

**Corporate Response Form 'Third Package' Consultation**  
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**Consultation Questions**

**Chapter 1 – Consumer Protection**

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

**Summary**

Suppliers require clarity and guidance from the government as to how the issues described within this response, and which have been discussed in detail with DECC during the consultation period, will be dealt with before suppliers can address them and clearly understand the degree of change, both internal and external, required to implement.

Due to the degree of ambiguity at this time over many of the government's proposals, suppliers are currently unable to undertake any detailed impact assessment activity and will continue to be unable to until such time as we have clarity on the government's decision, as well as view details on how any new licence obligations will be drafted.

Suppliers have further concerns that the proposed timetable for issuing a decision (advised as December or January) will provide them with only two months to fully impact assess any changes required and to develop and implement compliant solutions. Further, it should be noted that where any industry changes are required the lead time for this will be in the region of 12 months to implement.

It is evident that this timetable does not provide suppliers with an acceptable or achievable amount of time to develop and implement any new arrangements, therefore both the government and Ofgem need to urgently consider implementation arrangements when considering their final decisions.

### **Enforcement of right by individual customers**

DECC proposes (1.21) that customers will be able to take legal action against suppliers should they (customers) not have switched supplier within three weeks. ERA believes that this is disproportionate and unreasonable given that an individual supplier does not have full control of the process and that the issue will also be covered by a Licence Condition.

Customers already have an existing right, under common law, to claim for losses incurred due to breach of contract. In addition there are already well established, independent and free consumer protection measures for redress for domestic and micro-business customers under the CEAR Act 2007. It seems sensible that this issue is dealt with through that process.

Due to the nature of DECC's proposal and the energy market in Britain, energy suppliers would have to determine any fault to the process and therefore may have to take action against other suppliers which will not improve industry-wide co-operation to make the process work well.

### **Availability of Consumption Data**

This proposed Licence Condition, in respect of domestic supply to requiring suppliers to pass on consumption data to another supplier, is over-prescriptive and is neither an efficient nor appropriate way of addressing the issue. As DECC acknowledges in the consultation document, this information is already provided to customers.

This proposal goes beyond the requirements of the Directive, Annex 1(h) which states that the customer should have access to their consumption data. It does not go further to require this to be passed on to another supplier at customer request. ERA therefore believe that the existing regime of billing and providing an annual statement is sufficient as it does give the customer access to their consumption<sup>1</sup>.

With regards to metering data suppliers are already required to give customers access to this information and pass to another supplier at customer request. This is already a key feature of the GB supply market, through the use of the ECOES (Electricity Centralised Online Enquiry System) and SCOGES (Single Centralised Online Gas Enquiry System) systems, which allow any supplier to access a particular customer's metering data, provided that they have the customer's express permission to do so.

Use of the ECOES and SCOGES systems are fully governed and mandated under the Master Registration Agreement (MRA) and SPAA (Supply Point Administration Agreement) respectively. Electricity distribution companies or gas transporters are obliged to provide this service and keep the information up to date. All domestic energy suppliers are able to access these systems and significantly contribute to the costs of running and maintaining them. In electricity specifically, all suppliers are obliged under Licence to be party to, and comply with the MRA. In gas only domestic suppliers are obligated under Licence to be party to, and comply with the SPAA.

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<sup>1</sup> One ERA member has interpreted the Directive differently and their response will reflect this.

Suppliers do not support the development of a mechanism to pass data amongst themselves as this is fraught with complexity and risk:

- 1. processes required to capture and store request
- 2. concern over what the receiving supplier can do with the data and whether they would be expecting it (DPA issues)
- 3. New data flows required to send data
- 4. Use of a secure data transfer network
- 5. Flows for acceptance/rejection to ensure data received
- 6. General complexity, with a lead time to develop and implement at least 12 months
- 7. Concern of cost/benefit as we would not expect many customers to use this service

Suppliers have further concerns that the development of any solution will be costly, take time to implement and there is no evidence on volumes of transaction, which could be very low. Any industry changes should only be done based on a robust cost/benefit analysis.

In addition, customers already have a right to access personal data about them held by supplier under Section 7 of the DPA. Providing customers with the data to pass on to another supplier would work much better than a complex, and costly, set of arrangements to transfer data between suppliers; it would also fulfil the overall purpose of the provision.

