

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two options have been considered:

Option 0: Do nothing i.e. do not amend the existing legislation.

Option 1: Change the consumption levels in the definition of a micro business in the Order to:⁵

- a consumption of no more than 100,000 KWh of electricity per year, (increased from 55,000 KWh); and
- a consumption of no more than 293,000 KWh of gas per year (increased from 200,000 KWh).

Option 1 has been assessed against a baseline of “do nothing”, in which the definition of a micro business in the Order is left unchanged, and the micro businesses which would have access to the Redress scheme under Option 1 continue to rely on the Small Claims Court (SCC) for formal complaint resolution.

Option 1 is the preferred option because it provides additional business consumers, which have similar characteristics to micro business consumers under the existing definition, access to the same complaints resolution mechanisms available to those existing micro businesses. Furthermore it avoids a two-tier definition of a micro business, which may be confusing for customers, suppliers and organisations providing advice to micro businesses.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** NA

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)	Traded: N/A		Non-traded: N/A		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date:

1. VII.14

⁵ As discussed further in the following sections, a business must satisfy this requirement with respect to the particular type of energy supply regarding which they wish to make a complaint. Eligibility to raise an electricity complaint with the Ombudsman does not imply eligibility to raise a gas complaint, and vice versa.

Summary: Analysis & Evidence

Policy Option 1

Description: Change the annual consumption levels in the definition of a micro business in the Order to a consumption of no more than 100,000 KWh (for electricity) and a consumption of no more than 293,000 KWh (for gas).

FULL ECONOMIC ASSESSMENT

Price Base Year: 2014	PV Base Year: 2014	Time Period Years: 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.29	High: 0.30	Best Estimate: 0.29

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant Price)	Total (Present Value)	Cost
Low	n/a	n/a	0.00		0.00	
High	n/a		0.00		0.02	
Best Estimate	n/a		0.00		0.00	

Description and scale of key monetised costs by 'main affected groups'

It is expected that the newly eligible micro businesses may refer complaints, which would not have gone to the SCC under the baseline, to the Ombudsman Services: Energy ("the Ombudsman") due to this service being available and the relatively lower expected costs of doing so (£90 for the SCC process vs. £27 for the Ombudsman process).

In all of these cases, the supplier will incur the Ombudsman case fees, which they would not incur in the baseline. Furthermore, both suppliers and the newly eligible micro businesses will incur the administrative costs associated with going to the Ombudsman, which they would not incur in the baseline. However when appraising Option 1, in cases where the energy supplier loses the case made against them, we do not count any administrative costs and fees they incur.⁶

Although any compensation awarded by the SCC or the Ombudsman represents a transfer from the supplier to the micro business consumer, we do not count these as a cost to energy suppliers when appraising Option 1.⁷

Under this option there may be a familiarisation exercise associated for the newly eligible micro businesses. For example they may have to expend time to become acquainted with the Ombudsman procedures. These costs are captured in our monetised estimates of the costs to micro businesses associated with progressing complaints through the Ombudsman.

Other key non-monetised costs by 'main affected groups'

The proposed change to the definition of micro business in the Order will have a knock on effect on the scope of the Consumer Complaints Handling Standards, which require energy suppliers to record complaints, signpost customers to the Redress scheme and deal with referrals from the Citizen's Advice Bureau. There may be some minor direct costs to energy suppliers as a result of having to comply with these requirements with regards to the newly eligible micro business customers.

There may also be some indirect costs to suppliers, as signposting the Redress scheme may increase micro businesses' awareness of the ability to refer a complaint to the Ombudsman, which could increase the number of complaints taken to the Ombudsman. If this were to happen, suppliers would face increased costs associated with the Ombudsman process, compared to the SCC process.

⁶ This is in line with Better Regulation guidance, which states that costs (e.g. fines and penalties) incurred by companies for non-compliance should not be included when calculating the NPV and EANCB. See paragraph 2.3.42 in p.69 of the Better Regulation Framework Manual, available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211981/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf

⁷ Ibid

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant Price)	Total (Present Value)	Benefit
Low	n/a	n/a	0.03		0.29	
High	n/a		0.04		0.31	
Best Estimate	n/a		0.03		0.29	

Description and scale of key monetised benefits by ‘main affected groups’

As an increased number of micro businesses become eligible to use the Redress scheme, energy suppliers will be obligated to pay increased case fees in total per year to the Ombudsman. There are also administrative costs for both suppliers and newly eligible micro businesses associated with using the Redress scheme.

The expected costs to the newly eligible microbusinesses of the SCC process are significantly greater than those of the Ombudsman process. However, the expected costs to energy suppliers of the SCC process are slightly less than those of the Ombudsman process.

As noted above, in cases where the energy supplier loses the case made against them, we do not count any administrative costs and fees they incur. Therefore, in cases where a newly eligible micro business wins a case taken to the Ombudsman (that they would have taken to the SCC in the baseline), there are expected to be savings to business under Option 1. Because the cost savings to micro businesses resulting from using the Ombudsman process as opposed to the SCC process exceed the increased costs to energy suppliers, there are also expected to be savings to business under Option 1 in cases where the newly eligible micro business loses a case taken to the Ombudsman.

Although any compensation awarded by the SCC or the Ombudsman represents a transfer from the supplier to the micro business consumer, we do not count these as a cost to energy suppliers when appraising Option 1. Therefore in cases where a newly eligible micro business wins a case taken to the Ombudsman (that they would not have taken to the SCC in the baseline), there will be a benefit to these micro businesses in terms of compensation payments, relative to the baseline.⁸

Her Majesty's Courts & Tribunals Service is also expected to obtain savings due to a decreased number of energy sector complaints presented to the SCC.

Other key non-monetised benefits by ‘main affected groups’

Access to the Ombudsman will provide additional micro businesses with access to a mechanism for resolving complaints which is free to them, except for any administrative and time costs which may be incurred. By comparison, in the baseline scenario the micro businesses will bear the risk of incurring claim and hearing fees if they take their complaint to the SCC and subsequently lose the case.

In cases where a newly eligible micro business wins a case taken to the Ombudsman (that they would not have taken to the SCC in the baseline), they may receive non-financial forms of redress, such as a formal letter of apology. This represents a benefit to micro businesses, relative to the baseline.

This option may bring potential time savings for consumers awaiting complaint resolution. The supplier has a maximum of 8 weeks to resolve a complaint before they are obligated to refer it to the Ombudsman. However the complaint can be referred to the Ombudsman from day 1 to 8 weeks of the complaint being raised, if the supplier and micro business consumer are unable to come to a resolution (referred to as deadlock). By comparison, SCC proceedings can be a more time consuming process and typically take around 30 weeks. It has not been possible to monetise these benefits due to uncertainty regarding the value placed by micro businesses on having their complaints resolved more quickly.

Finally, suppliers and other organisations providing advice to micro businesses may save on administrative costs, which they would incur in the baseline scenario due to inconsistency in the definition of a micro business across the Order and the SLC 7A. It has not been possible to monetise these benefits due to lack of available evidence.

⁸ An implicit assumption here is that, for any given case, the compensation a micro business can expect to receive via the Ombudsman is the same as if they chose to use the SCC. The reasoning behind this assumption is explained in paragraph 38 below.

Key assumptions/sensitivities/risks**Discount rate: 3.5%**

The following assumptions have been made in the assessment of this option:

- the appropriate discount rate for future costs and benefits out to 2023 is 3.5%, the Her Majesty's Treasury (HMT) social discount rate;⁹
- the policy is appraised for the 10 years from July 2014 – June 2023, in 2014 prices with 2014 as the base year;
- up to 150,000 new businesses will be classified as micro businesses under the proposed definition;
- the number of micro businesses is estimated to grow from 1.9m in 2013 at a rate of 1.3% a year throughout the appraisal period, from 2014-23. This growth rate is derived as the average of the growth rates observed prior to the financial crisis, from 2005-07.¹⁰
- the additional cost to energy suppliers, in terms of fees paid to the Ombudsman, from each extra complaint taken by a micro business consumer to the Ombudsman is assumed to remain at £335 (real 2014 price) for the duration of the appraisal period.¹¹ This is equal to the case fee for a non-big 6 supplier;¹²
- these extra micro businesses will generate complaints across the appraisal period at an annual rate per business equal to the mean rate observed for businesses under the old definition from 2009-12, which was 9 complaints for every 10,000 businesses;
- time taken to complete and return necessary forms at each stage of the SCC and Ombudsman processes – see the 'Monetised Benefits of Option 1' section for details;
- the relevant hourly cost to business for the time taken for the following processes is the mean hourly wage for 'Business, research and administrative professionals n.e.c.' (SOC code 2429):¹³
 - completing any Admission, Defence and Counterclaim forms for SCC proceedings;
 - completing the Directions questionnaire for SCC proceedings;
 - attending a hearing; and
 - preparing and submitting evidence to the Ombudsman or SCC.
- the relevant hourly cost to business for the time taken for the following processes is the mean hourly wage for 'Other administrative occupations n.e.c.' (SOC code 4159):¹⁴
 - registering for the SCC online claims process; and
 - completing an online or postal SCC or Ombudsman application form.
- it will cost £20 ,on average, for each of the defendants and claimants to travel to any SCC hearing.

