DEPARTMENT OF ENERGY & CLIMATE CHANGE

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.**

Summary

We believe that retail competition in Great Britain is more established than anywhere else in Europe. Millions of customers switch every year via tried and tested processes and so any changes to these processes will have a bigger impact on Great Britain than any other market.

The purpose of the EU Directive is to propagate supply competition within the wider EU where deficiencies currently exist. Therefore we believe that it is somewhat perverse that Great Britain stands to suffer most from these process changes given that we already have millions of successful customer transfers per year, whereas other EU member states have hardly any in comparison. It is therefore essential that the provision of any new obligations upon suppliers, are both relevant and proportionate considering GB's current positive position in relation to retail competition.

As part of the Smart Metering Implementation Programme we are actively pushing the regulator for a radical overhaul of industry processes. This will ultimately deliver a combination of industry reform and new metering technologies which will enable much faster and efficient customer switching processes.

The introduction of tactical initiatives at this stage will unfortunately place a strain on already defective industry processes. That said, we understand that the third package must be implemented, but believe that much care is needed to avoid delivering poor outcomes for customers and increasing the UK non-compliance risk.

Whilst broadly, we may be able to deliver a three week switch there are exceptions to this and we require clarity and guidance from the government as to how these exceptions are dealt with before we can address them and understand the degree of change we will be required to implement.

At best the provision of guidance and clarification by the government will mean that further industry changes are not required. If this is the case and we receive a decision and final proposals on new supplier obligations, in accordance with the government's expected timetable, then this will provide suppliers with only two months to

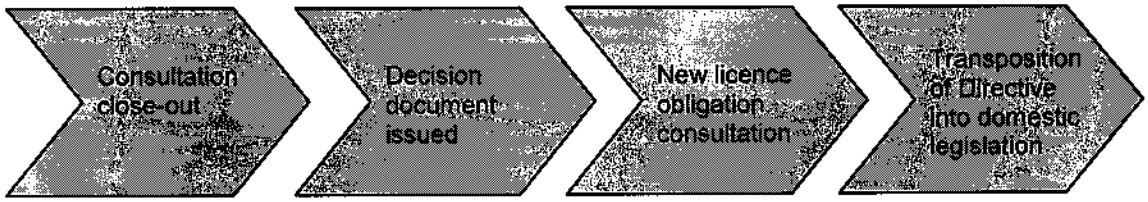
fully impact assess the internal changes required and to develop and implement compliant solutions.

It is clearly evident that this does not provide suppliers with sufficient time to develop and implement any changes that will be required. As a number of the changes have the potential to be significa[redacted]nding upon the policy decisions taken, a two month lead time for implementation will be wholly inappropriate and not achievable.

Based upon the limited information we currently have on what the final decisions may be and how these may manifest themselves into supplier obligations, we estimate that the extent of changes required to our internal processes and systems alone will take a minimum of approximately 9 months to complete (from the date where we have absolute clarity on our obligations).

Should however, the guidance and clarification provided require additional changes to be made to industry rules and arrangements, this will mean a requirement for formal industry changes to be raised which the industry will be unable to formally progress until January 2011 at the earliest. The industry change process for the subsequent development, agreement, approval and implementation of the resulting changes, to both industry and supplier systems, will mean that suppliers will not be able to comply until early 2012 at the earliest.

During the consultation period, suppliers have been advised by the government that it does not expect to provide a response to this consultation until either December 2010 or January 2011. Based upon this, we have outlined below a high level timetable of events:



We recommend that a phased approach to implementation will need to be undertaken. This could be achieved by individual suppliers providing Ofgem with an overview of the changes they will need to make and the timeframes for delivering them, with the provision of regular updates on progress. This would include the associated impacts of delivering any industry changes that may be required. This information could subsequently be utilised by Ofgem to inform their early approach to monitoring compliance and enforcement in these new areas.

We note that similar licence implementation issues were experienced earlier this year regarding the implementation of the feed-in tariff (FIT) scheme. At this time we recognised the valuable support that Ofgem provided to help suppliers introduce changes to deliver the new arrangements and the support they provided in the first few critical months of the scheme's operation. Due to our concerns on the implementation timetable for three week switching, we will again be looking for Ofgem to work constructively with suppliers in the coming months to address any implementation issues that will undoubtedly emerge.

Therefore, the implementation and enforcement of new supplier obligations is a critical area which we believe that both the government and Ofgem should acknowledge and address urgently.

Within our response, we recommend that any new licence conditions, particularly for three week switching and final account provision, are drafted on a 'reasonableness' basis. This approach would further provide comfort

to suppliers around implementation and compliance.

Please see below our detailed response to the various Consumer Protection proposals detailed within Chapter 1.

Switching Energy Suppliers

Please refer to our response to Question 2 below.

Enforcement of right by individual customers

Further to our more detailed comments relating to the switching of energy suppliers in question 2.

We are extremely concerned with the governments' proposal to include within consumer contracts the right for a consumer, in addition to existing enforcement mechanisms, to be able to take legal action for breach of contract if they are not switched within three weeks. We strongly believe that this proposal is neither appropriate nor proportionate.

All consumers have an existing right under common law to claim for any losses they have incurred because of a breach of contract by a supplier or in tort for a breach of statutory duty (i.e. licence condition) by a supplier. We do not believe that the introduction of a specific right for the customer to take legal action for failure to switch within three weeks needs to be formalised in a contract, when the same right is not formalised for other breaches of contract.

Furthermore, the likelihood of a consumer (particularly domestic consumers) incurring substantial losses as a result of a failure to transfer within three weeks is likely to be low. In fact in many cases a consumer will have incurred no loss at all, for example, where tariff change has not been the driver for changing supplier. We have a concern that customers may be misled into believing that, just because a contractual right to take legal action exists, that they will automatically be entitled to damages, even if they have suffered no loss.

There is also a risk that an already busy court system could be overwhelmed by a flood of very low value claims as customers seek to enforce this right. The costs to the courts and suppliers of trying to defend these claims are likely, in most cases, to be disproportionate to the value of the claims. Whilst of course legal action should always be available to a customer, and we do not seek to preclude a customer from ultimately exercising their legal rights through the courts, we believe more appropriate channels already exist for a customer to seek redress, which we detail below.

The proposals do not encourage customers to seek specific recourse from the established routes as detailed under The Consumers, Estate Agents and Redress Act, which we believe is a more than adequate mechanism for customers to seek any redress on the time it has taken to complete their transfer.

Rather than expressly requiring suppliers to give customers a right in the contract to take legal action a better and more appropriate solution may be for customers to utilise the CEAR Act to seek redress.

In summary, we believe that there is already a 'fit for purpose' model providing customers with everything from independent advice (Consumer Direct) to redress and compensation (CEAR Act and common law). We strongly believe that in light of other remedies being introduced by the Ofgem 'Probe' to refine this model further, the proposal would disincentivise customers to openly discuss matters with their supplier and bypass the existing mechanisms.

Within our response, we recommend that there should be a 'reasonableness' qualification to any three week transfer licence obligation. Should this ultimately be the case, suppliers would not subsequently be able to commit to a customer being able to take legal action if the three week deadline was not met, notwithstanding

their rights under common law as aforementioned.

Availability of Consumption Data

The consultation document states that *'we propose to introduce a new Licence Condition to give customers a right to contact their supplier to request them to pass on their consumption and metering data to another supplier, free of charge.'*

We do not believe that placing a specific obligation upon suppliers to pass this data between themselves is the most efficient or appropriate way of achieving compliance, nor do we believe it is necessary.

