

Smart Metering Implementation Programme – Rollout Team
Department of Energy & Climate Change
3 Whitehall Place
London
SW1A 2AW

22 November 2011

Dear Sir/Madam,

Smart Metering Implementation Programme – Licence Conditions for a Code of Practice for the installation of smart electricity and gas meters: a consultation

Thank you for the opportunity to respond to the above consultation. ScottishPower agrees that the customer experience of the Smart Metering rollout is crucial to the overall success of the programme. As an installing supplier, ScottishPower has a strong interest in ensuring that customers are satisfied with the installation process and as far as possible protected from harm or inconvenience.

We have been pleased to be closely involved in the development of the Smart Metering Installation Code of Practice from its inception and we believe that the Code has the potential to provide a full and appropriate level of protection for customers as Smart Metering is rolled out across Great Britain.

Our main comments on the points raised in the consultation are as follows:

- **Securing achievement of the Objectives:** The Licence Conditions combine rule based regulation (obligation to comply with the Code) and principles based regulation (obligation to take all reasonable steps to secure the achievement of the Objectives). We believe the additional layer of principles based regulation is unnecessary given that unforeseen issues can be addressed via modifications to the Code, and inappropriate given the nature of the enforcement regime. Our preference would be to omit Conditions CC 2 and DD 2 altogether, but failing that, we think those paragraphs should be subject to a two stage enforcement process.
- **Code review and governance:** The proposed conditions empower Ofgem to require licensees to make such changes to the Code as it may direct. Given that compliance with the Code is mandatory, this is tantamount to empowering Ofgem to modify the licence condition, but without any of the safeguards that normally apply to licence modification. Accordingly, Ofgem's decision should be designated as subject to appeal under section 173 of the Energy Act 2004.

- **Smart-type meters:** We think that domestic customers should have the same protections as respects smart-type meters as for compliant Smart meters, once there has been a suitable period to develop and implement the Code. We would suggest that the Code should apply to 'Smart-type' meters from a suitable point – perhaps summer or autumn 2012. We are relaxed as to whether this is under-pinned by the licence, providing that an accurate definition can be drafted.
- **Sales and Marketing:** The installation visit will present suppliers with unique and unparalleled access to their customer base, and this must be carefully managed. It is important to build trust and ensure that consumers are not subject to any unwelcome marketing or selling activities in their homes. We also think that a regime based around prior written consent would be practically difficult both for consumers and suppliers. Accordingly we would favour:
 - a complete ban on sales activity on the installation visit;
 - marketing limited to energy efficiency and the Green Deal, with no requirement for prior consent. This will enable installers to provide advice and answers to customer questions on areas such as the In Home Display and Energy Efficiency. This could be especially important as we attempt to engage more customers in Government initiatives around energy efficiency and the Green Deal; and
 - activity on other topics should be limited to the provision of literature. For example, we think that it would be premature for customers to discuss time of use tariffs at the installation visit before they have had a chance to get used to the smart meter and in home display.

Overall a clear, understandable policy around this must be developed and we think that the above could be easily achieved through the Code.

- **Record keeping:** The draft Licence Conditions include obligations on the licensee to 'maintain a record of its performance against and compliance with' the requirements of the Code. While some aspects of this activity may be amenable to record keeping, others (such as the activities of individual installers) are not. Either such record keeping should be left to the discretion of the licensee, or if the Government considers such record keeping essential in certain areas, this should be more narrowly prescribed in the Code.

Our answers to the specific consultation questions are in the attached Annex 1 to this letter. We have also provided in Annex 2 our suggestions as to how the domestic and non-domestic licence conditions might be redrafted to address the issues raised in our response and in Annex 3 an explanation of the suggested changes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**SMART METERING CODE OF PRACTICE LICENCE CONDITIONS
SCOTTISHPOWER RESPONSE**

Note: We have noticed that the original consultation questions featured two questions numbered as question 4. To avoid confusion we have re-numbered these appropriately.

1) Are the overall objectives set out in the draft Licence Conditions appropriate?

We are comfortable with the overall objectives set out in the draft Licence Conditions, but are concerned about the way these objectives have been translated into obligations. The Licence Condition combines rule based regulation (obligation to comply with the Code) and principles based regulation (obligation to take all reasonable steps to secure the achievement of the Objectives).