Sensitivity analysis was carried out to assess the impact of extending the appraisal period out to 20 years. Doing so increases the NPV to £0.53m, driven by further savings to HMCTS and compensation payments to newly eligible micro businesses.

⁹ HM Treasury (2011) 'The Green Book: Appraisal and Evaluation in Central Government', pp. 97-99 [web], available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf

¹⁰ The growth rate from 2004 is not used because there was an anomalous contraction in the number of micro businesses of 0.2% that year. Prior to 2003, there is insufficient available data to estimate the number of micro businesses in the UK.

¹¹ Data received from Ombudsman Services: Energy – email correspondence.

¹² The largest 6 licensed energy supplier must pay a variable annual membership fee to the Ombudsman, which is calculated based on a forecast of the number of referrals their customers are expected to generate in the forthcoming year. Big 6 suppliers pay only £260 per case but they pay a larger annual membership fee than non-big 6 suppliers, which is based on an estimate of the number of cases they are likely to generate. Because (i) non-big 6 suppliers pay a fixed membership fee of £150 + VAT and (ii) the Ombudsman operates on a cost recovery basis, it is assumed that the non-big 6 case fee (£335) is the marginal cost to the Ombudsman of handling complaints. As the Ombudsman is expected to pass this cost on directly to suppliers which generate referrals, the cost to a big 6 energy supplier for each extra referral they generate is £335. This assumption has been verified via correspondence with the Ombudsman. There is a further implicit assumption here that the cost to the Ombudsman of handling a referral is independent of whether it comes from a big 6 or non-big 6 supplier.

¹³ Taken from ONS (2013) 'Annual Survey of Hours and Earnings – 2012 Revised Results' [web], available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-328218>. Due to the wide variety of size and function of micro businesses, SOC code 2429 is taken as representative of these general, moderate to highly complex business tasks.

¹⁴ Ibid. SOC code 4159 is taken as representative of general business admin labour costs.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0.01	Net: -0.01	Yes	OUT

Evidence Base

Overview of Impacts of Option 1

- The net benefits of this policy to society depend on three things:
 - the costs to energy suppliers and the newly eligible micro businesses of complaint resolution mechanisms under Option 1 compared to the baseline scenario;
 - the proportion of complaints, progressed through a formal complaint resolution mechanism, that are expected to result in the micro business receiving some level of redress or compensation;¹⁵ and
 - the expected value to micro businesses of the redress they receive.
- As discussed in the 'Baseline' section below, if a would-be eligible micro businesses decides to progress a complaint through a formal complaint resolution mechanism under Option 1, they can be expected to do so via the Ombudsman as opposed to the Small Claims Court (SCC). Tables 1a and 1b below summarises the expected costs and benefits to business of pursuing complaints through the Ombudsman and the SCC, depending on whether the micro business is successful in receiving redress or not.

Table 1a: Expected costs per case to an individual micro business and supplier from SCC and Ombudsman proceedings (£, 2014)

		Probability	Cost to supplier	Cost to micro business	Overall cost to business	Reference
Micro business receives redress	SCC (Baseline)	77%	Non-compliant	75	75	See table 3 below
	Ombudsman (Option 1)	77%	Non-compliant	27	27	See table 5 below
Micro business receives no redress	SCC (Baseline)	23%	253	149	402	See table 3 below
	Ombudsman (Option 1)	23%	355	27	382	See table 5 below

Table 1b: Expected benefits per case to an individual micro business and supplier from SCC and Ombudsman proceedings (£, 2014)

		Probability	Benefit to supplier	Benefit to micro business	Overall benefit to business	Reference
Micro business receives redress	SCC (Baseline)	77%	Non-compliant	475	475	Paragraph 36
	Ombudsman (Option 1)	77%	Non-compliant	475	475	Paragraph 36
Micro business receives no redress	SCC (Baseline)	23%	0	0	0	
	Ombudsman (Option 1)	23%	0	0	0	

¹⁵ This redress or compensation could be financial or non-financial i.e. a letter of apology.

Background

3. This Impact Assessment (IA) examines the impact of secondary legislation to change the definition of a micro business in the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (SI 2008/2268) (“The Order”) in order to extend coverage to a larger number of businesses. The proposal to make this change stems from the Red Tape Challenge (RTC), which is HM Government’s flagship programme to remove and reform areas of regulation. DECC has ownership of the Energy Theme package, and the amendment of this Order is an agreed DECC RTC commitment.
4. The Order requires licensed energy suppliers (gas and electricity suppliers and gas transmission and electricity distribution companies) that provide energy to domestic and micro business customers to join a redress scheme which has been approved by the Gas and Electricity Markets Authority (GEMA), the governing body of Ofgem, the regulator for gas and electricity suppliers. This gives domestic and micro business customers the right to have access to an approved redress scheme if they have not been able to resolve a complaint with their energy supplier directly. The energy supplier bears the case fees of a complaint which is referred to the Redress scheme.

Redress Schemes

5. The Consumers, Estate Agents and Redress Act 2007 (“CEAR Act”) requires redress schemes to be approved by the independent regulator, Ofgem.¹⁶ The Order requires redress schemes to be approved by the governing body of Ofgem.
6. Since 1st October 2008, the Ombudsman Service: Energy (“the Ombudsman”) has operated the Redress scheme. To date this is the only one of its kind for the energy sector.

Micro Business Definition

7. Currently, the Order defines a micro business as any business meeting at least one of the following criteria:¹⁷
 - it does not consume more than 55,000 kWh of electricity per year;
 - it does not consume more than 200,000 kWh of gas per year; and
 - it employs fewer than 10 employees (or the full time equivalent) and has an annual turnover or annual balance sheet not exceeding €2 million.
8. The above thresholds were set following a full consultation by the Department for Business, Enterprise and Regulatory Reform in 2007.¹⁸ At the time there was broad agreement that businesses larger than the original micro business definition above had sufficient expertise and commercial capacity to either resolve problems directly with the service provider or pursue the matter through the courts. They were also considered likely to have the capacity and resources to seek alternative service providers.¹⁹ Consequently they were considered unlikely to benefit from access to a Redress scheme.²⁰ The definition of a micro business consumer in the Order has remained unchanged since 2008.

¹⁶ *Consumers, Estate Agents and Redress Act 2007*. s.49 [pdf], available at:

http://www.legislation.gov.uk/ukpga/2007/17/pdfs/ukpga_20070017_en.pdf

¹⁷ *The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008*. SI 2008/2268, s.2(1) [pdf], available at:

http://www.legislation.gov.uk/uksi/2008/2268/pdfs/uksi_20082268_en.pdf

¹⁸ BERR (2007) ‘Consumers, Estate Agents and Redress Bill: Measures to Strengthen and Streamline Consumer Advocacy – Consumer Redress Schemes in Gas, Electricity and Postal Services’ [pdf], available at:

<http://www.berr.gov.uk/files/file40283.pdf>

¹⁹ *Ibid*, p. 11

²⁰ BERR (2008) Impact Assessment for the expansion of redress schemes to the gas, electricity and postal service sectors – final’, p.20 [pdf], available at: <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file47809.pdf>

9. Ofgem implemented the same definition of a micro business set out in the Order in the Standard Licence Condition 7A (“SLC 7A”) for gas and electricity supply licences.²¹ The aim of the licence condition, which came into force on 18 January 2010, was to support micro business consumers by ensuring that certain relevant contractual information is provided to them by suppliers. This was aimed at improving visibility, transparency and timeliness of this contractual information and regulating contract roll overs.²²
10. Since then, Ofgem have undertaken an in-depth analysis of the market through its Retail Market Review (RMR). Ofgem undertook significant research to assess how to ensure business customers, and particularly smaller businesses, are able to get the best deal from the market. This research demonstrated that businesses just outside the existing definition of a micro business in the Order have similar characteristics, face the same problems and need similar help to micro businesses that are included under the current definition. For example, Small²³ and Micro businesses were found to have similar levels of dissatisfaction with billing accuracy and find similar amounts of errors in their billing.²⁴
11. Following extensive consultation, Ofgem issued an open letter on 28th June 2013, which set out its final decision to amend the licence condition in order to extend the coverage of the safeguards in SLC7A. This includes but is not limited to, increasing the consumption levels in the definition of a micro business²⁵. Ofgem has estimated that this new definition will encompass up to 150,000 extra businesses.²⁶
12. Effective from 31st March 2014, Ofgem has implemented the proposed change to the consumption levels in the definition of a micro business in SLC7A to read:
 - it does not consume more than 100,000 KWh of electricity per year, (increased from 55,000 KWh); and
 - it does not consume more than 293,000 KWh of gas per year, (increased from 200,000 KWh.²⁷
13. In a March 2013, Ofgem published a consultation document that set out final proposals for non-domestic consumers. Ofgem stated its intentions to seek a voluntary agreement with energy suppliers and the Ombudsman Service as a short term measure to ensure that any businesses newly covered by the changes to SLC 7A definition were able to access complaints redress via the same route as currently protected micro businesses.²⁸ In the longer term, Ofgem stated their intention to seek the legislative change considered in this IA, as a means to providing an enduring, enforceable and consistent level of support to all micro business consumers.²⁹ Any voluntary agreement would be designed to be a temporary measure in the interim period between the revised SLC 7A coming into effect and the amendment of the Redress order.