Customers already have a right to access consumption records from their supplier, which we believe is perfectly adequate. We do not see the need to set up an industry process for what is likely to be only a few requests per year. For example, BG currently gets only 100 requests per year from customer for a copy of their records or consumption records. This is against a customer base of 12m. We would propose continuing with this approach of access via the supplier until the volume of requests increases to a level which justifies the costs of a new industry process.

All customers are routinely provided with their consumption and metering data via their regular gas and electricity bills and via annual statements. This is acknowledged within paragraph 1.28 of the consultation which states, *'we consider that the details of tariff and consumption that are on the bill give sufficient information to a new supplier to be able to provide a quote to a customer on available tariffs.'*

We agree that customers should be free to pass their consumption and metering data onto other energy suppliers should they so wish – indeed, this is a right they already have - however the consultation further acknowledges that *'...consumers may not always retain this information to be able to provide it to a new supplier...'.*

The most efficient and timely way for suppliers to deliver compliance with this requirement is via the simple provision of replacement information to their customers in the form of replacement bills or annual statements upon request, or, if the customer wants more detailed information, via the request process described above for a copy of their account or consumption records. This will provide the customer with all of the information they require and will enable them to decide how and when they share that data with others.

Any requirement for a supplier to pass this data onto another supplier, on behalf of the customer, would require the introduction of complex arrangements and mechanisms. The transfer of customer data from one supplier to another supplier (or suppliers) on behalf of a customer is fraught with complexity and risk and, in our opinion, is not an efficient or appropriate option.

Suppliers would be required to introduce specific processes to ensure the capture of the customer request and more importantly the capture of their permission to pass their data onto another party or parties. Any processes or mechanisms would need to be developed, operated and monitored in strict accordance with the Data Protection Act, including processes to verify the identify of the requester. This would seem to be both complex and unnecessary. There would also be questions about what further use the other supplier could make, if any, of the data it received. Any further uses would, again, need to comply with the Data Protection obligations.

Suppliers would need to be explicitly advised by the customer what data should be sent and to whom, this could be to one supplier or multiple suppliers and it would be vital to ensure that mechanisms were in place to ensure that data was not issued to any party not authorised by the customer.

New systems and governance arrangements would need to be developed and implemented to accommodate new the introduction of new data flows, which would need to be sent via a secure data transfer network, along

with a myriad of other acceptance and rejection flows. The usage of a secure data transfer network would also need to be secured, along with associated commercial terms and governance arrangements that would also need to be developed, agreed and implemented.

Apart from the general complexity of this solution, the solution would take time to develop and implement (at least 12 months and possibly longer), would be costly to implement and would potentially be developed without a supporting business case i.e. suppliers have no view how many customers would utilise this service - in our opinion probably very few. Development and implementation costs should not be underestimated and we believe that these would be significant.

Further, we believe that the idea of a supplier developing an industry mechanism for sharing customer data is misguided as it assumes that customers will only want to pass consumption history to another energy supplier. In future it is likely that a customer may wish to pass their data to a third party, for example, an ESCO. It would therefore be much better to ensure that the customer receives data as per our proposal, allowing them to decide if and how to share this data with other parties.

In summary, we propose that a more efficient, timely and appropriate solution would be to ensure that where a customer has not retained their consumption and metering data and requests a copy of this information from their supplier, the supplier will provide a copy of any missing energy bill or annual statement free of charge, or the customer can access a copy of their raw consumption records. This process is already in place, therefore we can be deemed to already be compliant, without the need for more complex and costly arrangements.

In addition, the consultation document proposes to introduce a new obligation on suppliers to *'...require that where a customer provides a meter reading to the supplier, and provided that the supplier is satisfied that this data is reasonable, the supplier should either send an updated bill to that customer or reflect this reading in the customer's next bill..'*, it further states that *'...this updated consumption data should also be reflected in the customer's annual statement.'*

The Billing Code currently places an obligation upon suppliers that states *'where a valid read has been obtained this will be used to improve the accuracy of bills/statements'*. In practice, where appropriate we will endeavour to issue the customer with a revised bill, however where this is not appropriate the read will be reflected in the next customers bill and subsequently their annual statement.

The Billing Code is an example of successful self regulation and we do not believe that any additional or more onerous obligations upon suppliers are required.

In summary, we believe that the existing supplier obligations that are in place within the Billing Code, along with the processes associated with the validation and treatment of customer provided meter readings we undertake in accordance with these obligations, mean that we are already compliant with the requirements of the Directive.

We welcome the confirmation provided by DECC that this proposed new Licence Condition will not be applicable to non-domestic customers.

Consumer rights regarding dispute settlement

Paragraph 1.39 of the consultation advises of the requirement for suppliers, for electricity customers, to *'ensure that information about dispute settlement available are set out for consumers promotional materials and in or with bills.'* The government proposes under paragraph 1.41 to *'require energy suppliers to inform consumers in promotional materials and in or with bills that they can complain using the suppliers' complaint procedures and how they can obtain a copy.'*

We already explain in detail on the back of all of our bills the steps that a customer can take to make a

complaint relating to their energy account. However, we do not stipulate how a customer can obtain a copy of our complaint procedure. With regards to this latter point, we do not believe that Article 3(9)(c) makes specific reference to a supplier having to advise how customers *'can obtain a copy'*, instead the Article simply states *' information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute.'*

Therefore we believe that is it not necessary for this particular obligation to be given to suppliers to ensure compliance with the Directive and that the information currently provided to customers more than adequately provides customers with the information they require and outlines the process steps.

We note that there is no specific definition of 'promotional materials' within the Directive, however the consultation does state that *'in respect of promotional materials, we would expect suppliers to use the same methods currently required to comply with Condition 31.1 in the Supply Licence.'* However, Condition 31 relates only to Domestic customers and does not have a definition of promotional materials, although there is such a definition with Condition 21 of the Electricity Supply Licence.

We do not believe that the inclusion of information relating to a suppliers complaints procedure sits appropriately within promotional materials and have concerns over the provision of information overload to customers, particularly when there are already numerous mechanisms and communications that already provides information to customers relating to our complaint procedures.

It should be noted that the associated incremental costs that these requirements would create should not be underestimated and would result in costs running into £millions per annum, which would ultimately be passed onto customers.

We would appreciate the government providing clarity on the points raised above and on how a supplier obligation will be developed in this area. Changes to existing customer communications may ultimately be required, but until we have absolute clarity on what our obligations will be in this area, we are not in a position to progress any changes.

Energy Consumer Checklist

Within paragraph 1.48 of the consultation, the government proposes to *'give Consumer Focus the role of compiling and maintaining the Energy Consumer checklist in co-operation with the industry and Ofgem.'*

We agree with the governments' proposal to give this role to Consumer Focus.

Further, the government proposes to *'introduce a new obligation on suppliers to provide their customers with a copy of the Energy Consumer checklist and make it publicly available.'*

With regards to this proposal, we believe that the most appropriate way for suppliers to make the checklist publicly available to consumers would be by signposting the customer to the Consumer Focus website, where the Energy Checklist would be centrally held and be easily accessible to all customers.

Given the large volumes of information that suppliers have to provide to customers already, we do not believe that it is necessary or appropriate for a copy of the checklist to be provided to all customers. The costs associated with the provision of a hard copy of the checklist to all customers should not be underestimated and would result in costs running into £millions per annum, which would ultimately be passed onto customers.

As a supplier we would be happy to signpost the customer to the Consumer Focus website and if required be happy to provide a hard or electronic copy, free or charge, to any customer upon request. Any new obligation introduced, perhaps with SLC 31, should be clear to this effect.

We welcome the confirmation provided by DECC that this proposal will not be applicable to non-domestic customers.

Information to be included in contracts with customers

Paragraph 1(a) of Annex 1 of the Directive details various obligations regarding information that must be included by gas and electricity providers in contracts with customers.