As mentioned above, where a customer fails to retain their bills/statements, the best way to deliver this would be for suppliers to issue a copy of the latest bill(s) to the customer, which would hold all of the information the customer requires. The customer would then be able to share this information with other suppliers as they wish or provide other suppliers with the authority to view metering data on the existing industry systems. Suppliers have concerns regarding passing a customer's data directly to another supplier, and strongly believe this transaction should be managed through the party with whom we have a relationship; namely the customer.

In addition, DECC's proposals will not 'future-proof' any solution, as in the future a customer may wish to provide their data to any number of third parties e.g. ESCOs.

### **Consumer Rights Regarding Dispute Settlement**

We welcome the confirmation that this proposal relates solely to domestic electricity accounts. Under the Complaints Handling Regulations arising from the CEAR Act, suppliers are required, at least once in every 12 month period, to inform domestic customers of the existence of a complaints procedure and where it can be obtained free of charge, and suppliers currently comply with this. Suppliers do refer to the complaints procedure on bills. However the proposal, as currently outlined, would require suppliers to change their bill messaging. ERA is not clear what additional benefit would be obtained from further reminders as proposed, and believes the CEAR legislation meets the Directive's requirements to disseminate this information in general consumer information points.

Suppliers remain unclear about what is meant by including such information in 'promotional materials'. Suppliers' websites refers customers to their complaints procedure; however they would welcome clarity on whether this provision is intended to cover all marketing and promotional materials. If so, this would seem inappropriate as not all communications are suited to this type of message, particularly not communications about new products. A more pragmatic approach would be to restrict this to "relevant" promotional materials, but ERA does not believe that the Directive's provisions in this matter intend to refer to promotional materials. Suppliers require clarity, to be provided by DECC.

## **Energy Consumer Checklist**

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

We do not believe that suppliers would need to provide a copy of the Checklist to customers, as per paragraph 1.48 of the consultation. Suppliers are able to make it 'publicly available' by signposting the customer to the Consumer Focus (or most appropriate) website and/or by placing the checklist on their own website. There needs to be awareness/consideration of the significant costs associated with providing a hard copy to all customers and concern over general information overload to customers.

## **Record Keeping**

ERA members support the proposals in 1.53

## **Information to be included in contracts with customers**

We do not believe that the proposal within 1.56 to amend Principal Terms is workable as it includes business customers, whereas the requirement under Annex I 1(a) to provide customers with contractual information does not include business customers.

In addition, suppliers have concerns that the wording of the proposal is not clear and that the term 'Principal Terms' has not been used appropriately. By making these all Principal Terms, they would need to be read out in all domestic telephone sales, would have to be included in the hand held units which create the contracts for face-to-face sales and would have to be repeated at length in sales verification calls. This would create a very lengthy and bureaucratic sales process that would not be well received by the customer, and would be more expensive to deliver. Furthermore, any change to the Principal Terms will also impact non-domestic customers' sales, despite this requirement being targeted to domestic customers only. The costs associated with delivering this would be significant and should not be under-estimated.

We believe that DECC's intention here is that the elements in Annex 1 Paragraph 1(a) should always be included in a contract with a domestic customer (most of them are already included). ERA members do not think that the definition of Principal Terms needs to be amended.

It is more appropriate to include a requirement on suppliers to include this information as part of the contract terms, as opposed to the Principal Terms. It is important that Annex 1(a) refers to:

*"Information relating to consumer rights...clearly communicated through billing or the electricity undertaking's web site."*

Principal Terms are any contract terms that would materially affect the customer's decision to enter into the contract. Therefore, if the relevant information on consumer rights had a material impact on their decision to enter in to the contract they would, by definition, already be included within the Principal Terms. The Principal Terms are not the full express terms of the contract.

The ERA believes that the current definition of Principal Terms within the supply Licences is sufficient and fit for purpose.

It is important that the obligation on suppliers does not go beyond this (i.e. to require that detailed information on complaints handling is contained within the contract terms and conditions). It is more appropriate for a requirement on suppliers to include a term within their contract that will tell customers that "we will provide you with information on your rights, including complaint handling through our bill and / or on our website." The detail of the drafting of this obligation will be key.

