



CONSULTATION ON THE IMPLEMENTATION OF THE EU THIRD INTERNAL ENERGY PACKAGE

July 2011

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CHAPTER 1 INTRODUCTION

- 1.1 The Department of Enterprise Trade and Investment (the “Department”) has recently made The Gas and Electricity (Internal Markets) Regulations 2011, (the “Regulations”).
- 1.2 The Regulations have been made under Section 2(2) of the European Communities Act 1972 and implement the majority of the requirements of the Third European Package of Directives on market liberalisation in the energy sector.
- 1.3 Amongst other things, the Regulations give the Utility Regulator (the “UR”) the *vires* to give effect to certain requirements of the Directives. The UR has therefore sought to realize the Regulations through licence modifications and new licence conditions, as necessary. This consultation paper aims to set out the rationale and interpretation which has been brought to bear when drafting these licence modifications and conditions.
- 1.4 The UR seeks views and comments as to its implementation of the Regulations which is reflected through new draft licence conditions and modifications to existing licence conditions. A copy of the draft licence conditions/modifications may be found at Annex 1-3 of this paper.

The Third Energy Package

- 1.5 The Third Energy Package comprises the following:
 - i. Directive 2009/72/EC concerning common rules for the internal market in electricity. This replaces and repeals Directive 2003/54/EC.
 - ii. Directive 2009/73/EC concerning common rules for the internal market in natural gas. This replaces and repeals Directive 2003/55/EC.
 - iii. Regulation (EC) 713/2009 establishing an Agency for the Cooperation of Energy Regulators. This is a brand new Regulation in its entirety and has no predecessor to compare it against.

- iv. Regulation (EC) 714/2009 on conditions for access to the network for cross border exchanges in electricity. This repeals the Regulation of the same title and subject matter, Regulation 1228/2003.
 - v. Regulation (EC) 715/2009 on conditions for access to the natural gas transmission networks. This repeals the Regulation of the same title and subject matter, Regulation 1775/2005.
- 1.6 The key elements of the Third Energy Package include enhanced consumer protection measures; more stringent requirements for unbundling network operations from other activities; ensuring fairer competition within the EU; increased powers and independence for national regulators; greater cooperation between Member States; and the creation of a new European energy agency.
- 1.7 Many of the requirements of the Third Energy Package are not new and were part of the second European Package on market liberalisation in the energy sector.

Scope and extent of this consultation

- 1.8 This consultation does not reflect the requirements for the unbundling of the ownership of electricity and gas transmission networks. The Directives allow Member States a further 18 months in which to implement the unbundling requirements. At this time the UR is not in a position to make the necessary licence modifications to reflect the unbundling provisions, as this exercise cannot be completed until licensees have applied to be certified under a particular unbundling model. This model must then be approved by the Commission and designated by the Member State.
- 1.9 The UR will consult on this issue in a separate consultation exercise at a later date.
- 1.10 This consultation paper therefore focuses on the proposed licence modifications and proposed new licence conditions necessary in order to

give effect to provisions such as, inter alia, enhanced customer protection, and codes of practice for licences.

- 1.11 In order to stimulate debate and encourage understanding of the rationale behind the licence modifications, the UR will hold a workshop during the consultation period. Both industry and stakeholders will be invited to attend to participate in an interactive discussion with staff on the proposed licence modifications. A provisional date of 7 September 2011 has been set for this workshop details will be available on our website in due course.
- 1.12 The paper is divided into sections to reflect the various areas of change. These sections are:
- i. Retail and Consumer Issues;
 - ii. Gas Transmission Systems;
 - iii. Electricity Systems; and
 - iv. Gas Distribution Systems.
- 1.13 Each section outlines the policy which gives effect to the provision of the directive, outlines the current position, provides an explanation of the draft licence conditions proposed and what this is trying to achieve.
- 1.14 Drafts of the proposed new licence conditions and modifications for each category of licence, (i) gas and electricity supply, , (ii) gas transmission, and (iii) gas distribution, are set out in Annex 1- 3.
- 1.15 This consultation is only concerned with the implementation of the provisions of the Third Energy Package for Northern Ireland. There are some areas in which a degree of commonality with the Great Britain/Department of Energy and Climate Change (“DECC”) proposed approach has been sought. However, in some areas a different approach is desirable, due to the difference in the structure of the electricity and gas industry and regulatory regimes.

Next Steps

- 1.16 Given the importance and potential impact of the licence modifications proposed in this paper this consultation paper represents the first step in a two stage consultation process. Once all the responses to this paper are received and analysed, the UR intends to finalise the license modifications and engage in the usual statutory notification procedure which will allow for further comments and responses on the final proposals.