We believe the additional layer of principles based regulation is unnecessary, and inappropriate given the nature of the enforcement regime. The normal rationale for principles based regulation is that it provides greater flexibility and reduces the need for regulatory foresight. However the proposed mechanism of a mandatory code of practice, subject to regular review, obviates the need for flexibility, since if unforeseen issues arise, they can be incorporated in the Code. Updating the Code has the advantage of providing greater regulatory certainty and reducing the compliance risks for suppliers. We would be content with an obligation to take the Objectives into account in developing the Code.

The enforcement regime under the Gas and Electricity Acts empowers Ofgem to impose substantial financial penalties on first finding of a contravention¹, and with limited scope for appeal. This type of enforcement is inappropriate to principles based regulation, where there may be a degree of uncertainty as to what is expected, and where expectations may change over time (for example, regarding Domestic Customers' reasonable expectations or the completeness of information provision). Indeed, this issue has already been recognised in the context of SLC25A (prohibition of undue discrimination in supply), where the potential uncertainty over obligations is balanced by a two-stage enforcement process.

Our preference would be to omit Conditions CC 2 and DD 2 (obligation to take reasonable steps to secure the Objectives) from the draft condition. Failing that, we believe it would be appropriate to make these paragraphs subject to a two stage enforcement process.

2) Would the Licence Conditions as drafted effectively underpin:

- a. The intended roles of Ofgem and suppliers in establishing and reviewing Code(s) of Practice for domestic and micro business sites**
- b. An appropriate ongoing governance regime for the Code(s) of Practice**
- c. The intended arrangements for monitoring and compliance with the Code(s)?**

As explained above, we consider that the Licence Conditions combine rule based and principles based regulation in an inappropriate manner which creates unnecessary risk.

¹ As opposed, say, to communications, where the Communications Act 2003 provides for penalties only where an enforcement notice has been contravened.

Review and governance regime for Code

We are broadly comfortable with the roles of the Authority and suppliers in developing and agreeing the Code, subject to two important caveats:

- We accept the need for the Code (and changes to it) to be approved by the Authority, but we consider that the Authority's decision should be subject to appeal under section 173 of the Energy Act 2004.
- Conditions CC 11(c)(ii) and DD 7(c)(ii) empower Ofgem to require licensees to make such changes to the Code as it may direct. Given that compliance with the Code is mandatory, this is tantamount to empowering Ofgem to modify the licence condition, but without any of the safeguards that would normally apply to a licence modification (e.g. requirement to consult or right of appeal). We consider it essential that the Authority's decision should be subject to appeal under section 173 of the Energy Act 2004, and have suggested in Annex 2 wording to facilitate this.
- Any action by Ofgem to designate a code should be preceded by consultation.

Monitoring and compliance with the Code

The draft Licence Conditions include obligations (Conditions CC 14 and DD 10) on the licensee to 'maintain a record of its performance against and compliance with' the requirements of the Code. While we accept that it would be prudent for licensees to maintain appropriate records in order to demonstrate compliance – and an absence of such records might count against a licensee where there is a suspected breach – we believe it is going too far to make record keeping of compliance with the Code mandatory.

The detailed requirements are open to a wide range of interpretation (is a licensee required to record every conversation with a consumer or maintain a register of every leaflet provided?); and inclusion of these conditions could lead to a situation where a licensee is compliant with the Code and Objectives, but faces enforcement action merely in respect of record keeping.

Either such record keeping should be left to the discretion of the licensee, or if the Government considers such record keeping essential in certain (and practicable) areas, this should be more narrowly prescribed in the Code.

The obligations to comply with (and draw up) the Code should be "take all reasonable steps" obligations. It is not in the interests of consumers to use "all things within its power" wording as this could involve disproportionate cost, which would in due course be passed to consumers.

3) Should the Licence Conditions underpinning a domestic Code also be applied to Smart-type meters, or should the Government work with suppliers to secure voluntary application of Code provisions?

We think that it is appropriate for domestic customers to have the same protections as respects smart-type meters as for compliant Smart meters, once there has been a suitable period to develop and implement the code. We would suggest that the Code should apply to 'Smart-type' meters from a suitable point – perhaps summer or autumn 2012. We are

relaxed as to whether this is under-pinned by the licence, providing that an accurate definition can be drafted.

4) Would the Licence Conditions as drafted effectively underpin the policy intention that the costs of the installation of smart meter systems should be reflected over time in customer's energy bills, with no upfront or one-off charges?