Furthermore, suppliers would look to be flexible on how they convey consumer rights information when conducting telesales to domestic customers as part of the contractual information that they provide to customers when making the sale.

***Suppliers need clarity on this as any amendment to Principal Terms that will require significant changes, and until this clarity is provided suppliers will not be able to appropriately assess impacts.***

### **Final Closure Account**

Five of the six ERA members have signed up to the Billing Code for Domestic Customers whose clause 1.3 states that "Your supplier will provide a final bill within 30 working days of the supply end date. Where this is not possible the supplier will provide you with an explanation as to why the bill has not been issued."

This goes over and above what is proposed, and ERA believes that this is a clear example of successful self-regulation, working for the benefit of all customers. It is independently audited (currently by KPMG) on an annual basis, and can therefore be considered to be very robust for the purpose of complying with the European regulations. We would therefore ask DECC to consider this point very seriously before contemplating further regulation.

It is also important to understand that the key driver to the final bill is for the new supplier to provide the old supplier with an 'opening read' with which to close their account. In electricity, an old supplier who has not received this meter reading can only instigate the 'missing reads' process after 30 working days, so any requirement to deliver within 30 working days would require significant system changes. The majority of final bills are currently issued within the six week process, and where this is not possible, an explanation is provided to the customer which often prompts the customer to provide that 'opening read'.

If DECC were to proceed with regulating this area, then we would urge them to consider a "reasonable steps" approach, such as the potential for a letter of explanation from the supplier to the customer where the final account has not been able to be issued in time as an option for where the required information is not available. Without this, suppliers would incur significant additional staffing costs to chase other suppliers as well as customers, and would also have to introduce changes to industry flows and processes. It could also lead to an increase in estimated bills, the reissue of such bills, and a consequential rising of the number of bill disputes and complaints.

2 In respect of the requirement to switch customers within three weeks, subject to contractual terms, we propose to put in place a new Licence Condition requiring the new supplier to give new customers a 14 calendar day period after the contract has been entered into, to consider whether they wish to proceed with this. Unless the customer notifies the supplier they do not wish to proceed, the Licence Condition will require the new supplier to give customers the right to change their mind within 14 calendar days and then be switched within three weeks, subject to outstanding debt (and, in the case of non-domestic customers, contractual conditions). Do consultees agree with this proposal?

Suppliers are keen to ensure that there is a smooth and swift switching process in place, and that there is greater consumer understanding regarding the change of supplier processes. They believe that the roll out of smart metering will facilitate the achievement of this aim. The switching processes within the GB energy market include a number of specific interactions between industry participants and consumers that are designed to ensure that, overall, the process is as smooth as possible for the consumer.

Therefore ERA members believe it is important that consideration is given to each of the necessary stages required to aid the change of supply process and hence do not agree with this proposal as it stands, and have concerns and additional questions for clarification.

In summary:

- Suppliers welcome the 14 calendar day window and confirmation that existing cooling-off regulations will not be changed; however the trigger point for the start of the 3 week clock should be when a confirmation request has been accepted (and not rejected) – this will resolve the issue of rejections. Suppliers will require accurate and sufficient information prior to the start of switching; and the process must exclude any delay due to objections.
- Any supplier licence obligation must have a 'reasonable steps' obligation, as due to complexity of process and information requirements, not all customers will be able to be transferred within three weeks at all times.
- The licence condition should also relate to 15 working days (consistent with other elements in Licence) the definition of working day already included will resolve the issue surrounding gas transfers which occur over bank holiday periods (which will otherwise not be able to achieve a 3 week switch) .
- With this approach, we believe that costly industry changes would not be required for domestic customers. It should be noted that under the current proposals industry changes will definitely be required, particularly in gas.
- There needs to be a clear cost/benefit assessment done before any changes agreed and further consideration given to the impacts of future reform under the Smart Metering Implementation Programme.

Subject to the above points, suppliers would also support an amendment to the proposal detailed in paragraph 1.19 of the consultation document to read:

**"Where it has been established that a customer has provided incorrect or insufficient information to allow the supplier to effect the transfer, the customer has an outstanding debt or any other reasons for objection are resolved, we consider that the starting point of that customer's right to switch within 15 working days\* starts when the issue has been resolved (assuming that 14 calendar days have passed since the contract with the new supplier was signed)."**

(\* as defined in the Electricity and Gas Supply Licences.)