²¹ Ofgem (2009) ‘Energy Supply Probe – Proposed Retail Market Remedies’, pp.28-29 [pdf], available at:

<https://www.ofgem.gov.uk/ofgem-publications/38335/retail-package-decision-document.pdf>

²² Ofgem (2010) ‘Guidance on application and interpretation of certain aspects of SLC 7A’, p.1 [pdf], available at:

<https://www.ofgem.gov.uk/ofgem-publications/38475/guidance-application-and-interpretation-certain-aspects-slc-7a.pdf>

²³ A Small Business is defined in the *Commission Recommendation 2003/361/EC of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises*, Annex: Article 2 [pdf], available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:EN:PDF>

²⁴ Accent Scotland (for Ofgem) (2012) ‘Quantitative Research into the Non Domestic Customer Engagement and Experience of the Energy Market’, pp.37-40 [pdf], available at: <https://www.ofgem.gov.uk/ofgem-publications/39449/quantitative-research-non-domestic-customer-engagement-and-experience-energy-market.pdf>

²⁵ Ofgem (2013) ‘Implementation of the Retail Market Review non-domestic proposals – decision to make license modifications’, p.2 [pdf], available at: <https://www.ofgem.gov.uk/ofgem-publications/74749/implementationoftheretailmarketreviewnon-domesticproposals-decisiontomakelicencemodifications.pdf>

²⁶ This is the upper bound of Ofgem’s estimate. Ofgem note in the Impact Assessment for the final non-domestic RMR proposals that the figure is likely to be substantially less than 150,000.

²⁷ Ofgem (2013) ‘Implementation of the Retail Market Review non-domestic proposals – decision to make license modifications’, p.30 [pdf], available at: <https://www.ofgem.gov.uk/ofgem-publications/74749/implementationoftheretailmarketreviewnon-domesticproposals-decisiontomakelicencemodifications.pdf>

²⁸ Ofgem (2013) ‘The Retail Market Review – Final non-domestic proposals’, p.22-23 [pdf], available at:

<https://www.ofgem.gov.uk/ofgem-publications/39355/retail-market-review-final-non-domestic-proposals22-marchfinal.pdf>

²⁹ Ibid

14. Currently, there is no voluntary agreement formally in place; however the Ombudsman has been accepting complaint referrals from micro businesses under the proposed definition from April 2014.

Existing Protections for Micro Businesses

15. There are a number of existing arrangements, which are complementary to the Order and SLC 7A.

16. Energy providers must adhere to the complaint handling standards that are set by Ofgem under the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, SI 2008/1898 (“the CHSR”).³⁰ These regulations, defined in a statutory instrument written by Ofgem, describe legally binding requirements for energy suppliers handling complaints from domestic and micro business consumers.³¹

17. The definition of micro business consumer in the CHSR depends upon the definition of micro business consumer in the Order, so a change to the Order will have a knock on effect on the scope of the CHSR. As a consequence, if Option 1 is implemented, the scope of the CHSR will automatically change to match the revised definition and thereby apply to more micro businesses.

18. The CHSR place the following requirements on an energy supplier regarding handling complaints:

- **Recording of complaints** received, including information about agreed action or further communication. Follow-up complaints must also be logged and linked to the relevant previous complaint record;
- **Signposting to the Redress scheme**, informing the consumer about the Ombudsman and its powers. This must occur whenever a complaint reaches ‘deadlock’ (i.e. when the supplier is aware they cannot solve the complaint to the consumers satisfaction) or 8 weeks have passed since the complaint was first raised, whichever is sooner; and
- **Establish a process to deal effectively with complaints referred** from the Citizen’s Advice consumer service³² and Consumer Futures.^{33,34}

19. Separately, Consumer Futures has a duty under section 13 of CEAR Act to investigate a complaint from a micro business consumer, who is in individual, relating to the disconnection of a gas or electricity supply to the consumer’s premises.³⁵

20. The Citizens Advice consumer service (CAcs) is a free impartial service and can provide micro business customers with information and advice, as well as help when making a complaint about their energy supply.

Problem under Consideration

21. As discussed in paragraph 10 above, Ofgem research suggests that businesses just outside the existing definition of a micro business in the Order have similar characteristics, face the same problems and need similar help to micro businesses that are included under the current definition. In addition, as with existing micro businesses, businesses currently falling just outside the definition do not have the economic leverage of large enterprises when attempting to resolve complaints.

³⁰ *The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008*. SI 2008/1898 [pdf], available at: http://www.legislation.gov.uk/ukxi/2008/1898/pdfs/ukxi_20081898_en.pdf

³¹ *The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008*. SI 2008/1898 [pdf], available at: http://www.legislation.gov.uk/ukxi/2008/1898/pdfs/ukxi_20081898_en.pdf

³² At the time the Regulations were written, consumer advice was provided by Consumer Direct. However, Consumer Direct closed on 30th March 2012 to be replaced by the CA consumer service.

³³ Consumer Futures, which were named Consumer Focus at the time the Regulations were written, can refer, advise and represent consumer complaints where either (i) the consumer is designated as vulnerable or (ii) the complaint relates to disconnection. See s.12(3), s.12(4), s.13(2) and s.13(3) of the *Consumers, Estate Agents and Redress Act 2007*. s.49 [pdf], available at: http://www.legislation.gov.uk/ukpga/2007/17/pdfs/ukpga_20070017_en.pdf.

³⁴ At the end of March 2014, the function of Consumer Futures transferred to the Citizen’s Advice Bureau.

³⁵ *Consumers, Estate Agents and Redress Act 2007*. s.43 [pdf], available at: http://www.legislation.gov.uk/ukpga/2007/17/pdfs/ukpga_20070017_en.pdf

22. Ofgem is extending the scope of its definition of a micro business in SLC 7A from 31st March 2014. The Citizen's Advice consumer service have also stated that they intend to move to Ofgem's extended definition when it comes into effect from 31 March 2014 when dealing with micro business consumers.
23. If the definition of a micro business were to remain as currently stated in the Order, there would be different definitions of a micro business in different regulations, which may be confusing for suppliers, customers and other organisations providing advice to micro businesses. This discrepancy would also mean that there was not equal access to resolution mechanisms for businesses with similar characteristics, i.e. those under the scope of the original micro business definition and those extra businesses captured by the new definition.

Rationale for intervention

24. Government intervention is required to amend the definition of a micro business in the Order, to ensure that businesses with similar characteristics to those captured under the original micro business definition have access to the same complaint resolution process.
25. In addition, the costs to the complainant associated with pursuing a complaint via the Ombudsman are lower than via the SCC for a micro business complainant.³⁶ As the SCC is the main dispute resolution channel for businesses outside the current micro business definition, expanding the coverage of the definition will remove a financial impediment to effective mediated complaint resolution for a significant number of smaller businesses. The Ombudsman also represents a more socially cost effective means of providing a public service – mediated complaint resolution – than the SCC, without compromising the standard of this service.
26. By aligning the definition of a micro business in the Order and in SLC 7A, this will ensure that there is only one operational definition of a micro business in the energy sector. Un-aligned definitions could be confusing for market participants.
27. While Ofgem is seeking a voluntary agreement with energy suppliers to ensure that micro businesses covered by the changes to SLC 7A will also be able to access the Ombudsman services, amending the Order will also provide legal certainty of complaint resolution. This will ensure an enforceable and consistent level of support to all micro business consumers who use these services. If future access to the Redress scheme were to remain subject to a voluntary agreement, these businesses would have no recourse should the agreement be retracted.
28. SCC proceedings can be a timely process and typically take around 30 weeks.³⁷ This is derived as the average time between issue (i.e. when the claimant makes an application to the courts) and hearing for a Small Claims Court case between Q3 2010 and Q3 2013.³⁸ Firms eligible to use the Redress scheme can refer complaints to the Ombudsman 8 weeks after raising the complaint.³⁹ Following this, 92-95% of cases are resolved within 6 weeks.⁴⁰ Therefore, the additional businesses gaining access to the Redress scheme would benefit from significantly quicker complaint resolution.