Yes. We are comfortable that the aspects of the Licence Condition which relate to costs of installing smart meters are appropriate. This is already reflected in the draft Smart Metering Installation Code of Practice and we have no concerns over this approach.

5) Do you agree with our definitions of sales and marketing?

In our view, there is a policy distinction between sales activity (which includes the possibility of entering into or varying a contract during the installation visit) and marketing which involves discussions for the purpose of promoting goods or services but not actually entering into or varying a contract. This should be reflected in differing definitions for the two activities.

Subject to that, we are broadly comfortable with the definition given of marketing, although we would like to explore further how this may work in practice. In particular, there is potential for service activities at the installation visit to border on 'marketing activities' depending on the nature of the conversation.

While we are comfortable with appropriate restrictions on Sales and Marketing activities at the installation visit, we would wish to ensure that we are able to provide the best level of service to our customers and give them all the information they would reasonably require during the visit. In particular, we are keen to ensure that our installers do not inadvertently fall foul of the Licence Condition when providing the customer with advice on, for example, In Home Displays and Energy Efficiency. This could be especially important as we attempt to engage more customers in Government initiatives around energy efficiency and the Green Deal.

The principal route to dealing with this in our view is to provide that marketing of energy efficiency and Green Deal products may be undertaken without the need for any prior permission. Additionally, we think it would be helpful if the definition of Marketing specifically recognised those scenarios that would *not* be covered by 'Marketing' at the installation visit, for example:

- provision of any service advice, including advice provided as part of a discussion on general service issues, such as where the customer can find more information (for example, on our website);
- where a customer asks the Installer if products and services are available and the Installer provides the customer with contact details to find out more;
- where the installer offers to arrange a call back or sales appointment for the customer;
- where the installer provides advice and information relating to energy efficiency products and services.

6) Do you agree that prior written consent should be required for any face-to-face marketing or sales activity during the installation visit?

We think that a regime based around prior written consent would be practically difficult both for consumers and suppliers. In some high density areas, installers may work without prior appointments for those customers who are in and happy to provide access. Where the conversation turns to energy efficiency, it would be frustrating for customers to be told that the installer cannot discuss it because the customer had not previously provided a written consent. There is also the possibility that as a consumer protection measure it would be ineffective because of the use of “opt out” tick boxes on appointment cards and online booking forms.

However, the installation visit will present suppliers with unique and unparalleled access to their customer base, and this must be carefully managed. It is important to build trust and ensure that consumers are not subject to any unwelcome selling activities in their homes. We think that many consumers may not respond well to an installation visit being used for sales activities and we do not think that the skills of many Installers are well suited to this purpose, meaning it would not be appropriate for Installers to attempt face to face sales activities.

However, our customers may be willing to discuss energy efficiency or ask questions about it at the installation visit and we need to provide the necessary service and answer these questions appropriately. To that end, the licence condition and/or Code should specifically recognise those scenarios that would *not* be covered by ‘Marketing’ at the installation visit (see above).

As regards the permitted activities, we would favour:

- a. a complete ban on sales activity on the installation visit;
- b. marketing limited to energy efficiency and the Green Deal, with no requirement for prior consent. This will enable installers to provide advice and answers to customer questions on areas such as the In Home Display and Energy Efficiency. This could be especially important as we attempt to engage more customers in Government initiatives around energy efficiency and the Green Deal; and
- c. activity on other topics should be limited to the provision of literature. For example, we think that it would be premature for customers to discuss time of use tariffs at the installation visit before they had had a chance to get use to the smart meter and in home display.

Overall a clear, understandable policy around this must be developed and we think that the above could be easily achieved through the Code.

7) Are any other measures required to protect consumers’ interests in relation to sales and marketing during the installation visit?

On balance, we think that the draft Code covers the protections that we would expect to be in place for consumers around sales and marketing during the installation visit. However, we anticipate reviewing this as the rollout progresses, with a view to ensuring that any lessons learned, or apparent gaps in protections for customers are adequately covered within the Code.

8) Would the Licence Conditions as drafted and/or existing rules deliver the policy intentions on customer information and advice, vulnerable consumers, avoiding undue inconvenience and complaint-handling?