Within Paragraph 1.56 of the consultation document, the government proposes that *'we intend to amend the Principal Terms set out in Condition 1 of the Supply Licence (which specify contractual information suppliers are obliged to provide to customers), to ensure these matters are always explicitly addressed on the face of the contract'.*

We agree that to achieve compliance with the EU Directive it may be appropriate to include within the Supply Licence an obligation on suppliers to ensure that customers, in the words of the Directive, *'have a right to a contract with their service provider that specifies'* the elements detailed with Annex 1 Paragraph 1(a). However, we do not believe that it is either appropriate or necessary that these should be included within the licence as Principal Terms, but should instead be included as more generic terms that should always be included within a contract.

The Principal Terms, as defined under Condition 1 of the Supply Licence, currently consist of five specific terms which are deemed to be the key terms of contract that should always be communicated with the customer at the point of sale. Subsequently any amendments to the Principal Terms will have a significant impact upon suppliers as we would have to amend all of our sales procedures and literature. Further, they would be a significant change to our telephone sales processes which would greatly increase the length of the call with the customer. It should be noted that the costs of any changes of this nature will be significant.

As the consultation document acknowledges *'our existing arrangements reflect the requirements of this article with the exception of the new requirement regarding consumer rights information'*. We believe that the majority of this information is already included within contracts and that the requirements detailed within Annex 1, are not of significant importance to be deemed as requiring definition as a Principal Term.

In summary we believe that there is no requirement to makes changes to the Principal Terms within SLC 1 of the Supply Licence, instead changes could be made to SLC 7 to include these items as more generic obligations to place within contract.

Final closure account

Within paragraph 1.65 of the consultation, the government proposes to introduce a new licence condition to require suppliers to *'send their customer a final bill within six weeks of the date the customer has transferred to a new supplier.'*

The consultation acknowledges that the Billing Code currently requires suppliers to provide a final bill within 30 working days, or where this is not possible, to provide the customer with an explanation. Supplier performance against this obligation is independently audited on an annual basis.

Where we are unable to produce a valid final account within 30 working days, we will write to the customer advising them that we are aware that we need to provide a final account but are still in the process of providing it.

The competitive energy supply market provides incentives on energy suppliers to ensure that their customers have a positive experience, including the timely receipt of an accurate final account. Further, it is in the

supplier's interest to issue a final account in a timely manner in order to recoup any outstanding charges due.

However, due to the nature and complexity of industry change of supplier processes and the inability at times to obtain accurate meter reads at the time of transfer, it is not always possible for the old supplier to issue an accurate final account within 30 working days. It is important that this is appropriately recognised within any new obligations placed upon suppliers.

Industry processes and governance arrangements clearly place the obligation on obtaining an opening/closing meter read upon the incoming supplier, therefore the outgoing supplier has a reliance on the actions of the incoming supplier

It is neither in the interest of the customer or the supplier to issue a final account based upon an estimated or inaccurate meter reading, simply to achieve the production of a final account within a prescribed period of time. This only leads to inaccurate billing which results in customer dissatisfaction and complaints. Therefore, whilst working within the spirit of the Billing Code obligations, importance is also placed upon the accuracy of the final account.

The Billing Code is an example of successful self regulation and we do not believe that any additional or more onerous obligations upon suppliers are required.

Therefore, we believe that it is not appropriate or consistent to place a new licence condition, which directly relates to the provision of the opening/closing read to facilitate a final account, upon the outgoing supplier and that the existing self regulation arrangements are more than adequate to ensure compliance with the Directive and therefore should remain in place.

Indeed we would argue that the existing Billing Code obligations provide consumers with better protection i.e. a final account should be issued within 30 wording days, rather than the six weeks (42 calendar days) proposed under the Directive.

However, should the government ultimately decide that there is a necessity to introduce a supply licence condition upon suppliers, any condition should be drafted in such a way as to place a reasonable steps obligation (terminology which is consistent with other elements of the gas and electricity supply licence) upon suppliers. This will acknowledge genuine situations where a supplier is unable to issue a final account within the prescribed timeframe.

We welcome the confirmation provided by DECC that this proposal will not be applicable to non-domestic customers.

2	**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?**

1. Domestic Customers

Further to recent discussions between suppliers and DECC we welcome the clarity that has been provided relating to the proposed introduction of a uniform cooling off period.

Following these discussions, we are now clear that the inclusion of the 14 calendar day period (from the date the contract was entered into) will be a standard period which can be applied to all domestic customer

transfers to enable the appropriate statutory cool-off periods to apply (where required under regulation), and to introduce a standard point from which the three week switch 'clock' can commence.

Therefore, rather than introducing a *'uniform cooling-off period'* as stated within the consultation document, DECC propose to introduce a 'uniform period of 14 calendar days which will enable cool-off activities to take place, as applicable under existing legislation'.

Under this interpretation we welcome DECC's clarification that there will be no change to the current cool-off regulations i.e. as a supplier we would continue to comply with the existing cool-off obligations - which includes no mandatory cool-off requirements for business customers.

As the ERA suppliers have recently discussed with DECC, it should be noted that in addition to customers that choose to cancel there contract during the cooling-off period, there are other reasons why the progression of the customer transfer into the industry registration process, at the end of the 14 calendar day period, will not always be possible in 100% of cases.

There are a number of reasons and circumstances for this. For example, there are occasions where data, either held by suppliers and/or provided by customers, is not sufficient to enable a supply point confirmation request (the initial registration data flow) to be validly submitted. In these circumstances a supplier will work to ensure that all actions required to submit a valid confirmation request are undertaken in a timely manner. However, it should be acknowledged that not all transfers will enter the industry confirmation process, for example, where a customer chooses not to respond to a request for information or it has been ascertained that the supply point has been duplicated.

Further, there are other activities that suppliers need to undertake prior to starting the industry transfer process, for example, credit vetting activities. This is particularly important to consider as the outcome of the vetting process may impact the original terms of the contract offered to the customer and may indeed affect the customer's decision to transfer to us.

Our data shows that the occurrence of circumstances, that may genuinely prevent the industry transfer process from commencing at the end of the 14 calendar day window (excluding customers that legitimately cancel their contract during the cool-off period), will typically account for the percentage of all customer transfers as detailed within Table 1 of Appendix 1. Under the government's current proposals these customers will not switch within three weeks.

The end to end change of supplier process is complex and due to this complexity there will be customers who, for a variety of valid reasons, will not achieve a transfer within three weeks. It is therefore essential that any new licence obligation should be drafted in such a way as to place a reasonable steps obligation upon suppliers (terminology which is consistent with other elements of the gas and electricity supply licence). This will acknowledge the fact that there will be valid situations where a supplier is unable to transfer a customer within three weeks.

We have outlined below in more detail, our view of the issues which need to be considered when developing new supplier obligations in this area.

Appendix 1 provides details of our current annual customer transfer volumes for both domestic and non-domestic customers and of other specific values which are referred to within our response.
Please note that Appendix 1 is Confidential.

Please note that our response to three week switching has been drafted on the premise that the cooling-off regulations are as they are defined and applicable to suppliers today. It does not take into consideration any potential future changes which may be imposed from any work being undertaken by the EU on Consumer Rights. Any future changes to the existing cooling-off regulations, may have the potential to require a review of the arrangements ultimately implemented to obligate three week switching.

Customer registration process & commencement of the 3 week switch 'clock'

Working Days & Bank Holidays

It is our interpretation of DECC's proposals, that following the conclusion of the '14 calendar day period', the customer transfer should be completed within three weeks (21 calendar days). The gas industry processes which govern and deliver the mechanisms to enable the change of supplier process operate in 'working days'.