³⁶ Conversely, the cost to the energy supplier for a complaint pursued via the Ombudsman is greater than if it were pursued via the SCC. See tables 3 and 5 below for details. However, in the appraisal of Option 1 we do not count the costs to energy suppliers in instances where they lose the case made against them.

³⁷ It should be borne in mind, however, that only approximately 3% of cases issued to the county courts actually make it to hearing.

³⁸ Ministry of Justice (2013) 'Statistics (quarterly) July to September 2013' [web], see table 1.3 of https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267407/csq-q3-2013-main-tables.xls

³⁹ See the Ombudsman Services website: <http://www.ombudsman-services.org/who-can-we-help-energy.html>

⁴⁰ Data received from Ombudsman Services: Energy – email correspondence

Policy Objective

29. The government intends to increase the consumption levels in the definition of a micro business in the Order to read:
- it does not consume more than 100,000 KWh of electricity per year (increased from 55,000 KWh); and
 - it does not consume more than 293,000 KWh of gas per year (increased from 200,000 KWh).
30. This will provide an estimate of up to an additional 150,000 businesses, which have similar characteristics to existing micro businesses, access to the Redress scheme to resolve complaints with their energy supplier. As a result micro business consumers newly covered by SLC 7A will have access to additional complaints redress resources and may be privy to quicker complaint resolution as a consequence of the amendment.
31. Furthermore, this change will mean there is no confusion as to the definition of a micro businesses, for the purposes of gas and electricity supply, arising from a discrepancy between the Order and SLC 7A.

Options Considered

Baseline - 'do nothing' option

32. In order to assess the impacts of increasing the consumption levels in the definition of a micro business in the Order, the policy option has been assessed against a “business as usual” baseline scenario. In this scenario, the definition of a micro business in the Order remains as it was originally set.

Option 1 - Amend the Legislation

33. This option is to amend the legislation in order to increase the consumption levels in the definition of a micro business in the Order to read:
- it does not consume more than 100,000 KWh of electricity per year; and
 - it does not consume more than 293,000 KWh of gas per year.

Baseline

34. Under the current definition, there are an estimated 1.9 million micro businesses in the UK and this number is assumed to grow at a rate of 1.3% per year throughout the appraisal period, from 2014-23.⁴¹ This growth rate is derived as the average of the growth rates observed prior to the financial crisis, from 2005-07.⁴²
35. Under current arrangements, micro businesses - as defined in the Order – that have not had a complaint to their energy supplier settled to their satisfaction can seek dispute resolution from either of the following two organisations:
- The Small Claims Court (SCC): a successful claim will receive a maximum compensation payment of £10,000;
 - The Ombudsman Service: Energy: a successful claim will also receive a maximum compensation payment of £10,000.

⁴¹ For the 1.9m figure see ONS (2013) 'UK Business: Activity, Size, Location' [xls], available at: <http://www.ons.gov.uk/ons/rel/bus-register/uk-business/2013/rft--table-1.xls>

⁴² See previous ONS 'UK Business: Activity, Size, Location' releases [web], available at: <http://www.ons.gov.uk/ons/publications/all-releases.html?definition=tcn%3A77-21554>

36. In instances where a micro business was successful in receiving a financial award from the Ombudsman, the average award they receive is around £475 (real 2014 prices).⁴³ This average is based on data received by DECC from the Ombudsman services, covering the period 2009-12.
37. We have no evidence on the level of compensation typically awarded to micro business claimants by the SCC. Obtaining hard evidence on compensation levels for microbusinesses which take their energy supply related complaints to the SCC would have required conducting primary research on individual case files as SCC's. As explained in paragraph 63 below, carrying out this work would have been disproportionately costly for this IA
38. Therefore, for the purposes of this IA we have assumed that the level of compensation awarded is equivalent to that which would be awarded had they taken the case to the Ombudsman; £475 (real 2014 prices). This is justifiable because under both routes the independent arbitrators would be able to assess, and would also be legally obliged to compensate for, any unjust loss suffered by the micro business consumer.

Small Claims Court

39. The fee for submitting an SCC claim varies depending on the value of the claim being pursued. In addition, if the court determines a hearing is required, then there is a hearing fee which also varies depending on the value of the claim being pursued. This hearing fee is paid by the party that loses the case. There will also be a range of other costs (for both the micro business claimant and the defendant) associated with pursuing a claim via the SCC, which include the cost associated with the time it takes to complete the claim form, to prepare and submit evidence and to attend the court hearing. These costs are outlined in the following paragraphs.
40. As discussed in paragraph 38 above, the average level of compensation awarded by the SCC in a micro business case related to energy supply is expected to be £475 (real 2014 prices). As the SCC claim and hearing fees vary depending on the value of the claim being pursued, in order to produce cost estimates we have conservatively assumed that the average energy sector SCC claim falls within the £500.01 to £1000 band.
41. The SCC fee for submitting a claim in the £500.01 to £1000 band is £70 if a form is submitted in paper format and £60 if a claim is made online.⁴⁴ In the absence of information on the number of claims submitted via each route, the subsequent analysis assumes that the cost per submission of a claim is £65 i.e. the average of the two charges.
42. If the court decides a hearing is required, then a hearing fee of £80 is applicable for a claim in the £500.01 to £1000 band.⁴⁵
43. The estimated administrative costs to business of the SCC process are summarised in table 2 below.

It is assumed it takes one administrative worker:

- 30 minutes to complete the registration form; and
- one hour to complete the online or postal claim form (whichever the claimant opts for).

⁴³A weighted arithmetic mean average has been used, where weights are determined by annual caseloads.

⁴⁴ HMCTS (2013) 'Civil and Family Court Fees', p.3 [pdf] available at: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf>. SCC fees vary depending on the value of the claim being pursued. In light of this, the case fees (issuing fee and hearing fee) for a claim equal to the average Ombudsman award is taken as representative of case fees overall.

⁴⁵ Ibid, p.5. Hearings are only required in around 3% of SCC cases. See table 1.2 of Ministry of Justice (2013) 'Statistics (quarterly) July to September 2013' [web], available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267407/csq-q3-2013-main-tables.xls

It is assumed it takes one business professional:

- one day to complete the admission form (if the defendant accepts responsibility for the claim immediately) or one day to complete the defence and counter claim form (if the defendant defends all or part of the claim);
- one day to complete the directions questionnaire;⁴⁶ and
- one day to prepare and submit any required evidence.

It is further assumed that:

- one business professional will lose one day of earnings in attending any hearing; and
- in the absence of any robust evidence, the cost of travelling to court is £20 (£, 2014).

44. Of these costs, the registration and claim form costs are borne by the claimant while the admissions and defence and counter claim form costs are borne by the defendant. The travel costs, hearing attendance time costs, cost of preparing evidence and completing the directions questionnaire are borne by both the defendant and the claimant.

Table 2: Estimated costs to business of the SCC process (excluding compensation pay-outs) (£, 2014)

Process	Number of workers	Hours per worker	Hourly labour cost	Total labour cost	Paper costs	Postage Costs	TOTAL
Registration	1	0.5	13.89	6.94			6.94
Online claim	1	1	13.89	13.89			13.89
Postal claim	1	1	13.89	13.89	0.22	0.60	14.70
Admission form	1	7.5	26.41	198.07	0.22	0.60	198.89
Defence and counterclaim form	1	7.5	26.41	198.07	0.22	0.60	198.89
Directions questionnaire	1	7.5	26.41	198.07	0.22	0.60	198.89
Preparing & submitting evidence	1	7.5	26.41	198.07	2.19	0.96	201.22
Attending a hearing - loss of earnings	1	7.5	26.41	198.07			198.07
Attending a hearing - travel costs							20.00

Key: Yellow = cost borne by claimant only, Green = cost borne by defendant only, Orange = cost borne by both parties.

45. On top of these costs are the case fees and any hearing fees outlined above. The costs to business, both micro businesses (claimants) and suppliers (defendants) need to be weighted by (a) the probability that each possible stage in SCC proceedings is reached and (b) the probability that the micro business wins the case. The probability of reaching each stage is estimated from Ministry of Justice (MoJ) court statistics.⁴⁷ The probability of the claimant winning is estimated to be 77%, as outlined in paragraphs 68-70 below. The probability weighted costs are presented in table 3 below.

⁴⁶ This questionnaire is used by the courts to allocate the case to an appropriate court and, usually, assign a hearing date.