Section 75 of the Northern Ireland Act 1998

- 1.17 As a public authority, the UR has a number of obligations arising from Section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:
- i. persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - ii. men and women generally;
 - iii. persons with disability and persons without; and
 - iv. persons with dependants and persons without.
- 1.18 The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.
- 1.19 In the development of its policies the UR also has a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. Some of the above equality categories will therefore overlap with these vulnerable groupings.
- 1.20 The purpose of several aspects of the implementation of IME3 is to help protect, and improve services for, vulnerable customers in relation to accessing energy services in Northern Ireland and it is intended that its implementation should have a positive impact for all groups within the population.

- 1.21 In order to assist with equality screening of the proposals contained within this consultation paper, the UR requests that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the proposals. Furthermore, the UR welcomes any comments which respondents might have in relation to the overall equality impact of the proposals.

Question 1. Do respondents agree that where this consultation has an impact on the groups listed above, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?

Question 2. Do respondents consider that the proposals need to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.

How to Respond

- 1.22 The UR welcomes industry and other stakeholder views and comments on all the proposals set out in this consultation paper.
- 1.23 The consultation period will close on 7th October 2011
- 1.24 Responses to this consultation should be forwarded to reach the UR on or before 5pm on 7th October 2011 to:

Mary Jones
The Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED
Email: mary.jones@uregni.gov.uk

- 1.25 Your response to this consultation may be made public by the UR. If you do not wish your response or name made public, please state this clearly by marking the response as confidential. Any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.
- 1.26 Information provided in response to this consultation, including personal information may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.
- 1.27 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.
- 1.28 This document is available in accessible formats. Please contact Mary Jones on 02890311575 or [mary.jones@niaur.gov.uk] to request this.

CHAPTER 2 RETAIL AND CONSUMER ISSUES

2.1 This chapter of the UR's consultation deals primarily with the range of customer focused Retail and Customer Protection measures that are envisaged by the Directives.

2.1.2 The UR recognises that the Third Energy Package deliberately places a new and increased emphasis on consumer protection measures and consumer information. The preamble to the Directives note that all consumers

“...should be able to enjoy high levels of consumer protection.....and should also have access to choice, fairness, representation and dispute settlement”.

2.1.3 It goes on to add that

“consumer interests should be at the heart of this Directive”

2.1.4 And that

“Existing rights of consumers need to be strengthened and guaranteed, and should include greater transparency.....consumer rights should be enforced by the Member States or, where a Member State has so provided, the Regulatory Authorities”.

2.1.5 On the basis of the above and the specific new requirements introduced within the various Articles of the Electricity and Gas Directives, this chapter outlines how the UR intends to introduce enhanced consumer protection and improved consumer access to information in order to fully deliver on the requirements of the Directives and the implementing Regulations. For ease of explanation and future reference during the consultation, the chapter separates the Directives' requirements into a number of sub issues. Each section also includes specific consultation questions where appropriate.

2.1.6 When formulating its proposals on enhanced consumer protection and information the UR took into consideration a number of sources of evidence including the following:

- i. The Third Energy Package.
- ii. The DETI consultation on the Third Energy Package dated 28 October 2010, the responses which DETI received and DETI's subsequent decision paper¹.
- iii. Published notes on the interpretation of the Third Energy Package².
- iv. The UR's Social Action Plan consultation paper published 5 Jan 2009 and the responses to that consultation³.
- v. The research report on "Helping customers to avoid debt and manage their way out of debt" published by the UR in June 2010⁴.
- vi. The Ofgem "Retail Market Review, Findings and Initial Proposals" published on 21 March 2011⁵.
- vii. A consumer research report on electricity supply companies jointly published by the UR and the Commission for Energy Regulation (CER) on 14 June 2010⁶.
- viii. A research report on the "Views and Experiences of Electricity and Gas Customers" published by the UR on 17 May 2011⁷.
- ix. The UR's six month review of the opening of the NI domestic electricity market (work programme published 21 February 2011⁸, findings due to be published at the end of June 2011. As the review identifies immediate concerns for customers, it is our view that the customer protection provisions envisaged under the Third Energy Package will require full reflection in our proposed licence conditions.