Three weeks can easily be translated into and defined as 15 working days. However the issue and impact of Bank Holidays needs to be considered. Without consideration due to existing industry arrangements, all gas customer transfers that span a bank holiday period will automatically fail to be switched within three weeks (if defined as 21 calendar days). The percentage of all customer transfers that occur over a bank holiday period is detailed within Table 2 of Appendix 1. Therefore, under the government's current proposals, these customers would not be able to be switched within three weeks.

Based upon the volume of domestic transfers we undertake annually, we estimate that the volume of customers not subsequently being transferred within three weeks for this particular reason is as defined in Table 2 of Appendix 1.

We propose that a simple way of addressing this issue would be to use appropriate wording within any supplier licence obligation, which stipulated any requirement to be undertaken in working days.

There are already numerous obligations included within both gas and electricity supply licences, which require suppliers to undertake activities within a prescribed amount of working days. The term 'working day' is currently defined within the licence as:

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(b)"

This definition is also utilised in other pieces of legislation associated with the gas and electricity industry, for example within Statutory Instrument 2005 No. 1135 'The Gas (Standards of Performance) Regulations 2005', which deals with the Bank Holiday issue by using the same wording as a defined term.

The introduction of working days into any licence obligations would be beneficial as it would:

- provide consistency with industry governance and processes
- provide consistency with other obligations within licence
- it would address the issue of customer transfers spanning Bank Holiday periods not being able to be achieve a three week switch
- it would negate the requirement to make any changes to industry governance or systems for domestic customers (detailed later in this response)

Rejections

Regardless of when the *'uniform cooling-off period'* concludes, it is important to recognise that a customer transfer cannot commence its route through the industry customer transfer process until a valid confirmation has been successfully registered and accepted onto the registration service provider's system.

Each confirmation request raised by a supplier has to stipulate the proposed date of transfer or the 'Supply Start Date (SSD)'. Currently, the gas industry arrangements only permit a supplier to enter an earliest SSD of 15 working days. All confirmation requests are either accepted or rejected by the registration service provider within two days. Where a confirmation request is rejected by the registration service provider, the supplier needs time to be able to correct the reason for the rejection and to, where appropriate, re-submit the

confirmation request. All re-submitted confirmation requests will again need to state an SSD which, as earlier described, can be no earlier than 15 working days from the date of the confirmation request.

The time it takes for a supplier to resolve the rejection can vary and will be dependant upon the rejection reason. For example rejections could be due to incorrect data being submitted, which may require further engagement with the customer, or because another supplier is currently in the process of transferring the same customer.

Therefore, based upon the government's current proposals, all rejected gas confirmation requests will fail to deliver a three week switch. The average industry rejection rate is currently 1.5% for electricity and 4.4% for gas. Based upon the volume of domestic transfers we undertake annually, the volume of customers that would not be transferred within three weeks for this particular reason, would equate to the volume detailed within Table 3 of Appendix 1.

We propose that this important issue could be simply addressed by starting the three week switch 'clock' only once a valid confirmation request has been successfully accepted onto the registration service providers system and has not been rejected.

Objections

During the transfer process, the old supplier is able to object on grounds that the customer has an outstanding debt. Paragraph 1.19 of the consultation states *'where a customer has an outstanding debt, we consider that the starting point of the customer's right to switch within three weeks starts when the debt has been resolved.'*

When an objection for debt occurs, the new supplier is seldom aware of if and when the customer has resolved the debt, further there are issues associated with the definition of when the debt was actually resolved i.e. is it when the payment was made by the customer or when the payment was cleared and allocated to the customer's account. In any event there are no notification processes in place which provide the new supplier with visibility that a debt has been resolved.

Therefore, we do not believe that it is appropriate or practicable for suppliers to have an obligation placed upon them which states that a customer has to be transferred within three weeks of a debt being resolved. This is specifically relevant on the occasions where a customer does not resolve their debt, ultimately preventing the change of supplier event from ever taking place.

In practice, British Gas currently operates a process where, following an objection for debt, we will normally make three further attempts to register the customer. Once these attempts have been exhausted i.e. the confirmation request has been objected for debt on three consecutive occasions, we will make further contact with the customer and cancel the registration process. The percentage of customer transfers that this issue is applicable to is detailed within Table 4 of Appendix 1.

Based upon the volume of domestic transfers we undertake, under the governments' current proposals, the volume of customers per annum that would not ultimately be transferred is detailed within Table 4 of Appendix 1.

In summary, based upon the government's current proposals, the percentage and volumes of customer transfers that will not switch within three weeks are detailed within Table 5 of Appendix 1.

2. Non-Domestic Customers

We welcome the clarity provided by DECC, confirming that their proposals will not be changing the existing cool-off regulations i.e. as a supplier we would continue to comply with the existing cool-off obligations - which includes no mandatory cool-off requirements for business customers.

However, as discussed at a recent meeting between DECC, Ofgem and non-domestic suppliers we have concerns that the government has not taken into consideration suppliers that choose to offer its non-domestic customers a cool-off period.

At this meeting DECC advised that as there are no mandatory obligations upon suppliers to offer any cool-off period to non-domestic customers, that the 14 calendar day window will not be applicable to the non-domestic sector and that the three week switch 'clock' will instead commence from the date the contract has been entered into.

It is currently our practice, and has been for some time, to offer a cooling-off period to contracts which are agreed over the telephone with non-domestic customers, similar to our domestic arrangements. The percentage of our annual non-domestic transfers and the volume of customer transfers that this impacts are detailed within Table 6 of Appendix 1.

We see this practice as very much a positive and customer enhancing measure which provides the customer with an additional level of protection, which we believe enhances the customer experience.

We believe that it is important to allow our customers time to be able to review and understand our Terms & Conditions before making a final commitment to switching their supply to us.

Further, there are other essential activities that suppliers need to undertake prior to commencing the industry transfer process, for example, credit vetting activities. This is particularly important to consider as the outcome of the credit vetting process can materially impact the original terms of the contract offered, indeed the contract offer may be withdrawn, or the customer and may decide not to accept the revised conditions. Therefore until the credit vetting process has been successfully completed, it is not prudent or efficient for the supplier to commence the industry transfer process.

Under the current government proposals for non-domestic customers, in order for suppliers to comply with a three week switch, a supplier would <u>not</u> be able to continue to offer a cooling-off period to any non-domestic customers, as the principle has already been accepted that cool-off and industry transfer activities should not be run concurrently.

Although existing cool-off regulations do not place any mandatory requirements upon suppliers to offer a cool-off period to non-domestic customers, we do not believe that it is fair or appropriate for this segment of customers to be penalised. It would appear that the government's proposed implementation solution for non-domestic customers does not, overall, provide a more beneficial solution for customers who want to switch supplier and that the level of protection our customers currently receive will be reduced.

Further and more importantly, for gas non-domestic customer transfers, the current government proposal as defined will definitely necessitate industry changes to be made to enable all industry participants to be compliant. This is due to two specific elements:

1. That for all larger supply point (sites with an annual consumption greater than 73,200kWh) an additional industry process step is required (namely the nomination process). This additional step is not required for smaller supply points (sites with an annual consumption less that 73,200kWh – which are predominantly domestic sites). The nomination process adds an additional 3 days to the normal domestic transfer process.

2. For all larger supply points, the standard confirmation process (the start of the transfer process) cannot commence until the nomination process is complete.

This will impact all gas non-domestic customer transfers, where nomination is required, with all of these non-domestic transfers subsequently being unable to achieve a three week switch. See Appendix 1 for the volume

of non-domestic transfers we undertake annually.