This approach is fully aligned with the existing Standard Licence Condition 15 on Electricity Distribution companies, which firstly imposes a strict timescale on Licensees to deliver a quote for connection but "stops the clock" if the customer has failed to provide sufficient or correct information to allow the licensee to complete the quote. The clock is then restarted once all of the information has been collected, and reflects the fact that customers may also bring delays to the switching process.

This situation mirrors the change of supply process and would appear to provide a pragmatic solution for Ofgem to draft a supply licence condition from and provide a precedent for monitoring compliance against.

We also believe that it fully meets the requirements of the Third Package and allows DECC to demonstrate to the Commission that the UK complies with the Directive.

DECC's current proposals, as we outlined in the response to the Call for Evidence, may potentially have the opposite effect by creating confusion and a poor experience for consumers.

In order for suppliers to fully assess the impacts of DECC's proposal, they would need confirmation of the definition of the change of supplier process and precisely where DECC considers the process begins and ends.

It is important to note that suppliers have clarity and visibility, as without this they cannot assess and progress any changes that may be required. Further there is concern over timeframe for decision versus implementation of EU Directive; two months to implement is a major concern when there is no clarity over what the obligation will be at this stage.

We would like to remind DECC that the vast majority of customers already switch within a three week period (based on the trigger we have defined). When delays do occur these are for legitimate reasons and relate to issues that need to be resolved before the switch can take place, and not due to industry complacency.

DECC is proposing an exception to the three week rule where the previous supplier is owed a debt by the customer. However there are also other objection reasons included in the Supply Licence Conditions which should be taken into account, such as where the customer has attempted to switch an MPAN which is related to another MPAN that should be switched at the same time. There is also a risk of an erroneous transfer, where the customer's details were incorrect and unless this is resolved, the wrong customer could be switched in error. Alternatively, a supplier may believe the data to be acceptable but later finds it rejected by the registration service and would therefore need to approach the customer for further information in order to enact the registration.

The ERA has provided DECC with details as to the current level of registration rejections and objections that are occasioned by such issues (attached is more information regarding the objection and rejection rates and reasons which we would be happy to discuss in detail with DECC. In addition, Ofgem is targeting the initial deployment of smart meters for 2012, and this will resolve many of the issues within current plans.). Suppliers believe that it is entirely in the customer's benefit that such issues are resolved before switching supplier is enacted as otherwise the new account will be fraught with problems. We therefore strongly urge DECC to review its proposals and to allow the three week 'clock' to be stopped to resolve such significant issues, thereby ensuring a smooth switching process for customers.

ERA members would welcome formal clarification by DECC that they are not proposing to amend existing cooling-off regulations or seeking to introduce a contractual 14 day cooling off period for customers, as such a period is already defined by the Distance Selling Regulations for domestic customers . However, this 14 calendar day period still really equates in most cases to the full seven working days cooling off period required by the Distance Selling regulations. This is because cooling off begins at the point at which the customer receives the contract, and for telephone or internet sales, this can be two or three working days after the contact was agreed with the sales agent. This will often mean that the period required to deliver the 7 day cooling off period is 14 calendar days. There is therefore no slack in this period to support the gas registration process.

DECC should be aware of the work being done by the EU reviewing cooling-off rights. ERA's views are based on today's arrangements and if changes are made to the cooling-off arrangements in the future a review of the appropriateness of the arrangements being proposed for 3 week switching will need happen.

In gas, Large Supply Points (LSP) (with an AQ >73,200 KWH) require an additional nomination process step within the industry transfer process. There may be a very small number of cases where this may impact domestic customers (c. 0.2% of the domestic market), which would require an exemption from the requirements. This will be an issue for all LSP non-domestic gas transfers.

Domestic suppliers have a concern that otherwise changes to industry processes will be required and due to shared nature of the industry confirmation processes for both domestic and non-domestic customers, any changes made to facilitate non-domestic transfers will also have an impact to domestic transfers with no benefit, but additional cost. The changes required would be significant in terms of costs and timeframe for implementation.