⁴⁷ These expected probabilities are derived from the average proportion of county court cases reaching each stage in court proceedings, over the period Q1 2009 to Q3 2013. See table 1.2 of Ministry of Justice (2013) 'Statistics (quarterly) July to September 2013' [web], available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267407/csq-q3-2013-main-tables.xls

Table 3: Probability weighted costs to business of the SCC process (excluding compensation pay-outs) (£, 2014)

Furthest stage in proceedings	Probability	Claimant loses		Claimant wins	
		To claimant	To defendant	To claimant	To defendant
Not defended	0.85	86.24	198.89	21.24	263.89
Defended	0.05	285.13	397.77	220.13	462.77
Allocated to Small Claims track	0.07	486.35	598.99	421.35	663.99
Hearing	0.03	874.42	707.07	529.42	1052.07
EXPECTED VALUE	1.00	149.29	253.06	75.41	326.94
Average cost to claimant	92.35				
Average cost to defendant	310.00				
TOTAL EXPECTED COST TO BUSINESS	402.34				

46. In total, the expected cost of pursuing a case via the SCC is estimated to be £75 for a micro business claimant if they win the case and £149 if they lose it (real 2014 prices). Conversely, the cost to the energy supplier defendant is estimated to be £253 if they win the case and £327 if they lose it. These estimates do not include any compensation awarded by the court which would represent an additional cost for the energy supplier. Furthermore, they represent the per unit cost for existing cases and the assumed unit cost for additional SCC cases in the counterfactual.

47. For these calculations, micro business employees are assumed to work the average working day of 7.5 hours, as per the latest ONS labour market statistics.⁴⁸ The hourly cost of labour is taken from the 2012 Annual Survey of Hours and Earnings data, at 4 digit occupational level.⁴⁹ GDP deflators from HMT are used to adjust these costs to be in real 2014 prices.⁵⁰ Non-wage labour costs are assumed to be 27% of the wage cost, in line with the latest HMT Green Book publication.⁵¹

48. The SCC can award up to £10,000 in compensation to the claimant. As discussed in paragraph 56 below, this is the same as the maximum amount of compensation which the Ombudsman can order the supplier to pay to the consumer.

49. The option of pursuing a claim via the SCC creates an incentive for suppliers to deal with complaints directly in the first instance where the cost of addressing the complaint to the consumer's satisfaction is less than the expected cost to the supplier (defendant) of the SCC process, plus any expected compensation award.

The Ombudsman Service: Energy

50. Small energy suppliers (non-big 6) must pay a fixed annual membership fee of £150 plus an individual case fee of £335 for each complaint referred by one of their customers to the Ombudsman. Therefore, the cost to a non-big 6 supplier, in terms of fees paid to the Ombudsman, for an additional complaint referred to the Ombudsman is fixed at £335.

⁴⁸ ONS (2013) 'Labour Market Statistics, February 2014' [web], available at: <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/february-2014/table-a01.xls>

⁴⁹ For administrative staff, the SOC10 code is 4159, and for business professionals it is 2429. See: <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2012-revised-results/2012-revised-table-14.zip> for the average hourly wage figures.

⁵⁰ HM Treasury (2013) 'GDP deflators at market prices, and money GDP: December 2013 update' [web], available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269878/GDP_Deflators_Qtrly_National_Accounts_December_2013_update.xls

⁵¹ HM Treasury (2011) 'The Green Book: Appraisal and Evaluation in Central Government' [web], available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf

51. The largest 6 licensed energy suppliers⁵² must pay a variable annual membership fee to the Ombudsman, which is calculated based on a forecast of the number of referrals their customers are expected to generate in the forthcoming year. It is therefore assumed this fee is calculated on the basis of an average cost to the Ombudsman of £335 per referral. This assumption has been verified via correspondence with the Ombudsman (please see footnote 12 above for further details).
52. There will also be additional costs (for both the micro business claimant and the defendant) suppliers in the preparation and submission of evidence, which include the costs of lodging a complaint with the Ombudsman and submitting detailed evidence.
53. The estimated administrative costs to business of the Ombudsman process are summarised in table 4 below. It is assumed it takes one administrative worker 30 minutes to complete the online claim form. It is assumed to take one business professional one day to prepare and submit any required evidence. On top of these costs, which are borne by the micro business claimant, are the case fees borne by the supplier (defendant). The costs of preparing and submitting evidence are borne by both the claimant and the defendant.

Table 4: Estimated costs to business of the Ombudsman process (excluding compensation pay-outs) (£, 2014)

Process	Number of workers	Hours per worker	Hourly labour cost	Total labour cost	Paper costs	Postage Costs	TOTAL
Online claim	1	0.5	13.89	6.94			6.94
Preparing & submitting evidence	1	7.5	26.41	198.07	2.19	0.96	201.22

Key: Yellow = cost borne by claimant only, Green = cost borne by defendant only, Orange = cost borne by both

54. The costs to business, both micro businesses (claimants) and suppliers (defendants) need to be weighted by the probability that it is necessary for a significant amount of evidence to be prepared and submitted. In the SCC, it is only necessary to prepare and submit evidence if the case is actually allocated to the small claims track (i.e. if it is not resolved before this step). Given that 10% of specified claims under £10,000 are actually allocated to the small claims track, it is assumed that it is only necessary for a significant amount of evidence to be prepared and submitted to the Ombudsman in 10% of cases. The probability weighted costs of the Ombudsman process are presented in table 5 below.

Table 5: Probability weighted costs to business of the Ombudsman process (excluding compensation pay-outs) (£, 2014)

Furthest stage in proceedings	Probability	To claimant	To defendant
Online claim	0.90	6.94	335.00
Preparing & submitting additional evidence	0.10	208.16	536.22
EXPECTED VALUE	1.00	27.14	355.20
TOTAL EXPECTED COST TO BUSINESS	382.34		

55. In total, the per case cost of the Ombudsman process is estimated to be £27 for the micro business claimant and £355 for the energy supplier defendant. These estimates do not include any compensation awarded by the court which would represent an additional cost for the energy supplier. Furthermore, they represent the per unit cost for existing cases and the assumed unit cost for any additional Ombudsman cases resulting from this policy intervention.

⁵² The largest 6 licensed energy suppliers are, at the time of writing: Centrica, E.ON, SSE, EDF Energy, RWE npower and Scottish Power.

56. If a case is referred to the Ombudsman, it can award compensation of up to £10,000 to address any loss they consider the consumer has experienced. Therefore, a micro business consumer can be expected to take a case to the Ombudsman if they believe they have incurred a loss exceeding the expected cost to them of the Ombudsman process (£27) but no greater than £10,000 in value.
57. The option of pursuing a case via the Ombudsman creates an incentive for suppliers to deal with the complaint where the cost of addressing the complaint to the consumer's satisfaction is less than the expected cost to the supplier (defendant) of the Ombudsman process, plus any expected compensation award.

Comparison of SCC and Ombudsman

58. As outlined in paragraph 38 above, it is reasonable to assume that (for any given case) the compensation levels which would be awarded by the Ombudsman and the SCC are equal. Furthermore, it is estimated that the cost to the consumer of the SCC process (£75 if they win the case and £149 if they lose it) exceeds that of the Ombudsman process (£27). Therefore a micro business consumer who pursues a complaint can be expected to do so through the Ombudsman as opposed to the SCC. In either state of the world it can be expected to leave them in a better financial position than the SCC. Going to the Ombudsman is a strategy which strictly dominates going to the SCC.
59. For cases exceeding £10,000 in expected value, it is assumed that the consumer pursues the complaint through the courts (non-SCC).⁵³ This option creates an incentive for suppliers to deal with the complaint in the first instance where the cost of addressing the complaint to the consumer's satisfaction is less than the expected cost of the non-SCC courts process to the supplier,⁵⁴ plus any expected compensation award.

Option 1

60. Under Option 1, suppliers will face the same processes when handling complaints by the newly defined micro businesses as they do for existing micro businesses.
61. The additional (up to) 150,000 business consumers that would fall under the proposed new definition of a micro business, if they are unable to reach a mutually acceptable agreement with their supplier, currently only have the option of going to the SCC. Therefore, due to the lower costs to micro businesses associated with the Ombudsman process (relative to the SCC), if the proposal is implemented these consumers can be expected to take a case to the Ombudsman if they believe they have incurred a loss exceeding the expected cost to them of the Ombudsman process but no greater than £10,000 in value. For cases exceeding £10,000 in value, it is assumed the consumer pursues the complaint through the courts (non-SCC), as in the baseline scenario.
62. The additional (up to) 150,000 businesses under the proposed new definition are expected to refer complaints to the Ombudsman across the appraisal period at an annual rate per business equal to the average annual rate observed for businesses under the old definition from 2009-12, which is 9 complaints for every 10,000 micro businesses.⁵⁵ This gives an estimate of 129 extra cases in 2014, rising to 146 by 2023 (due to the projected growth in the number of businesses).