The licence conditions as drafted place an obligation on licensees to include provisions in the Code relating to ‘procedures, practices and arrangements’ that will help deliver these policy intentions. Given that many of these areas will be covered by existing licence conditions and codes, this provides an appropriate degree of flexibility to plug any gaps in a way that gives reasonable regulatory certainty.

We have proposed in Annex 2 some qualifications of reasonableness around the obligations in respect of vulnerable customers. It will not always be possible for an installer in every case to identify or meet their needs.

Undue inconvenience

Condition CC 9(b) requires the Code to provide for ‘practices, procedures and arrangements’ by which licensees will ‘take all reasonable steps to ensure that no undue inconvenience is caused’ to customers as a result of installation visits. We consider this to be unnecessary. Suppliers have an incentive to give good customer service in this area, as in others, because poor service can lead to customers switching elsewhere. Suppliers already exchange meters at a significant proportion of the rate required for smart metering under the new and replacement meter programme, without any need for regulation in this area. The existing Guaranteed Standards scheme will apply and, for example, provides for compensation in respect of missed appointments.

There will inevitably be occasions where more than one visit will be needed to complete the installation, whether as a result of problems with the smart metering system or apparatus, or with conditions in the consumer’s home². It is not clear that the code of practice can or should define how to avoid undue inconvenience in a host of relatively low probability circumstances. We think that the redress scheme approach is more appropriate to such circumstances.

Our preference would be for Condition CC 9(b) to be omitted altogether, and any specific gaps plugged through the Guaranteed Standards scheme. This would avoid lengthy discussions about the Code of Practice which might well not deal with individual circumstances in a sensible manner.

9) Do you agree that, for the purposes of the non-domestic Code, the sites to be covered should be defined as a business with no more than 10 employees or their full-time equivalent, an annual turnover that does not exceed €2 million, or consumes less than 50MWh of electricity a year or less than 200MWh of gas a year?

We think that it is appropriate to link application of the non-domestic Code to the specifications for rollout of Smart Meters to non-domestic premises. Specifically, we think that the non-domestic Code should cover electricity sites with a Profile Class of 3 and 4 and gas sites that have an annual consumption of less than 732MWh a year.

This will help to ensure a consistent experience for all customers and also help to ensure better and consistent reporting across the roll out as a whole. It will also address

² For example, a problem with the meter board or meter point could be discovered or there might be communication difficulties between the gas and electricity meters, requiring different apparatus to be installed.

variations between suppliers dependent on how suppliers identify or deem customers to fall within the micro business definition.

10) Would the Licence Conditions as drafted effectively underpin the policy intentions with respect to non-domestic consumers on customer information and advice and undue inconvenience?

In relation to information and advice for non-domestic customers, we think that the Licence Condition does effectively underpin the policy intentions.

However in respect of Condition DD 5(a) (undue inconvenience) we would reiterate the comments made above in respect of Condition CC 9(b). If anything, the scope for mis-matched expectations is greater for non-domestic than for domestic customers. For example, a customer who stores stock for a shop in front of his meter and has to move large volumes of stock to allow access to the meter may consider this to be undue inconvenience. Similarly, if a customer is required to stop trading temporarily due to the requirement to shut off the supply to the property, but an issue occurs with the customer's apparatus once the supply is shut off that delays trading for longer, this could be considered 'undue inconvenience' by the customer. It seems rather elaborate for a Code of Practice to attempt to deal with such situations.

Our preference would therefore be for Condition DD 5(a) to be omitted altogether, and reliance placed on Guaranteed Standards which apply also to non-domestic customers.

Proposed Draft Licence Condition – Domestic

The following draft Condition is presented as a mark-up of the version in the consultation showing how our key points could be reflected in licence drafting. It is presented as the domestic electricity condition, but similar points, *mutatis mutandis*, would apply to the gas and non-domestic cases.

Condition CC: Smart Metering Installation Code of Practice – Domestic Customers (electricity)

The Objectives ~~and the duty to achieve them~~

- 1 The objectives of this Condition (the **Objectives**) are to ensure that:
- (a) the licensee and any Representative provides and maintains a standard of service which helps to ensure that Domestic Customers' experience of the installation of Smart Metering Equipment at their premises meets their reasonable expectations;
 - (b) all activities undertaken by the licensee and any Representative in relation to the installation of Smart Metering Equipment are conducted in a fair, transparent, appropriate and professional manner;
 - (c) each Domestic Customer is given information about, and during, the installation of Smart Metering Equipment which:
 - (i) is complete and accurate;
 - (ii) does not mislead that Domestic Customer; and
 - (iii) informs that Domestic Customer about the benefits of the Smart Metering Equipment and about what to expect in relation to the installation process; and
 - (d) Domestic Customers are not subject to unwelcome sales or face-to-face marketing activities during any visit to their premises for the purposes of installing Smart Metering Equipment.