<b>3</b>	<b>Do consultees consider that the requirement on supply undertakings which are not registered in Great Britain, to provide a GB address for the service of the documents, poses any difficulty for these suppliers? Evidence of costs to these suppliers would be particularly welcome.</b>
<b>The ERA does not have a view on this section.</b>	

<b>Chapter 2 – Transmission and Distribution Networks</b>	
<b>4</b>	<b>Do you have any comments relevant to our consideration of which unbundling models should be available in the GB market?</b>
<b>The ERA does not have a view on this section.</b>	
<b>5</b>	<b>Do you have any views or concerns with how we intend to apply these new Third Package requirements on TSOs and DSOs?</b>
<b>The ERA does not have a view on this section.</b>	
<b>Chapter 3 – Gas Infrastructure</b>	
<b>6</b>	<b>Should the Gas Directive requirements for storage and LNG operators be introduced through a new licence regime or by amending existing legislation? Please provide evidence of costs and benefits wherever possible.</b>
<b>The ERA does not have a view on this section.</b>	
<b>Chapter 4 – Role of the National Regulatory Authority</b>	

7	<p><b>Implementing binding decisions</b></p> <p>For the reasons we have set out in the consultation document, the Government proposes to replace the current collective licence modification objection arrangements with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body. This would reinforce Ofgem's power to make decisions in accordance with their powers and duties under the Third Package, and would give all licensees the same right of appeal. Ofgem's decisions, as now, would need to be reached following consultation and subject to the principles of better regulation. This proposal would include all Ofgem licence modification decisions and not only those covered by the Third Package. We would be grateful for your views on these proposals.</p>
<p><b>Chapter 5 - Cross border co-operation</b></p>	
8	<p>Do you have any views or concerns with how we intend to introduce the regional co-operation elements of the Third Package?</p>
<p>The ERA does not have a view on this section.</p>	

### Impact Assessment Questions

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

#### Consumer Switching

<b>9</b>	<b>Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with this measure?</b>
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<b>10</b>	<b>The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: supplier systems changes, monitoring costs, administrative burdens, the number of extra erroneous switches which may occur as a result of our proposals, the cost of manually stopping the switch and any information regarding the number of customers that currently fall outside the 3 week switching</b>
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	period defined (excluding the cooling-off period).
<b>Consumer Information</b>	
11	<b>Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?</b>

<b>12</b>	<b>The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: whether the record keeping requirement imposes additional costs (system costs and administrative costs) on industry; an estimate of the scale of these costs; and any evidence regarding the costs associated with passing on consumption and metering data to another supplier.</b>
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13	<b>What would be the additional costs to the industry for providing the additional information to consumers in terms of complaints handling/dispute settlement arrangements available by the supplier?</b>
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<b>National Regulatory Authority</b>	
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14	<b>Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?</b>
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15	<b>We would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding; the monitoring, enforcement and administrative costs involved and any evidence regarding the indirect costs on industry of these measures.</b>
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<b>Transmission and Distribution</b>	
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16	<b>Are the Impact Assessment assumptions on the costs to TSOs of complying with the new TSO certification process realistic (both for those seeking derogations and those not doing so)?</b>
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17	<b>The Impact Assessment assumes that ensuring the independence of the compliance officer for DSOs requires little additional action on the part of the affected DSOs. Your views including evidence of costs would be appreciated.</b>
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<b>Gas and LNG Operators</b>	
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18	<b>Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?</b>
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<b>19</b>	<b>What specific changes to current practice will be required to comply with articles 15 (unbundling) and 16 (confidentiality) of the Directive? What are the likely costs of making these changes?</b>
<b>20</b>	<b>Articles 15, 17 and 19 of the Gas Regulation specify that certain operational information must be made publicly available by 'technically and economically necessary' LNG and storage sites. What are the likely costs involved in making this information publicly available?</b>

21	<b>Article 22 of the Regulation outlines the requirement for contracts and procedures to be harmonised at ‘technically and economically necessary’ LNG and storage sites. What changes to current practices will, in your view, be required to achieve this and what are the likely costs of making these changes?</b>
22	<b>We would welcome evidence on the costs and benefits of introducing a licensing regime for LNG and storage as opposed to introducing the measures through changes to legislation.</b>