⁵³ If the costs to the consumer of the non-SCC court process are equal to those of the SCC process, this assumption will be valid. In general, a consumer can be expected to pursue an unresolved complaint using the complaint resolution mechanism that gives them the highest expected value, taking into account the amount of compensation they expect to receive and the expected cost of that mechanism in terms of fees and administrative costs.

⁵⁴ This expectation should be weighted by the suppliers belief of the probability that a micro business consumer will actually proceed to the non-SCC court

⁵⁵ Data received from Ombudsman Services: Energy – email correspondence

Estimation of the number of complaints referred to the SCC in the baseline scenario

63. We do not have robust evidence on the number of complaints which these newly eligible micro businesses would refer to the SCC in the baseline scenario. One possible way of estimating this figure would have been to obtain data on the number of micro businesses, under the current definition, which use the SCC to resolve complaints related to their energy supply. However discussions with MoJ revealed that this approach would have been disproportionately costly for the scale of the measure being appraised in this IA.⁵⁶ In order to obtain the required data, DECC would have needed to obtain clearance from HMCTS to study numerous individual case files at many SCC locations across the country. Resource would also need to be expended to devise a sampling methodology and analyse the results.
64. In light of this, we have estimated the number of complaints which the newly eligible micro businesses would refer to the SCC in the baseline scenario as a range. The upper bound of this range is equal to the number of complaints the newly eligible micro businesses are expected to refer to the Ombudsman (as outlined in paragraph 62 above). This is justified because, given the SCC is a more costly option (as outlined in paragraph 58 above), micro businesses cannot be expected to refer more complaints to the SCC in the baseline than they would refer to the Ombudsman under Option 1.
65. The central estimate for the number of micro business complaints going to the SCC in the baseline is calculated on the assumption that the probability of using a complaint resolution mechanism is in direct proportion to the expected net benefit of using that mechanism to progress a complaint. On this assumption, the estimated number of cases going to the SCC in the baseline can be calculated as a proportion of the number of cases expected to go to the Ombudsman under Option 1. The expected net benefit of the SCC process is £273, whereas for the Ombudsman process it is £339 (real 2014 prices). Therefore $273/339 = 81\%$ of those cases taken to the Ombudsman under Option 1 are expected to go to the SCC in the baseline scenario.
66. The lower bound of the estimate is calculated such that the central estimate (81%) is the midpoint of the range. On this basis the lower bound estimate is that 61% of those cases taken to the Ombudsman under Option 1 are expected to go to the SCC in the baseline scenario.⁵⁷ As explained in the 'Sensitivities' section below, the uncertainty around the level of the SCC caseload in the baseline has no significant implications for the high-level analysis presented in this IA. However it does have a bearing on the EANCB of Option 1, as discussed in the 'One-in, two-out' section below.
67. The direct impact on costs to business, as well as any compensation payments which are classified as transfers, is summarised in the table 6 below. The table shows the difference in costs, compared to the baseline, for each feasible combination of supplier and consumer behaviour.

Estimation of the probability of a micro business winning case

68. Data received from the Ombudsman allow us to estimate the proportion of cases taken to the Ombudsman by the newly eligible micro businesses that will result in them winning the case. Here, we are defining the micro business as winning the case whenever they receive some form of redress, financial or non-financial (i.e. a letter). Under this definition, and based on data covering the period 2009-12, the probability of the micro business winning the case is estimated to be 77%.⁵⁸
69. We do not have robust evidence on the proportion of complaints taken to the SCC which result in the micro business winning the case. Obtaining hard evidence on this would have required conducting primary research on individual case files as SCC's. As explained in paragraph 63 above carrying out this work would have been disproportionately costly for this IA.

⁵⁶ Source: email discussions with the Criminal Justice System statistics team at MoJ

⁵⁷ $81\% - (100\% - 81\%) = 61\%$.

⁵⁸ This probability is an arithmetic mean average of the observed probabilities for each year from 2009-12, weighted by the number of cases taken to the Ombudsman in each year.

70. We have therefore assumed that (for any given case) the probability of the micro business winning the case is the same whether they use the SCC or the Ombudsman. This is justifiable because under both routes the independent arbitrators would be able, and legally required, to assess whether any unjust loss had been suffered by the micro business consumer. This assumption is in line with an MoJ in consultation stage IA on court fees, where it was assumed that 80% of claimants in the SCC end up winning their case.⁵⁹

⁵⁹ MoJ (2013) 'Enhanced Court Fees', p.15 [pdf] available at: https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting_documents/courtfeesconsultation.pdf

Table 6: Direct impact on business of Option 1, dependent on supplier and consumer behaviour (costs in real 2014 prices)

	Baseline Scenario	Option 1	Change in process costs	Explanation	Change in compensation	Explanation
Micro business receives redress (costs to the energy supplier defendant aren't counted)	Taken to SCC by consumer	Consumer goes to the Ombudsman	-£48	The cost to a micro business of the SCC process is £75, whereas the cost to them of the SCC process is £27, leading to a £48 saving	£0	There is no change in compensation payments as the average SCC and Ombudsman awards are assumed to be the same
	Not taken to SCC by consumer		£27	The cost to a micro business of the ombudsman process, when they win the case, is £27	£475	The average ombudsman award is £475
Micro business receives no redress costs to the energy supplier defendant are counted)	Taken to SCC by consumer		-£20	The total cost to business of the SCC process is £402, whereas the cost of the Ombudsman process is £382, leading to a £20 saving	£0	The consumer loses the case and receives no redress
	Not taken to SCC by consumer		£382	The total cost to business of the ombudsman process, when micro business loses the case, is 382	£0	The consumer loses the case and receives no redress

Impact of Policy Options

Monetised Costs of Option 1

Familiarisation Costs

71. Under this option there may be a familiarisation exercise associated for the newly eligible micro businesses. For example they may have to expend time to become acquainted with the Ombudsman procedures. These costs are captured in our monetised estimates of the costs to micro businesses associated with progressing complaints through the Ombudsman.⁶⁰
72. It has been assumed that a newly eligible micro business only faces familiarisation costs if they decide to progress a complaint through the Ombudsman. This is justified because a micro business would have no cause to become familiar with the process in any other instance. Unlike larger businesses, which may require a comprehensive and up-to-date understanding of all of the legal frameworks underpinning the markets in which they operate, for micro businesses such an understanding would be unnecessary and costly.

Recurring Annual Costs

73. Under this option, it is expected that the newly eligible micro businesses will refer complaints, which would not have gone to the SCC under the baseline, to the Ombudsman due to the relatively lower expected costs of doing so (the SCC process is expected to cost them £75 if they win the case and £149 if they lose it, compared to £27 for the Ombudsman process).
74. In all of these cases, the supplier will incur the Ombudsman case fees, which they would not incur in the baseline. Furthermore, both suppliers and the newly eligible micro businesses will incur the administrative costs associated with going to the Ombudsman, which they would not incur in the baseline (see rows 2 and 4 in table 2 above). However when appraising Option 1, in cases where the energy supplier loses the case made against them, we do not count any administrative costs and fees they incur. This is in line with the Better Regulation Framework Manual guidance.
75. Therefore, in instances where the micro business claimant wins the case, there is a net cost to business (and society) of £27 (see row 2 in table 6 above). In instances where the micro business claimant loses the case, there is a net cost to business (and society) of £382 (see row 4 in table 6 above).
76. Based on these figures, and the estimates of the number of complaints which would go to the Ombudsman in the counterfactual (outlined in paragraphs 63 to 67 above), these costs are expected to be between £0 and £5,400 in the first year of the appraisal, with a central estimate of £2,700. This rises to between £0 and £6,000 (with a central estimate of £3,000) by 2023 (in line with the growth in the number of microbusinesses over the appraisal period). The lower bound of £0 reflects the fact that the upper bound for the estimate of the number of complaints going to the SCC in the baseline is equal to the number of complaints the newly eligible micro businesses are expected to refer to the Ombudsman under Option 1.⁶¹
77. Over the entire appraisal period, the value of these costs is expected to be between £0 and £0.06m, with a central estimate of £0.03m (real 2014 prices). This gives a present value range of £0 to £0.05m, with a central estimate of £0.02m (base year 2014).
78. Table 7 below shows an illustrative example for how these costs have been calculated, using data for 2015, in which year the number of cases taken to the Ombudsman by the newly eligible micro businesses, denoted C_{OS} , is expected to be 131.

⁶⁰ See table 5 above.

⁶¹ See paragraph 64 above.