We believe that under the government's proposals for domestic arrangements (as long as there is an appropriate solution to bank holidays and other issues we have identified), the industry will not require any industry change. However, as the main part of the transfer process (the confirmation process) is consistent across both the domestic and non-domestic sectors, any changes will need to be made across the board (to both domestic and non-domestic) with all suppliers picking up costs associated with these changes regardless of whether they have a non-domestic portfolio or not. However, the benefits associated with any changes would only be attributable to non-domestic customer transfers.

Based upon our current overall acquisition volumes, non-domestic customers account for a percentage of these as detailed within Appendix 1. Therefore the industry would incur potentially substantial industry costs for a relatively small level of benefit.

Further, the lead times associated with the type of gas industry change required in order to enable Larger Supply Point non-domestic transfers to be compliant will not be short. Typically a change which requires changes to both supplier and industry IS systems will take at least 12 months from the date the formal change proposal was raised.

Although the UNC Distribution Workstream is currently considering potential change options, until there:

1. is clarity over the exact details of what any new supplier obligations will be,
2. is confirmation that an industry change is actually required,

a formal industry change proposal will not be able to be progressed.

Under the government's proposed timeline for issuing a response to this consultation, we estimate that the implementation of any change would not be delivered until the start of 2012 at the earliest.

In order to address this situation and negate the need for costly and lengthy industry change, we recommend a more simplistic implementation approach for non-domestic customers. We propose that the government takes a similar approach to implementation to that which they are proposing for domestic customers i.e. the introduction of a 14 calendar day window (prior to the commencement of the three week switch 'clock') which will be a uniform period to enable suppliers, at their discretion, to offer a cool-off window. (Please refer to our implementation proposals as detailed later in this response).

There are a number of benefits to this approach including:

1. The 14 calendar day window would enable suppliers to continue to offer a cooling-off period, where they choose to do so from a customer service perspective. However, should suppliers not wish to offer any cooling-off protection, then there is no reason why the industry transfer couldn't be started earlier within the 14 calendar day period.

2. The window will also enable suppliers to undertake essential activities such as credit vetting processes, the outcome of which may result in the change or withdrawal of a contract offer to the customer. It will also enable suppliers to ensure that they have all the relevant information required to commence the industry nomination and confirmation process.

3. Offering a solution to enable supplier compliance without the requirement for industry change, subject to the treatment of bank holidays and resolution of other issues detailed within our response.

4. Consistency in implementation approach, across both domestic and non-domestic, which will assist suppliers with the general delivery of the proposals within their existing processes.

5. There would also be a welcome consistency in the requirements for monitoring arrangements (existing proposals for non-domestic customers will require different arrangements to be introduced due to different trigger points).

6. It will ensure that all customers, regardless of whether they are domestic or non-domestic, are treated in a fair and equitable manner and that existing consumer protections are not lost.

We concur with the government's proposals that non-domestic customers with preferred contract start dates, or for transfers which are objected to on the basis of contract; are excluded from the three week switch obligation, with the transfer not taking effect until the day after the existing contract ends. Based upon current data the volume of non-domestic customers that transfer to a preferred contract start date is detailed within Table 7 of Appendix 1.

3. Our Proposal for implementation

Based upon the issues and potential remedies we have detailed above, we have articulated below a consistent proposal for both domestic and non-domestic customers, which we firmly believe will:

- satisfy the requirements of the EU Directive
- enable the vast majority of customers to be transferred within three weeks
- negate the requirement to make costly and lengthy (in terms of delivery timescales) changes to industry systems and governance arrangements (this issue is further discussed later in our response)
- provides a consistent delivery model across both the domestic and non-domestic sectors
- enable suppliers to meet an earlier implementation date
- provides suppliers with a consistent platform from which to implement compliance monitoring requirements

The British Gas Proposal:

- Provision of a reasonable steps licence condition upon suppliers to effect the transfer of a customers gas/electricity supply within 15 Working Days (utilising the definition of Working Day already included within the licence).

- From the date the contract has been entered into, a 'uniform' period of 14 calendar days will apply which will enable existing cool-off activities to take place, as applicable under existing legislation or where they choose to do so from a customer service perspective.

- No later than the day following the end of the 14 calendar day period, suppliers will endeavour to put into place a process to effect transfer of the customers gas/electricity supply within 15 working days. (This specifically means that a supplier will endeavour to submit a confirmation request to the registration service provider, with a Supply Start Date (SSD) of no later that D+15 working days – whilst acknowledging that there will be genuine circumstances when this cannot be achieved).

- The three week switch 'clock' will commence at the point where a valid confirmation has been successfully accepted onto the registration service provider's system (and has not been rejected). (This will address the gas non-domestic nomination issue).

- Where a confirmation rejection has been received, the supplier will process all rejections in a timely manner and where required will re-submit a new confirmation request to the registration service provider as soon as possible.

- Where an objection for debt has been raised by the old supplier (and has not subsequently been withdrawn) the confirmation will lapse in accordance with industry rules. A new confirmation request will be raised with a new SSD of not less than D+15 (unless there is agreement with the customer not to progress the transfer i.e. if the customer does not resolve their debt with the old supplier)

- Where a non-domestic customer has a preferred contract start date or the transfer has been objected to on grounds of contract, the transfer will not take effect until the day after the existing contract ends.

The implementation of our proposal, would ensure that the issues identified within this response relating to the following will be addressed:

- Transfers that will genuinely not enter the industry customer transfer (confirmation) process
- Transfers impacted by not using working days as a measure (bank holidays)
- Transfers impacted by confirmation rejections
- Transfers not concluded following objection for debt
- Transfers impacted by the non-domestic nominations process

Appendix 1 provides an overview of the relevant percentages and volumes associated with each of the above, with Table 8 providing an overall summary.

Changes required to industry registration service provider systems

We believe that the adoption of the British Gas proposal as detailed above, which specifically recognises the requirement of starting the three week switch 'clock' at the point of confirmation acceptance into the registration service provider's system, will negate the requirement to facilitate any changes to the existing gas and electricity industry arrangements for domestic customer transfers.

Should DECC ultimately introduce arrangements which do not address the issues we have raised within our response, there will be a requirement to progress industry changes to enable supplier compliance, particularly in gas. The following issues would then need to be taken into consideration:

- Although potential options for change can be explored now by industry governance groups, detailed change proposals can only be progressed once the government has released its decision and suppliers are fully aware of what their obligations will be.
- Based upon current information provided by DECC, decisions are not anticipated be released until the end of 2010/early 2011. Therefore any formal, detailed industry change proposals will not be able to be raised and progressed until clarity of obligations is received.
- Regardless of when a modification is raised, there is a standard timeframe for progression of the change proposal which will ultimately, at the end of the industry process, be issued to Ofgem for decision.
- Should the change proposal be approved, there will be a subsequent period for the industry to develop and agree an appropriate system solution, which would ultimately require changes to both the registration service providers and suppliers systems.
- The lead time for the implementation of any system changes will be a minimum of at least six months from the point when the industry solution has been agreed (not from the date of the Ofgem decision).
- In our opinion, based upon the above, the earliest date that any industry solution could be introduced would be early 2012.
- The costs associated with any changes to both industry and supplier systems will be significant,

although an assessment cannot currently be undertaken, we anticipate that the overall costs would run into £millions. We note that this has already been identified by the government within its initial Impact Assessment.

- Industry design solutions in gas will also be complicated as the current systems are due to be replaced. A major system replacement project is underway, namely Project Nexus, to deliver this.
- A number of other industry changes that have been considered over the past 18 months, that would require change to the existing systems, have not been progressed or considered due to a negative cost/benefit analysis i.e. the cost of the required system changes when compared to the limited life span of the current systems.
- Currently Project Nexus is not expected to be delivered until 2013/2014.
- In addition, consideration should also be given to the potential changes required to Independent Gas Transporter (IGT) governance and systems and the associated changes required by suppliers (as IGT customer transfer processes are separate to that of the rest of the gas industry). There are a significant number of customers, over 1.2m, which are currently supplied on IGT networks.