~~2 The licensee shall take all reasonable steps:~~

- ~~(a) to secure the achievement of the Objectives; and~~
- ~~(b) to avoid doing anything which jeopardises its ability to achieve the Objectives.~~

The Domestic Installation Code

~~2 The steps that the licensee must take to secure the achievement of the Objectives include, without limitation, taking~~ **The licensee shall take all reasonable** ~~such steps and doing such things as are within its power to:~~

- (a) together with all other licensed electricity and gas suppliers of Domestic Premises; and

- (b) by no later than one month after this Condition takes effect (or such later date as the Authority may direct) (**the relevant period**),

to prepare and submit for approval to the Authority a document to be known as the Domestic Installation Code of Practice (**Domestic Installation Code**).

43 If:

- (a) the licensee, together with all other licensed electricity and gas suppliers of Domestic Premises, does not submit a Domestic Installation Code to the Authority within the relevant period; or
- (b) the Authority does not approve the Domestic Installation Code submitted to it,

the Authority may, **after consultation with all licensed electricity and gas suppliers to domestic premises**, designate a Domestic Installation Code which shall apply for the purposes of this Condition.

Content of the Domestic Installation Code

54 The Domestic Installation Code must include provisions which set minimum standards of service for the installation, and activities relating to the installation, of Smart Metering Equipment at Domestic Premises.

65 The Domestic Installation Code must include provisions which ensure that any costs that the licensee seeks to recover from Customers in relation to:

- (a) the design, installation or operation of Smart Metering Equipment at Domestic Premises;
- (b) the modification or reconfiguration of Smart Metering Equipment at Domestic Premises in accordance with the duty at paragraph 9(b) of Condition AA; or
- (c) the provision of a replacement In-Home Display at Domestic Premises in accordance with the duty at paragraph 8(b) or paragraph 9 of Condition BB,

may be recovered from a Domestic Customer only in the circumstances described in either paragraph **76** or **87**.

76 The circumstances described in this paragraph are that costs are borne by the licensee's Domestic Customers generally as an increment of charges for electricity supplied to them.

87 The circumstances described in this paragraph are that:

- (a) the Smart Metering Equipment installed at Domestic Premises exceeds the minimum requirements of the SME or IHD Technical Specification ('enhanced equipment');
- (b) the Domestic Customer at the premises has first been given the option of having installed at his premises Smart Metering Equipment which is in conformity with but does not exceed the minimum requirements of the Technical Specification; and
- (c) the Domestic Customer has, prior to the Smart Metering Equipment being installed, expressly requested the installation of enhanced equipment.

98 The Domestic Installation Code must make provision relating to the establishment and implementation of practices, procedures and arrangements by which the licensee and its Representatives will:

- (a) **ensure that no Sales activity takes place;**

~~(a)~~(b) ensure that any Marketing:

(i) ~~is not undertaken during a visit to install Smart Metering Equipment without the consent of the Domestic Customer which is given in advance of the date of the installation visit and in Writing~~ **relates only to energy efficiency or Green deal products**; and

(ii) ceases immediately upon any request from the Domestic Customer or any member of his household;

~~(b) take all reasonable steps to ensure that no undue inconvenience is caused to Domestic Customers or other occupants of Domestic Premises as a result of any visit made to Domestic Premises for the purposes of installing Smart Metering Equipment;~~

(c) provide for Domestic Customers to be given, **so far as is reasonably practicable**, clear and accurate information and advice about:

(i) the installation, purpose, features and advantages of Smart Metering Equipment;

(ii) the use of Smart Metering Equipment, including such information as will enable Domestic Customers to make informed judgments about the way in which they can improve the efficiency with which they use the electricity and/or gas supplied to them; and

(iii) sources from which Domestic Customers may obtain additional information or assistance about improving the efficiency with which they use the electricity and/or gas supplied to them;

(d) **so far as is reasonably practicable**, identify and meet the **reasonable** needs of specific Domestic Customer groups – including in particular Domestic Customers (or occupants of the Domestic Premises) who are of Pensionable Age, disabled or chronically sick - in relation to the installation (and provision of information relating to the installation) of Smart Metering Equipment; and

(e) notify Domestic Customers of the Domestic Installation Code, of the provisions set out in it and of the licensee's obligations under it.