Table 7: Estimated breakdown of costs arising from increased Ombudsman caseload in 2015 (real 2014 prices)

	Cost (low)	Cost (central)	Cost (high)
SCC cases in baseline (C_{SCC})	131 (= C_{OS})	106 (=81% x C_{OS})	80 (=61% x C_{OS})
Probability of microbusiness winning the case (p_{win})	77%	77%	77%
Net cost if microbusiness wins the case (NC_{win})	£27	£27	£27
Net cost if microbusiness loses the case (NC_{lose})	£382	£382	£382
Total cost ($(C_{OS} - C_{SCC}) \times (p_{win} \times NC_{win} + (1 - p_{win}) \times NC_{lose})$)	£0	£2,700	£5,500

79. In those instances where the micro business wins the case, their energy supplier may be ordered to pay them financial compensation. While these financial awards represent a cost for suppliers, we do not count these costs in the appraisal of Option 1.

Non -monetised Costs of Option 1

80. The processes for dealing with complaints referred from the CACs and Consumer Futures are already in place. Therefore suppliers will only bear the costs of recording, and signposting in relation to, complaints raised by the newly eligible micro businesses under Option 1. Most of the direct costs associated with complying with these requirements relate to undertaking IT systems changes and training staff. As such they have already been borne by existing suppliers. The direct marginal costs, resulting from having to comply with these requirements for additional customers, are therefore expected to be negligible.

81. There may be some indirect costs to suppliers as signposting to the Redress scheme increases awareness of the ability to refer a complaint to the Ombudsman, which could increase the number of complaints taken to the Ombudsman. If this were to happen, suppliers would face increased costs associated with the Ombudsman process, compared to the SCC process (please see tables 3 and 5 above for the breakdown and comparison of these costs).

82. It has not been possible to monetise the direct costs due to lack of available evidence on the costs to suppliers resulting from having to comply with the Regulations for a greater volume of complaints. It has not been possible to monetise the indirect costs due to lack of evidence regarding the extent to which signposting the Redress scheme increases the probability a consumer takes a complaint to the Ombudsman.

Monetised benefits of Option 1

Benefits of reduced costs to business of the Ombudsman process compared to SCC process

83. As an increased number of micro businesses become eligible to use the Redress scheme, energy suppliers will be obligated to pay increased case fees in total per year to the Ombudsman. There are also administrative costs for both suppliers and newly eligible micro businesses associated with using the Redress scheme.

84. The expected costs to the newly eligible microbusinesses of the SCC process are significantly greater than those of the Ombudsman process. However, the expected costs to energy suppliers of the Ombudsman process are slightly less than those of the SCC process.

85. As noted above, in cases where the energy supplier loses the case made against them, we do not count any administrative costs and fees they incur. Therefore, in cases where a newly eligible micro business wins a case taken to the Ombudsman (that they would have taken to the SCC in the baseline), there are expected to be a net saving to business (and society) of £48 (see row 1 in table 6 above).⁶²
86. Because the cost savings to micro business resulting from using the Ombudsman process as opposed to the SCC process exceed the increased costs to energy suppliers, there is also expected to be a net saving to business (and society) of £20⁶³ (see row 3 in table 6 above) in cases where the newly eligible micro business loses a case taken to the Ombudsman.
87. Based on these figures, and the estimates of the number of complaints which would go to the Ombudsman in the counterfactual (outlined in paragraphs 63 to 67 above), these benefits are expected to be between £3,300 and £5,400 in the first year of the appraisal, with a central estimate of £4,400. This rises to between £3,700 and £6,000 (with a central estimate of £4,900) by 2023 (in line with the growth in the number of microbusinesses over the appraisal period).
88. Over the entire appraisal period, these the value of these savings is expected to be between £0.04m and £0.06m, with a central estimate of £0.05m (real 2014 prices). This gives a present value range of £0.03m to £0.05m, with a central estimate of £0.04m (base year 2014).
89. Table 8 below shows an illustrative example for how these benefits have been calculated, using data for 2015, in which year the number of cases taken to the Ombudsman by the newly eligible micro businesses, denoted C_{OS} , is expected to be 131.

Table 8: Estimated breakdown of benefits arising from reduced costs of Ombudsman process compared to the SCC process in 2015 (real 2014 prices)

	Benefit (low)	Benefit (central)	Benefit (high)
SCC cases in baseline (C_{SCC})	80 (=61% x C_{OS})	106 (=81% x C_{OS})	131 (C_{OS})
Probability of microbusiness winning the case (p_{win})	77%	77%	77%
Net benefit if microbusiness wins the case (NB_{win})	£48	£48	£48
Net benefit if microbusiness loses the case (NB_{lose})	£20	£20	£20
Total benefit ($C_{SCC} \times (p_{win} \times NB_{win} + (1 - p_{win}) \times NB_{lose})$)	£3,400	£4,400	£5,500

Benefits of compensation payments to newly eligible micro businesses

90. Although any compensation awarded by the SCC or the Ombudsman represents a transfer from the supplier to the micro business consumer, we do not count these as a cost to energy suppliers when appraising Option 1. Therefore in cases where a newly eligible micro business wins a case taken to the Ombudsman (that they **would not** have taken to the SCC in the baseline), there will be a benefit to these micro businesses of around £475 in terms of compensation payments, relative to the baseline (see row 2 of table 6 above).
91. These benefits are expected to be between £0 and £18,200 in the first year of the appraisal, with a central estimate of £9,100. This rises to between £0 and £20,500 (with a central estimate of £10,200) by 2023 (in line with the growth in the number of microbusinesses over the appraisal period). Over the entire appraisal period, the value of these compensation payments is expected to be between £0 and £0.19m, with a central estimate of £0.10m (real 2014 prices). This gives a present value range of £0 to £0.16m, with a central estimate of £0.08m (base year 2014).

⁶² £75 - £27 = £48

⁶³ £402 - £382 = £20

92. Table 9 below shows an illustrative example for how these benefits have been calculated, using data for 2015, in which year the number of cases taken to the Ombudsman by the newly eligible micro businesses, denoted C_{OS} , is expected to be 131.

Table 9: Estimated breakdown of benefits arising from increased compensation to micro businesses in 2015 (real 2014 prices)

	Benefit (low)	Benefit (central)	Benefit (high)
SCC cases in baseline (C_{SCC})	131 (= C_{OS})	106 (=81% x C_{OS})	80 (=61% x C_{OS})
Probability of microbusiness winning the case (p_{win})	77%	77%	77%
Average compensation pay-out in instances where the microbusiness wins the case (AC)	£475	£475	£475
Total benefit ($(C_{OS} - C_{SCC}) \times p_{win} \times AC$)	£0	£9,200	£18,400

Savings to HMCTS

93. As outlined in the 'Baseline' section above, there is a cost to HMCTS of handling the SCC process, which is estimated to be £210 per case.
94. Based on these figures, and the estimates of the number of complaints which would go to the Ombudsman in the counterfactual (outlined in paragraphs 63 to 67 above), these benefits are expected to be between £16,700 and £27,100 in the first year of the appraisal, with a central estimate of £21,900. This rises to between £18,800 and £30,600 (with a central estimate of £24,700) by 2023 (in line with the growth in the number of microbusinesses over the appraisal period). Over the entire appraisal period, the savings to HMCTS are expected to be between £0.18m and £0.29m, with a central estimate of £0.23m (real 2014 prices). This gives a present value range of £0.15m to £0.24m, with a central estimate of £0.20m (base year 2014).
95. Table 10 below shows an illustrative example for how these benefits have been calculated, using data for 2015, in which year the number of cases taken to the Ombudsman by the newly eligible micro businesses, denoted C_{OS} , is expected to be 131.

Table 10: Estimated breakdown of benefits to HMCTS arising from reduced SCC caseload in 2015 (real 2014 prices)

	Benefit (low)	Benefit (central)	Benefit (high)
SCC cases in baseline (C_{SCC})	80 (=61% x C_{OS})	106 (=81% x C_{OS})	131 (C_{OS})
Cost to HMCTS for a SCC case	£210	£210	£210
Total benefit ($(C_{OS} - C_{SCC}) \times p_{win} \times AC$)	£16,900	£22,200	£27,500

Non-monetised Benefits of Option

Benefits resulting from the expansion of Redress scheme

Net benefits to society

96. The newly eligible micro businesses will have access to a mechanism for resolving complaints which is completely free to them, except for administrative and time costs. By comparison, in the baseline scenario the micro businesses will bear the risk of incurring claim and hearing fees if they take their complaint to the SCC and subsequently lose the case.
97. In cases where a newly eligible micro business wins a case taken to the Ombudsman (that they **would not** have taken to the SCC in the baseline i.e. rows 2 and 4 in table 6 above), they may receive non-financial forms of redress, such as a formal letter of apology. This represents a benefit to micro businesses, relative to the baseline.
98. This option may bring potential time savings for consumers awaiting complaint resolution. The supplier has a maximum of 8 weeks to resolve a complaint before they are obligated to refer it to the Ombudsman. However the complaint can be referred to the Ombudsman from day 1 to 8 weeks of the complaint being raised, if the supplier and micro business consumer are unable to come to a resolution (referred to as deadlock). By comparison, SCC proceedings can be a timely process and typically take around 30 weeks. It has not been possible to monetise these benefits due to uncertainty regarding the value placed by micro businesses on having their complaints resolved more quickly.
99. Finally, suppliers and other organisations providing advice to micro businesses may save on administrative costs, which they would incur in the baseline scenario due to inconsistency in the definition of a micro business across these two regulations. It has not been possible to monetise these benefits due to lack of available evidence.