Smart Metering

It is essential that consideration should also be given to the Smart Metering Implementation Programme and the myriad of industry changes that all industry parties will be required to make to deliver the new smart metering arrangements.

As part of the Smart Metering Implementation Programme we are actively pushing the regulator for a radical overhaul of industry processes. This will ultimately deliver a combination of industry reform and new metering technologies which will enable much faster and efficient customer switching processes.

The introduction of tactical initiatives at this stage will unfortunately place a strain on already defective industry processes. That said, we understand that the third package must be implemented, but believe that much care is needed to avoid delivering poor outcomes for customers and increasing the UK non-compliance risk.

Should suppliers be required to make fundamental changes at this time and then further changes to support smart meters, in a relatively short timescale, it would be both costly and inefficient resulting in additional costs to customers.

The implications and impacts of making dual sets of changes should not be underestimated and it is therefore essential that any proposed industry changes be subject to a detailed cost/benefit analysis, which also considers the impacts of deliverables under the Smart Metering Implementation Programme.

A confidential Aanex accompanies this section

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 do not believe that this requirement should pose any difficulty for supply undertakings not registered in GB. The requirement is not to establish a business in GB, simply to ensure that notices can be served in GB.

In our view, should a supply undertaking wish to do so, it could make minimum provision in this area which might, for example, be a managed postal address. While clearly any undertaking making use of this provision will wish to be assured that such notices are promptly received by the appropriate staff, this would be within control of the undertaking contracting for the service provision.

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 agree with the Government assessment that the ITO model is not compatible with GB market arrangements. Therefore, we concur that only two derogation models should be made available to TSOs, namely, the ISO model and Article 9(9) model.

As we have previously stated, our preference for the most robust solution continues to be for full ownership unbundling. We believe this is the simplest, and cleanest model, providing the greatest clarity and confidence to all participants.

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

TSO:
Centrica believes that the full ownership unbundling is the separation model that best delivers the benefits of energy market liberalisation to customers. It establishes a clear regulatory arrangement that offers objective, transparent and non-discriminatory network access for all network users, in terms of both operations and investment decisions, given that the ownership is entirely separate from any competitive market activities. However, if arrangements are in place which are at least equivalent to the ITO model, and further these arrangements are adequately overseen/policed and reported upon, then that could also be adequate. The key is in the implementation, compliance and policing. Assuming this to be the case, we would agree that both full unbundling and the proposed derogation could be available.

The question of transmission unbundling remains open in electricity in the case of the two onshore Scottish transmission networks. It seems likely that the current regime does not offer an equivalent level of protection to that offered by the ITO model, which is the minimum separation requirement established under the third package.

In some areas, we agree that the present GB arrangements do indeed "go further" than the requirements of the ITO model, for example, as a result of the existence of an independent GBSO. However, the autonomous nature of the ITO in the Third Package (and the requirement that any other separation model be equally as robust as the ITO model) does not sit entirely comfortably with the division of the TO and SO roles in GB, incorporating as it does the SO role and some, but not all aspects of those duties carried out by the TO licensees in GB.

Secondly, the Ofgem consultation stated that "under the ITO model, the TSO is required to carry out all of the activities relating to the operation and investment in the network". This is not currently the case. For example, Scottish TOs (rather than GBSO) lead in the planning of their own network outages. While there is a facility for the co-ordination of outages between the Scottish TOs and National Grid as GBSO this is thought to be suboptimal as outlined in National Grid's consultation on Potential Enhanced Electricity Transmission Owner (TO) Incentives in October 2009, this appears to remain the case based on the further document issued by National Grid in May 2010. A major consequence of suboptimal outage planning is the potential for high constraint costs which will ultimately impact end consumer prices.

It is essential that Ofgem/DECC scrutinises the arrangements for the separation of SHETL and SPTL from their respective corporate owners to ensure that they are at least as independent as the ITO requirements dictate. Organisational structures are key in delivering individual and corporate behavioural decisions. Thus, foremost in Ofgem's investigation is the satisfaction of the arrangements governing 'independence of the staff and the

managements of the transmission system operator (article 19 of the third Electricity Directive), 'supervisory body' (article 20), and 'compliance programme and compliance officer (article 21).

While we do not oppose the principle of making an Article 9(9) derogation available were the current arrangements sufficient, based on our comments above we are not certain that the current GB arrangements would qualify on the basis of guaranteeing more effective independence of the TSO than the ITO model.

DSO:
We continue to have concerns that where a Distributed System Operator is part of a vertically integrated organisation with a supply arm, their communication and branding can and does on occasion create confusion for customers of the supply arm in that there is no clear distinction between the separate identities of the companies. We believe that customers can be left with the impression that the supplier has an unfair advantage purely as a result of this relationship and therefore the customer is better choosing that supplier over any others purely based upon that relationship.

This might not mean that full unbundling is necessary but further consideration could be given to the branding that these vertically integrated companies use for their supply arms, to ensure that no such customer confusion can arise. Attention could also be paid to the sales techniques used by the supplier arm to ensure that they are not providing customers with inappropriate messages.

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 possible.**

We do not consider that Storage and LNG are directly comparable as their current TPA/exemption status is different. In particular, a flexible regime for LNG is essential as it assumes ever greater importance as a source of supply for GB going forward.

The question of Licence or Legislation is extremely complex, there are pros and cons of both approaches in terms of clarity, certainty and flexibility, and the same approach may not be suitable for both LNG and Storage operators.

We believe that for LNG, the licence approach would likely prove more flexible and responsive to future requirements than a legislative route; it would provide the light touch approach needed in a sector which is still developing while being able to respond to the changing global dynamics and influences in the sector. This is based on designing a straightforward set of minimum obligations to be included in a standard LNG Operator (LNGO) licence. These conditions should be sufficient only to give effect to the 3rd package requirements and should not be used as a route to apply additional policies or unnecessarily onerous requirements onto a competitive market operator. Users of LNG import terminals are, by definition, producers or shippers, and while the general interests of consumers must, of course, be upheld as per the Ofgem duties, and conditions must support non discriminatory approaches etc. standard "consumer protection type" conditions would be totally inappropriate within an LNGO Licence.

We would support the inclusion of reasonable transparency and monitoring provisions for oversight, as well as mechanisms for change. The flexibility which is a potential benefit of the licence route also carries inherent risks that, over time, the initially straightforward conditions become unduly complex or onerous. Given the nature of the LNG market, and the key differences from networks, consideration should be given at an early stage as to how unnecessary "creeping" regulation can be avoided. (Networks are natural monopolies, whereas LNG/Storage operators are recognised as operating within a competitive market framework.