~~409~~ The Domestic Installation Code may make further provision in relation to any matters that are designed to secure the achievement of the Objectives.

~~44~~**10** The Domestic Installation Code must set out procedures for its review and revision which shall, as a minimum, provide for:

(a) the making of proposals by:

(i) the licensee and any other licensed gas or electricity supplier of Domestic Premises; and

(ii) the National Consumer Council,

for revisions to the Domestic Installation Code;

(b) a requirement to obtain the **consent** ~~approval~~ of the Authority to proposed revisions to the Domestic Installation Code; and

(c) the Authority:

- (i) at any time to require the licensee, together with all other licensed gas and electricity suppliers of Domestic Premises, to review such features of the Domestic Installation Code as it may specify ('the specified features');
- (ii) following such a review, to issue a direction requiring the licensee and all other licensed gas and electricity suppliers of Domestic Premises to make ~~such~~ **proposals for modifications in respect of** ~~to~~ any of the specified features, **to give effect to such policies for improving the Code's delivery of the Objectives,** as it may direct;

but the making of a proposal by the licensee under this subparagraph shall not be considered as agreement by the licensee to the proposal for any purpose relating to section 173 of the Energy Act 2004.

Consultation on the Domestic Installation Code

~~42~~**11** The licensee must:

- (a) before submitting the Domestic Installation Code or any proposed revisions to it to the Authority for its approval; and
- (b) in carrying out any review of the Domestic Installation Code,

consult with, and consider any representations made by, the National Consumer Council and any other person or body **representing consumers** likely to be affected.

Compliance with the Domestic Installation Code

~~43~~**12** The licensee must take ~~such~~ **all reasonable** steps ~~and do such things as are within its power~~ to comply with the Domestic Installation Code approved or designated (as the case may be) by the Authority.

~~44 The licensee must maintain a record of its performance against and compliance with the requirements of the Domestic Installation Code.~~

Review of the Domestic Installation Code

~~45~~**13** The licensee must from time to time:

- (a) take steps to obtain the views of Domestic Customers about the licensee's and its Representatives' activities and conduct relating to the installation of Smart Metering Equipment; and
- (b) together with all other licensed gas and electricity suppliers of Domestic Premises, review the Domestic Installation Code and the manner in which it has been operated with a view to determining whether any revisions should be made to it.

~~46~~**14** Where, within 30 days of the licensee submitting to the Authority the proposed revisions to the Domestic Installation Code, the Authority has not given:

- (a) its ~~approval~~ **consent** in Writing to the proposed revisions;
- (b) Notice to the licensee that it is withholding ~~approval~~ **consent**; or

- (c) Notice to the licensee that it is unable to reach a decision on whether to approve or withhold ~~approval~~ **consent** within the 30 day period and that it will do so by such later date as is specified in the Notice,

the proposed revisions submitted to the Authority shall be treated as having been ~~approved~~ **consented to** by the Authority and **(subject to any appeal under section 173 of the Energy Act 2004)** incorporated into the Domestic Installation Code.

4715 As soon as practicable following the Authority's approval or designation of the Domestic Installation Code (including following any revision to it), the licensee must take steps to ensure that an up-to-date copy of the approved or designated (as the case may be) Domestic Installation Code is:

- (a) sent to the Authority and the National Consumer Council;
- (b) made readily accessible, including by being published on and made readily accessible from its Website (if it has one); and
- (c) given free of charge to any person who requests it.

Interpretation and Definitions

4416 In this Condition, any reference to Smart Metering Equipment shall be read as incorporating a reference:

- (a) to any part of that equipment; and
- (b) to an In-Home Display.

4517 In this condition, any reference to 'installation' shall be read, in the context of an In-Home Display, as incorporating a reference to the provision of that In-Home Display, and the words 'install' and 'installed' shall be construed accordingly.