¹http://www.detini.gov.uk/consultation_on_the_implementation_of_the_eu_third_internal_energy_package_25_october_2010

² Cabu, Doherty, Ermacora, Graper, Jones, Schoser, Silla and Webster, "EU Energy Law Volume 1, The International Energy Market, The Third Liberalisation Package" (2010) Claeys & Casteels

³ <http://www.uregni.gov.uk/search/results/dc79eaf7c0f9e32512faa9bf3188a773/>

⁴ http://www.uregni.gov.uk/publications/view/helping_customers_avoid_manage_debt/

⁵ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=1&refer=Markets/RetMkts/rmr>

⁶ http://www.uregni.gov.uk/news/view/consumer_research_report_on_electricity_supply_companies_published/

⁷ http://www.uregni.gov.uk/publications/views_and_experiences_of_electricity_and_gas_customers_in_northern_ireland/

⁸ http://www.uregni.gov.uk/news/view/update_on_the_the_six_month_review_of_the_domestic_market_opening/

- 2.1.7 The UR consulted this wide variety of evidence given the comprehensive nature of the Third Energy Package and the need to fulfil the obligations under the Directives.
- 2.1.8 In addition to this, in order to ensure the practical application of terms such as “adequate safeguards to protect vulnerable customers,⁹” it is vital to take into consideration the views and experiences of Northern Ireland customers in addition to experience elsewhere. Experience elsewhere is important due to the stage of development in Northern Ireland’s retail energy markets.
- 2.1.9 The UR considers that it is appropriate based on the precautionary principle to examine problems that have occurred in GB markets and put in place “adequate safeguards” now. This should ensure that similar problems do not occur in Northern Ireland and in order to ensure that Northern Ireland customers are protected from potential future harm.
- 2.1.10 Annex 1 includes those existing licence conditions in a [model] electricity supply licence to which modifications are being proposed and also the new conditions being proposed (whereby the numbering of the new condition is also by reference to an existing [model] electricity supply licence).
- 2.1.11 For the purposes of this consultation paper we have not produced an equivalent template to show the same/equivalent modifications to a gas supply licence.
- 2.1.12 However, all of the provisions in the conditions included in Annex 1 apply equally to gas supply licensees. The gas supply licences will therefore also be modified to include, whether as substitution for an existing corresponding condition or as a new condition, the conditions shown in Annex 1 and in the same form etc. as the conditions in Annex 1 but with references to gas rather than electricity and such other consequential changes that may be required.
- 2.1.13 In other words the conditions in Annex 1 and the obligations set out in them will, unless otherwise stated, apply equally to all electricity and gas supply licensees.

⁹ Article 3(3) Gas and Article 3(7) Electricity

2.1.14 Where it has been necessary to modify transmission/distribution or conveyance licences these modifications will be referenced separately and will appear in annex 2 or 3

Question 3. Do respondents agree with the UR's approach in terms of the precautionary principle?

Question 4. Do respondents wish to submit views and evidence on the potential impact of the proposals set out in this section 2?

2.2 **UNIVERSAL SERVICE** *(Article 3(3), Electricity)*

Policy Background

- 2.2.1 The article requires Member States to ensure that all household consumers, and, where the Member State deems appropriate, small enterprises, have the right to a universal service to a supply of electricity at reasonable, easily and clearly comparable, transparent and non-discriminatory prices. It also provides that Member States shall impose on distribution companies an obligation to connect customers, and may also appoint a supplier of last resort.
- 2.2.2 Having a right to a universal service essentially means that at least every household customer irrespective of their geographical location should be able, so far as is reasonably practicable in all the circumstances of the case for their premises to be connected to the electricity network, as a last resort, to receive an electricity supply on terms that meet the universal service standard, i.e. reasonable, transparent, non-discriminatory etc.

Current Position

- 2.2.3 Domestic customers in Northern Ireland are currently entitled to receive a universal service at reasonable, clear, easily comparable, transparent and non-discriminatory prices. This is through a combination of the following -
- 2.2.4 All licensed suppliers are under a duty to offer terms to domestic customers, as set out in Condition 26 of their electricity supply licence; thereby enabling the customer to obtain different terms from different suppliers in order to compare prices.
- 2.2.5 Any licensed supplier that is in a dominant position in the electricity supply market is prohibited by virtue of Condition 14 of its electricity supply licence from showing undue preference towards or exercising undue discrimination against customers. At present the prohibition applies only to NIE Energy Limited.

- 2.2.6 NIE Energy Limited's charges for the supply of electricity are regulated by way of a price control set by the UR. The manner of the price control ensures that NIE Energy Limited sets its prices on a non-discriminatory basis.
- 2.2.7 All licensed suppliers are obliged under Condition 27 of their electricity supply licence to have terms and conditions which are in clear and comprehensible language and which, among other things, clearly identify the supply charges.
- 2.2.8 In combination, the above provisions facilitate the position whereby a domestic customer can, should he/she so wish, be able to receive a supply of electricity on terms which are compliant with the requirements of Article 3(3).
- 2.2.9 The UR therefore considers that as far as household customers are concerned no regulatory intervention is required to ensure compliance with these provisions of the Directive.
- 2.2.10 The Directive provides that it is for the Member State to determine whether the universal service standard should be extended to small businesses. In its October 2010 consultation, the Department invited views on this particular aspect and we note that those respondents who commented on this particular issue did not favour an extension of the universal service standard to small enterprises.
- 2.2.11 The Department has not extended the universal service standard to small businesses and on that basis the UR does not propose to introduce or amend a licence condition which would have the effect of extending the universal service standard to small enterprises.