Indirect benefits resulting from the knock-on effect on the scope of the Complaints Handling Standards Regulations

100. There may be some benefits to newly eligible micro businesses as signposting to the Redress scheme increases awareness of the ability to refer a complaint to the Ombudsman, which could increase the number of complaints taken to the Ombudsman. If this were to happen, micro business consumers would benefit from the lower costs associated with the Ombudsman process compared to the SCC process (please see the '*Monetised benefits of Option 1*' below for details). Furthermore, HMCTS may see savings if some of these complaints would have otherwise been taken to the SCC.
101. It has not been possible to monetise these indirect benefits due to lack of evidence regarding the extent to which signposting the Redress scheme increases the probability a consumer takes a complaint to the Ombudsman

Overview of the costs and benefits of Option 1

102. Bringing together all of the costs and benefit discussed in the previous sections, the central estimate of the total net benefit of this policy is £0.35m, of which £0.11m falls to business. This has a present value of £0.29m, of which £0.10m falls to business
103. Table 11 below summarises the costs and benefits of this policy (C_{OS} denotes the expected Ombudsman caseload increase, as outlined in paragraph 62 above.

Table 11: Estimated costs and benefits of Option 1 (£m 2014, present value base year 2014)

	Low	Central	High	Directly borne by business?
SCC cases in baseline (C_{SCC})	C_{OS}	$81\% \times C_{OS}$	$61\% \times C_{OS}$	
Costs due to increased Ombudsman caseload	0	0.02	0.05	Yes
Benefits arising from reduced costs of Ombudsman process compared to the SCC process	0.05	0.04	0.03	Yes
Benefits arising from increased compensation to micro businesses	0	0.08	0.16	Yes
Benefits to HMCTS of reduced SCC caseload	0.24	0.20	0.15	No
TOTAL	0.29	0.29	0.30	

104. The overall NPV figure is the same in each of the three scenarios – low, central and high – due to the different offsetting costs and benefits. This result is explained by the fact that the range of estimates in the appraisal is driven by the assumed range for the SCC caseload in the baseline scenario (see 62 to 66 above).

105. As the baseline caseload decreases, businesses receive more compensation relative to the baseline. However, there is also less to be saved by HMCTS and the fact that the Ombudsman process is cheaper than the SCC process (there are fewer cases where the micro business goes to the SCC in the baseline). Furthermore, the Ombudsman caseload, relative to the SCC baseline caseload, is higher which results in increased costs to business (there are more cases where the micro business doesn't go to the SCC in the baseline).

Assumptions and Sensitivities

Assumptions

106. The following assumptions have been made in the assessment of this option:

- a. discount rate for future costs and benefits out to 2023 is 3.5%, the Her Majesty's Treasury (HMT) social discount rate;
- b. the policy is appraised for the 10 years from July 2014 – June 2023, in 2014 prices with 2014 as the base year;
- c. up to 150,000 new businesses will be classified as micro businesses under the proposed definition;
- d. the number of micro businesses is estimated to grow from 1.9 million in 2013 at a rate of 1.3% a year throughout the appraisal period of 2014-23. This growth rate is derived as the average of the growth rates observed prior to the financial crisis, from 2005-07.
- e. the additional cost to energy suppliers from each extra complaint taken by a micro business consumer to the Ombudsman is assumed to remain at £335 (real 2014 price) for the duration of the appraisal period. This is equal to the case fee for a non-big 6 supplier;
- f. these extra micro businesses will generate complaints across the appraisal period at an annual rate per business equal to the mean rate observed for businesses under the old definition from 2009-12, which was 9 complaints for every 10,000 businesses;
- g. time taken to complete and return necessary forms at each stage of the SCC and Ombudsman processes – see the 'Monetised Benefits of Option 1' section for details;
- h. the relevant hourly cost to business for the time taken for the following processes is the mean hourly wage for 'Business, research and administrative professionals n.e.c.' (SOC code 2429);
 - i. completing any Admission, Defence and Counterclaim forms for SCC proceedings;
 - j. completing the Directions questionnaire for SCC proceedings;
 - k. attending a hearing; and
 - l. preparing and submitting evidence to the Ombudsman or SCC.
- m. the relevant hourly cost to business for the time taken for the following processes is the mean hourly wage for 'Other administrative occupations n.e.c.' (SOC code 4159):
 - n. registering for the SCC online claims process; and
 - o. completing an online or postal SCC or Ombudsman application form.
- p. it will cost £20 ,on average, for each of the defendants and claimants to travel to any SCC hearing.

Sensitivities

107. The default 10 year appraisal period was used for this IA.⁶⁴ However it may be expected that increased access to the Redress scheme for micro businesses will have impacts extending much further out than 2024. Sensitivity analysis was therefore carried out to assess the impact of extending the appraisal period out to 20 years. Expectedly, doing so increases the NPV to £0.53m, driven by further savings to HMCTS and compensation payments to newly eligible micro businesses.

108. As discussed in paragraphs 104 and 105, the NPV estimate is almost completely independent of the assumption made regarding the SCC caseload in the baseline scenario. Table 12 below demonstrates why this is the case.

⁶⁴BIS (2013) 'Better Regulation Framework Manual: Practical Guidance for UK Government Officials', p.68, paragraph 2.3.34 [web], available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211981/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf

Table 12: Estimated welfare effects of one case less going to the SCC in the baseline (real 2014 prices)⁶⁵

Category of welfare effect	Value of change	Explanation
Savings to HMCTS	-£210	No money saved by the courts if an MBC doesn't use the SCC in the baseline
Compensation to MBC	£366 ⁶⁶	Ombudsman awards the MBC compensation, which they don't get in the baseline if they don't use the SCC
Admin cost saving of OS	-£150	No SCC admin costs to be averted if an MBC doesn't use the SCC in the baseline
Total	£5	

Small and micro business assessment (SMBA)

109. This is a fast-track IA for an RTC measure, meaning that an SMBA is not required.⁶⁷

110. All of the benefits to business of this policy will be borne by those classified as micro businesses under the new definition. There will be no exemptions from these regulations for small and micro businesses. This is a measure to help micro businesses access an effective complaint resolution mechanism and should not be restricted to any portion of the market.

One-in, two-out (OITO) section

111. Apart from the cost savings to HMCTS (see paragraphs 93 – 95 above), all of the monetised costs and benefits of this policy fall directly to business. As described in paragraph 102 above, the central estimate of the net benefit to business over the appraisal period is £0.11m (real 2014 prices), which has a present value of £0.10m (base year 2010, real 2009 prices). In line with the Treasury Green Book guidance, this gives an EANCB of minus £9,000. Therefore, this policy represents a small OUT of £0.01m.

112. Unlike the NPV figure however, the EANCB does vary significantly between the low, medium and high scenarios. The EANCB in the low scenario is minus £4,000 whereas in the high scenario it is minus £13,000. This can be understood with reference to table 12 above. As the SCC baseline caseload decreases (as we move from the low NPV to the high NPV scenario), we count the increased compensation (£366) and loss of admin cost savings (£150) but not the loss of savings to HMCTS (£210). Therefore for each case less which goes to the SCC in the baseline, the impact on business is positive £216.⁶⁸

113. However, in each of the three scenarios presented the expected net impacts to business overall are very small and therefore this policy could be considered cost neutral for businesses.

114. As outlined previously, it has not been possible to monetise other potential costs and benefits of this policy due to lack of available evidence.

⁶⁵ Figures may not sum due to rounding

⁶⁶ This is obtained by applying the probability a micro business wins their case, 77 % (see paragraph 68 above) to the £475 average award figure (see paragraph 36 above). $77\% \times £475 = £366$.

⁶⁷ BIS (2013) 'Better Regulation Framework Manual: Practical Guidance for UK Government Officials', p.26, paragraph 1.6.4 [web], available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211981/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf

⁶⁸ £366 - £150 = £216