4618 For the purposes of this Condition:

Marketing means any Sales activity excluding the activity of entering into or agreeing to vary the terms of contracts with the Domestic Customer or any member of his household for the sale of any goods and services

Sales means any activities of the licensee that:

- (a) take place with the simultaneous physical presence of:
 - (i) the licensee or any Representative and
 - (ii) a Domestic Customer or any member of his household;
- (b) entail verbal communication with the Domestic Customer or any member of his household for the purposes of promoting any goods or services to them,

and includes the activity of entering into or agreeing to vary the terms of contracts with any such person for the sale of any goods and services;

and for these purposes **(and the definition of 'Marketing')** 'goods and services' shall be read as including (without limitation) the supply of electricity under a Domestic Supply Contract and the supply of gas under a 'Domestic Supply Contract' as defined in standard condition 1 of a Gas Supply Licence.

Summary of Drafting Changes

The following table summarises the drafting changes proposed to the original draft domestic Licence Condition. These comments are equally applicable to the non-domestic Licence Condition, where relevant provisions exist.

Condition Reference (original numbering)	Action	Rationale
Paragraph 2	Delete	The additional layer of principles based regulation is unnecessary, and inappropriate given the nature of the enforcement regime (see response to Q1).
Paragraph 3	Amend opening sentence	Obligation to do all things within licensee's power is too strong; replace with all reasonable steps
Paragraph 4	Insert "after consultation with all licensed electricity and gas suppliers to domestic premises" in closing sentence	Where Ofgem designates a Code other than that which has been developed by licensees, the content should be subject to consultation
Paragraph 9	Insert new (a) "ensure that no Sales activity takes place"	All sales activity should be prohibited (see response to Q6).
Paragraph 9(a)(i)	Re-number as 9(b)(i) and replace text with "relates only to energy efficiency or Green deal products"	Marketing related to energy efficiency and Green Deal should be permitted without prior permission (see response to Q6).
Paragraph 9(b)	Delete "undue inconvenience" requirement	See response to Q8.
Paragraph 9(c)	Insert "so far as is reasonably practicable" in opening sentence	The requirement to provide clear and accurate information should be no more than is reasonably practicable.
Paragraph 9(d)	Insert "so far as is reasonably practicable, identify and meet the reasonable needs" in opening sentence	Both the identification and the meeting of vulnerable customer needs is necessarily subject to reasonableness.

Condition Reference (original numbering)	Action	Rationale
Paragraph 11(b)	Replace “approval” with “consent”.	For consistency with section 173 of the Energy Act 2004 which makes reference to <i>consent</i> . This enables the Secretary of State to make Regulations making refusal to consent to Code modification proposals potentially appealable to the Competition Commission (See response to Q2).
Paragraph 11(c)(ii)	Amend text	The new text defines a process where Ofgem sets out the policy to be achieved and the industry must bring forward Code modifications which Ofgem can consent to, so bringing the process within the ambit of section 173 of the 2004 Act.
Paragraph 11(c)	Add final phrase: “but the making of a proposal by the licensee under this subparagraph shall not be considered as agreement by the licensee to the proposal for any purpose relating to section 173 of the Energy Act 2004.”	The original text would have empowered Ofgem to require licensees to make such changes to the Code as it may direct. Given that compliance with the Code is mandatory, this is tantamount to empowering Ofgem to modify the licence condition, but without any of the safeguards that normally apply to licence modification. The purpose of this text is to enable the Secretary of State to designate the process as subject to appeal under section 173 of the Energy Act 2004. (See answer to Q2)
Paragraph 12	Insert “representing consumers”	Without this amendment we would have a duty to consult all 3 million of our customers.
Paragraph 13	Replace obligation with “all reasonable steps” approach	It is not in consumers’ interests to require disproportionately expensive steps.

Condition Reference (original numbering)	Action	Rationale
Paragraph 14	Delete	While some aspects of compliance may be amenable to record keeping, others (such as the activities of individual installers) are not. Such record keeping should be left to the discretion of the licensee (see response to Q2)
Paragraph 16	Replace “approval” with “consent”, and insert “(subject to any appeal under section 173 of the Energy Act 2004)”	For consistency with section 173 of the Energy Act 2004 which makes reference to <i>consent</i> . This clarifies that consent to Code modification proposals (or refusal of such consent) can be made appealable to the Competition Commission by an order under section 173 of the 2004 Act.
Interpretation and Definitions	Amend definition of ‘Marketing’ to distinguish ‘Sales’ from ‘Marketing’.	See response to Q5.