Question 5. Do respondents agree with UR's position as noted above?

2.3 **CHANGE OF SUPPLIER AND THREE WEEK SWITCHING**

(Article 3(5)(a), Electricity; Article 3(6)(a), Gas)

Policy Background

- 2.3.1 One of the key aims of the Directive is to promote competitive energy markets that deliver customer benefits. The above articles are effectively aimed at ensuring that customers can switch suppliers easily and in a non-discriminatory manner in relation to costs, effort and time.
- 2.3.2 In particular, Articles 3(5)(a) and 3(6)(a) respectively require Member States to ensure that an electricity or gas customer can change supplier within three weeks. In addition Article 3(7) of the Electricity Directive and Article 3(3) of the Gas Directive require that eligible customers should be able to "easily" switch suppliers.

Current Position

- 2.3.3 The UR agrees that in principle all customers must be able to switch supplier easily and freely. In this respect there are no statutory, regulatory or legal stipulations within the statutory or regulatory framework which restrict the ability of eligible customers to receive a supply of gas/electricity from a supplier of their choice.
- 2.3.4 However, at present there is no specific time period within which a supplier transfer needs to be effected. Figures up to May 2011 show that in electricity, where any customer in any geographical location is eligible to change supplier, over 30,000 domestic customers have changed supplier and in gas, where effectively only customers in Greater Belfast can currently change gas supplier, just over 1400 domestic gas customers have changed from one gas supplier to another.
- 2.3.5 Given the relative infancy of full retail competition in both the gas and electricity sectors, the level of switching activity to date has been relatively low. However, this is expected to change quite significantly in terms of increased numbers of customers taking advantage of competition and switching between different suppliers. Distributors' current processes,

procedures and systems will therefore need to accommodate both the increase in activity and the timescales within which supplier transfers need to be made.

- 2.3.6 Some distributors have indicated that their current systems, processes and procedures may not necessarily be able to accommodate three week switching if there is an immediate and substantial increase in switching activity. But all such distributors are, in dialogue with and guidance from the UR, undertaking system development and upgrades to ensure that they can deliver systems that will fully facilitate the Directive requirements. Current timelines indicate that the necessary upgrades will be in place by no later than spring 2012.

Proposed Modifications

- 2.3.7 The UR is therefore proposing licence modifications both by way of introducing new licence conditions and by way of amending existing licence conditions to implement Article 3(5)(a) of the Electricity Directive and Article 3(6)(a) of the Gas Directive.

- 2.3.8 The proposed modifications include:

- i. A requirement that all energy supply contracts should have at least a 10 day cooling off period. (Paragraph 7(e) of Condition 27 in Annex 1).
- ii. A requirement for all energy suppliers to provide in their contractual terms and conditions that the customer can start to receive a supply from the supplier within three weeks from the start date of the contract. In effect this means within three weeks from the end of a 10 day cooling off period. (Paragraph 2(b) of Condition 27 in Annex 1)
- iii. A requirement for all energy suppliers to ensure that their systems, processes and procedures are able to facilitate a change of supplier within the three week period. (New condition 43 in Annex 1)
- iv. A requirement for all gas and electricity distributors to ensure that their systems are able to effect supplier transfers within three weeks of receiving registration requests from suppliers. The proposed condition for gas distributors is included in Annex 3 as new Condition A. (A

similar condition will be included in Northern Ireland Electricity's electricity distribution licence).

2.3.9 Going forward it may also be necessary to make some changes to the industry wide market rules, processes and procedures, for example by way of modification to the Market Registration Code in electricity or the Supply Meter Point Agreement in gas.

2.3.10 We will consult with the industry on this question during the consultation window and welcome comments. The UR will work with and consult market participants on such changes.

Reasons and Effect

2.3.11 The above conditions are proposed to implement the Electricity and Gas Directives requirement that customers wishing to change supplier should be able to effect that change within a three week period.

Contract Term

2.3.12 Where a customer changes to a new supplier, it is reasonable for the customer to expect that the new supplier will start supplying him at the earliest opportunity. For this reason it is appropriate that the three week switching standard should be part of the contractual relationship between customers and suppliers, as required by paragraph 2(b) of Condition 27 in Annex 1.