	It will be particularly important ensure that (perceived) risk to participants/investors is minimised, given the scale and lead times necessary for investment in the global LNG market. Investor confidence in this area is essential in terms of attracting long term investment and contracts to GB from a range of international counterparties. In implementing the 3rd package requirements (and ongoing operation) therefore, DECC/Ofgem will need to ensure that the route chosen does not act as a deterrent or cause unnecessary concern to investors. In the context of transparency, we also note the existence of GGPLNG where TPA is required. Most requirements of the guidelines would not apply to fully exempt facilities (i.e. those which do not provide TPA). However, some aspects should still be applicable e.g. on transparency of data. Some of the provisions will also be relevant in the case of sites holding time limited exemptions from TPA. Centrica further notes in the context of GGPLNG and the GGPSSO mentioned below, that both are planned to be reviewed by ERGEG. Depending on the outcome of the review, they could be made binding via comitology. In respect of storage, we understand that Centrica Storage Ltd (CSL) as an operator may wish to make further remarks on this question in terms of issues facing Storage System Operators (SSOs). However, we would note that based on previous review CSL is considered as more GGPSSO compliant than other operators. As a customer for storage, whether the licence or legislative route is pursued in terms of Storage operators, we would advocate simple, standard SSO provisions designed to provide a level playing field across those (non-exempt) storage facilities which do currently fall short of best practice. These requirements must be transparent and should clearly set out the obligations faced by the regulated party as well as suitable oversight and reporting mechanisms. As part of these provisions (however implemented), we believe it would be appropriate to require compliance with the principles contained within the GGPSSO if. Most requirements of the storage system operator obligations would not apply to fully exempt facilities (i.e. those which do not provide TPA). However, some aspects should still be applicable, in particular those on transparency of data. This would assist market participants in building a view of the wider gas system/market. If a site has been given a conditional exemption, i.e. they must offer some access to the market as a condition of being allowed to retain a portion of capacity themselves; the rules should apply to the non-exempt portion of capacity.
Chapter 4 – Role of the National Regulatory Authority	
7	**Implementing binding decisions** **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.**

We are still formulating our response for submission in response to the DECC consultation on Licence Modification Appeals which closes on 29th October. However, the consultations raise a number of interesting questions and significant concerns.

In common with our previous comments in this response we believe that changes made to implement the 3rd Legislative Package into GB law should be sufficient only to carry out the requirements of the package, recognising the strong and liberalised market which operates in GB, rather than introducing significant additional policy changes.

Where the 3rd package explicitly requires a limited right which relates directly to the GB implementation of EU legislation, then additional powers may need to be granted in such limited circumstances. We are continuing to analyse the requirements. However, if such powers are granted, even in limited form, it will be essential to ensure that a robust appeal mechanism is available to licensees. This should be merits-based (as with current appeal processes applicable with respect to industry codes, rather than a JR type process) and incorporate appropriate checks and balances.

Centrica does not believe that the 3rd package requires Ofgem be given additional general powers to change licence conditions unilaterally in any circumstances. We are not convinced that such a step is justified and in this instance, it is likely that more extensive appeal provisions would be required to ensure a reasonable balance of cost and risk to licensees.

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?**

The 3rd package requires promotion of co-operation at various levels between Member States. This includes co-operation between governments, between regulatory authorities and between transmission system operators.

We note that the Member State cooperation is envisaged to be managed via the Regional Market Initiative. Were the Commission to suggest changing the boundaries of these regions in its forthcoming Communiqué on the Initiative this autumn, then the list of countries would need to be changed. Independently from this potential change, it is important to recall that the UK's connections with the Continent will increase in the near future through the Britned power interconnector. It could thus be argued that the scope of the regional cooperation for the power market should be expanded to include the Netherlands.

In its work to complement and coordinate the work of NRAs, ACER may issue opinions, recommendations and decisions addressed to regulatory authorities (article 4.a of the ACER Regulation). Chapter 4 of the DECC consultation has correctly addressed the need to recognise such advice when it is of a binding nature, and indeed the timetable for compliance with binding guidance is clearly set out in the Gas and Electricity Directives. The issue of non-binding guidance from ACER has however not been addressed. It is important that the regulatory authorities recognise and takes account of ACER non-binding guidance in making its decisions.

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?**

Please read our response to the following questions 9 & 10, alongside our detailed response to Q2 of the consultation document.

Whilst broadly, we may be able to deliver a three week switch there are exceptions to this and we require clarity and guidance from the government as to how these exceptions are dealt with before we can address them and understand the degree of change we will be required to implement.

At best the provision of guidance and clarification by the government will mean that further industry changes are not required. If this is the case and we receive a decision and final proposals on new supplier obligations, in accordance with the governments' expected timetable, then this will provide suppliers with only two months to fully impact assess the internal changes required and to develop and implement compliant solutions.

It is clearly evident that this does not provide suppliers with sufficient time to develop and implement any changes that will be required. As a number of the changes have the potential to be significant, depending upon the policy decisions taken, a two month lead time for implementation will be wholly inappropriate and not achievable.

As there is still ambiguity as to how any new obligations upon suppliers in this important area will be drafted, it is not possible for us to undertake a detailed impact assessment, including costs and benefits, until we are receipt of clarification from the government.

However, based upon the government's current proposals, as outlined within the consultation document, it is apparent that suppliers will be unable to achieve full compliance with a three week switching obligation unless changes are made to industry governance arrangements, with resultant changes to both industry and suppliers systems. We note that the government have also acknowledged within their IA, that they have been unable to identify the scale of these costs at this stage.

Within our response to 2 of the consultation, we have identified and documented the issues and complexities of the customer transfer process, which have not been taken into consideration, along with our concerns with the proposals as they are currently drafted.

We have also proposed an alternative implementation solution which we believe will address these issues, whilst still making the UK compliant with the Directive. Further it should be noted that our proposals would negate the requirement for any costly changes to industry governance and systems.

Based upon the government's current proposals, we believe that the costs associated with implementing these new obligations, as defined within the Impact Assessment, have been significantly underestimated and that further detailed work is required to accurately ascertain these costs, particularly in relation to costs associated with changes to industry and supplier systems. It is also important to have clarity over the overall cost/benefit of any industry changes and specifically what sector of the market the resulting benefits are related to.

The development of actual industry changes cannot be identified or progressed until clarity is provided on how the three week switch process for both domestic and non-domestic customers will operate, how obligations will be defined and what the exact trigger point for the three week switch 'clock' will be.

However, we expect that the costs associated with any changes required, to both industry and supplier

systems, will be significant. Although a detailed assessment cannot currently be undertaken, we anticipate that the overall costs would run into £millions.

We note that the scope of changes required have already been acknowledged within the Impact Assessment, although under Option 2 rather than Option 1, and states that *'Responses to the Call for Evidence have suggested that these changes are likely to cost several million £ to suppliers, and we would expect these costs to ultimately be passed on to consumers in the form of increased bills.'* We argue that based on the governments proposal, these changes and costs will actually be applicable to Option 1 and that this materially changes the Impact Assessment.

The lead time for the implementation of any system changes also needs to be considered and will, in our opinion, be a minimum of at least twelve months from the point when the government publishes its final decisions.

Therefore, we anticipate that the earliest time that any industry solution could be introduced would be early 2012.

Consideration also needs to be given to the Smart Metering Implementation Programme and the myriad of industry changes that all industry parties will be required to make to deliver the new smart metering arrangements.

As part of the Smart Metering Implementation Programme we are actively pushing the regulator for a radical overhaul of industry processes. This will ultimately deliver a combination of industry reform and new metering technologies which will enable much faster and efficient customer switching processes.

The introduction of tactical initiatives at this stage will unfortunately place a strain on already defective industry processes. That said, we understand that the third package must be implemented, but believe that much care is needed to avoid delivering poor outcomes for customers and increasing the UK non-compliance risk.

Should suppliers be required to make fundamental changes at this time and then further changes to support smart meters, in a relatively short timescale, it would be both costly and inefficient resulting in additional costs to customers.

The implications and impacts of making dual sets of changes should not be underestimated and it is therefore essential that any proposed industry changes be subject to a detailed cost/benefit analysis, which also considers the impacts of deliverables under the Smart Metering Implementation Programme.

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).**

Please refer to our response to Q9 above with regards to the costs associated with industry and supplier system changes.

As detailed within our response to the Q2 consultation question, the monitoring issue is complicated by the potential for different trigger processes being implemented for domestic and non-domestic customers i.e. it is proposed that domestic will have a uniform 14 calendar day window before the three week switch 'clock' starts.

