly available?</p>
21	<p>Article 22 of the Regulation outlines the requirement for contracts and procedures to be harmonised at 'technically and economically necessary' LNG and storage sites. What changes to current practices will, in your view, be required to achieve this and what are the likely costs of making these changes?</p>

22	<p>We would welcome evidence on the costs and benefits of introducing a licensing regime for LNG and storage as opposed to introducing the measures through changes to legislation.</p>