Suppliers with both domestic and non-domestic portfolios will incur additional expense and complexity should they have to implement two distinct monitoring mechanisms. This is an issue that, as detailed within our alternative implementation proposal, can be easily addressed, but has not been considered by the Impact

Assessment.

With regards to the number of extra erroneous transfers which may occur as a result of the governments' proposals, again this is difficult to quantify without having clarity on the final decision. However, we acknowledge that the implementation of the uniform 14 calendar day window at the start of the process will assist the facilitation of cool-off duties, however it is essential that consistent arrangements are also implemented for non-domestic customers, particularly where credit vetting is such as important issue and may impact the terms of the contract with the customer or indeed the customers decision to transfer to us.

We agree that suppliers will incur additional costs associated with the administrative costs associated with altering terms and conditions to reflect any changes. However, we do not agree with your estimate of these costs and based upon previous experience believe that these costs will actually be substantially higher.

We have detailed within our consultation response the volume of customers that will fall out of the three week switch period, based upon the governments' proposals, and detailed how we believe this can be addressed.

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?**

Please read the contents of our response to the following questions 11 to 13, alongside our detailed response to Q1 of the consultation questions.

There is still a degree of ambiguity of how any new obligations upon suppliers will be drafted. Therefore it is not possible for suppliers to undertake a detailed impact assessment, including costs and benefits until we are receipt of a more detailed view of what any new obligations will be.

However, we believe that overall the IA has significantly underestimated the costs of implementing the governments' proposals as detailed within the consultation. Please see below a specific response to each of the areas proposed.

Availability of Consumption Data

With regard to the treatment of customer provided readings, there is already an obligation under the Billing Code that states *'where a valid read has been obtained this will be used to improve the accuracy of bills/statements'*, we therefore agree that suppliers are already compliant and that changes will not be required.

In respect of including meter readings in the annual statement, as any customer read is used to either produce a bill or is reflected in the production of the next bill, by default the annual statement will already be utilising this data, therefore we believe that no changes are required.

The proposal to introduce a new licence condition to give customers a right to contact their supplier to request them to pass on their consumption and metering data to another supplier however, does cause us some concern.

As detailed within our consultation response, we do not believe that this is an appropriate or efficient way of achieving compliance, indeed we believe that suppliers are already compliant and agree with the statement within the consultation document which states *'we consider that the details of tariff and consumption that are on the bill give sufficient information to a new supplier to be able to provide a quote to a customer on available tariffs.'*

As we have explained within our consultation response, due to the sensitive nature of the customer data that

will need to be transferred between suppliers, the development of a robust and complex set of industry governance arrangements and data flows will be required.

It is not possible at this stage to assess the costs associated with the development of such a solution. However, we anticipate that the development and implementation costs associated with a robust industry wide solution should not be underestimated and we believe that these would be significant.

We anticipate that the benefits will ultimately be very low as customers will be unlikely to utilise this service when they already have their consumption and metering data to hand. Further it would not facilitate a solution should the customer want to pass data onto a third party other than a supplier.

Without proper detailed industry assessment it is not possible to identify the costs and benefits in detail, however we strongly believe that any assessment would provide a negative case for change.

Consumer rights regarding dispute settlement

As detailed within our consultation response, we concur with the governments' view that the industry already complies with this measure by explaining in detail the steps that a customer can take to make a complaint on the back of all bills.

We do not believe that the inclusion of information relating to a suppliers complaints procedure sits appropriately within promotional materials and have concerns over the provision of information overload to customers, particularly when there are already numerous mechanisms and communications that already provides information to customers relating to our complaint procedures.

It should be noted that the associated incremental costs that these requirements would create should not be underestimated and would result in costs running into £millions per annum, which would ultimately be passed onto customers. Further, we believe that these costs would undoubtedly outweigh any of the limited benefits that may be achieved.

Energy consumer checklist

We are unable to comment on the costs that Consumer Focus may incur for compiling the checklist and the ongoing costs of maintaining it, but agree that there will be small costs to the industry with co-operating on the compilation of the list.

We do not believe that it is necessary for all customers to be provided with a hard copy of the checklist and agree with your view that there is *'a risk that this may lead to information overload and confusion which would limit the benefits of this measure.'*

We have yet to see a detailed draft of the energy checklist, therefore we are not in a position currently to assess the costs of producing and issuing a hard copy to all customers, although based upon previous experience we estimate that this would result in costs running into £millions per annum, which would ultimately be passed onto customers.

We have suggested an alternative solution, which we believe is more efficient and appropriate, which would oblige suppliers to signpost customers to it at least once a year. This signpost could advise customers how to obtain a hard copy free of charge and provide a link to it on our website. We could also provide a link to the Consumer Focus website, where this document could also be hosted. The cost of delivering this option would be minimal.

Information to be included in contracts with customers

We agree with your view that we currently comply with this requirement and therefore the measure should impose no further costs.

However, as detailed within our consultation response, we have concerns over the proposal to make amendments to the Principal Terms within licence and we propose that instead, changes could be made to Condition 7 to include these items as more generic obligations.

It is important to note that any changes to Principal Terms will have significant impacts to suppliers. These specific terms need to be provided, and explained to all customers at the point of sale.

Any amendment to the Principal Terms will have a significant impact upon suppliers as we would have to amend all of our sales procedures and literature. Further, there would be a significant change to our telephone sales processes which would greatly increase the length of the call with the customer. It should be noted that the costs associated with any changes of this nature will be significant.

We believe that there is no requirement to makes changes to the Principal Terms within SLC 1 of the Supply Licence; instead changes could be made to SLC 7 to include these items as more generic obligations to place within contract.

12	**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.**

Please see attached our response to Q11 above regarding views associated with passing on consumption and metering data to another supplier.

13	**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?**

Please see attached our response to Q11 above regarding views associated with providing additional information to consumers in terms of complaints handling/dispute settlement arrangements available by the supplier.

National Regulatory Authority

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?**

As noted under question 7 above, we will address any issues raised by the impact assessment as part of our response to the DECC consultation on Licence Modification Appeals

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.**

As noted under question 7 above, we will address any issues raised by the impact assessment as part of our response to the DECC consultation on Licence Modification Appeals	
Transmission and Distribution	
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)?**
No comment in this area, DSOs and TSOs will be better able to assess costs to their businesses under this section	
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.**
No comment in this area, DSOs will be better able to assess costs to their businesses under this section	
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?**
No comment in this area, Storage and LNG Operators will be better able to assess costs to their businesses under this section	
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?**
We expect that Article 15 shall only apply to GB in terms of unbundling of storage system operators, as we understand that the ISO separation model is not to be offered for transmission systems. Where a storage facility is required to offer third party access according to article 33, then the storage operator must be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission, distribution and storage, i.e. it must be independent from the competitive activities of the vertically integrated undertaking. Article 15 sets out clear independence criteria in paragraph 2(a)-(d). In terms of general principles of unbundling and confidentiality, without wishing to compromise normal commercial contractual terms, it will be important to ensure that trading and informational separation between the separated business elements and the relevant trading business can be subject to proper scrutiny, to provide assurance to market participants that the separation provisions are being properly applied. This might, for example, include oversight of the regulated business to demonstrate that trades with related companies are subject to full "arms length" provisions and at market based rates. The scrutiny should also ensure that maximum physical capacity is made available to the market on non-discriminatory terms and appropriate congestion management procedures are in place.	

20	**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?**
No comment in this area, Storage and LNG Operators will be better able to assess costs to their businesses under this section	
21	**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?**
No comment in this area, Storage and LNG Operators will be better able to assess costs to their businesses under this section	
22	**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.**
No comment in this area, Storage and LNG Operators will be better able to assess costs to their businesses under this section	