2.3.13 It should however be noted that the three week period effectively starts from the end of the cooling off period. This is because all energy supply contracts must, in accordance with licence conditions, provide for at least a 10 day cooling off period – and this period is not taken into account in the three week calculation. Should the supplier wish to offer a longer cooling off period the three week period still starts from the 10th day of any such period. The reasoning behind this is we do not believe that suppliers should be able to make up for any deficiencies in their systems or internal processes and

procedures by offering a longer cooling off period as a potential means of extending the three week switching timetable.

- 2.3.14 It should also be noted that the obligation to start supplying within the three week period will not apply where the customer has requested a later date, where the existing supplier has objected to the transfer or where there are other reasons beyond the control of the new supplier which prevent him from supplying by the date in question. The UR considers this proposal provides some certainty to the customer that, having made the decision to change supplier, he/she will start receiving a supply from the new supplier at the earliest opportunity.

Suppliers' Processes

- 2.3.14 It is clear that in order for customers to be switched from one supplier to another within the three week period, suppliers need to ensure that their internal systems, processes and procedures are sufficiently robust and able to effect the transfer within that relevant period. The UR therefore considers it appropriate to include a licence condition to that effect. In essence, the proposed condition requires suppliers to ensure that their systems etc. are able to facilitate a customer's wish to change to a new supplier within the three week window. This obligation will apply equally to the supplier's actions and processes where it is the new supplier i.e. gaining the customer as well as where it is the existing supplier, i.e. losing the customer.

Distributors' Processes

- 2.3.15 In practice, given the industry structure and market rules, it is licensed distributors that have the greater part to play in the procedural aspects of the change of supplier process. This is because they operate the registration system which records and identifies which individual supplier is responsible for supplying each of the individual premises (and thereby customers) in their area. This central record serves a number of purposes, including changes of supplier whereby the registration needs to change from one supplier (the existing or old supplier) to another (the new supplier). It is therefore imperative that the distributor's registration system (i.e. the IT

system itself) and the procedures/processes adopted by the distributor in order to make and effect the changes within the registration system, are sufficiently robust so as to effect the change of supplier within the three week window.

2.3.16 The proposed licence condition therefore provides for distributors to effect a change of supplier within three weeks of receiving a registration request from the new supplier. However, the licence condition is drafted such that in any individual case there is excluded from the three week timescale (i) any period within which, under the market rules, the old supplier can object to the transfer, and (ii) where the old supplier does so object, any period within which such an objection may be withdrawn. It is appropriate to exclude these periods from the three week window for distributors because they are effectively unable to progress the supplier transfer during any such applicable periods.

2.3.17 Finally, given the concerns of some distributors about the readiness of their systems and processes to handle the number of supplier transfers that may need to be effected in a fully competitive market, the licence condition requires licensees to provide regular updates to the UR on the volumes being handled by them and to notify the UR in advance and as soon as possible where they envisage system limitations going forward.

2.3.18 It should be noted however that this provision does not relieve them of the licence obligation as it is imperative that all customers are able to change supplier as quickly as possible and within the three week period envisaged by the Directives.

Question 6. Do respondents agree that both electricity and gas distributors and suppliers should have licence obligations to facilitate the three week switching requirement of the Directives?

Question 7. Are there any other obligations which should be imposed on licensees to meet the three week switching requirement of the Directives?

Question 8. Apart from the Master Registration Code and the Supply Meter Point Agreement, are respondents aware of, or have any views on, other industry codes or agreements that may also need to be revised to facilitate compliance with the three week switching requirement of the Directives?

2.4 **CUSTOMER INFORMATION: CONSUMPTION DATA**

(Article 3(5)(b) & Annex 1(h) (i) & (j), Electricity; Article 3(6)(b) & Annex 1(h) (i) & (j), Gas)

Policy Background

- 2.4.1 The Directives provide for all customers (both domestic and non-domestic) to be entitled to their relevant consumption data.
- 2.4.2 In particular they provide that, as a minimum, domestic customers should have their consumption data at their disposal and also by explicit agreement have that data given to electricity and gas supply companies. Furthermore, customers must be properly informed of consumption data frequently enough to enable them to regulate their consumption and there must be no charge to customers for the provision of this information.
- 2.4.3 It is important to note that the information requirements and the means of providing information vary between domestic customers, small and medium enterprises and large businesses. It is generally agreed that it is necessary to be more prescriptive about the provision of information to domestic and smaller customers.

Current Position

- 2.4.4 At present, all gas and electricity supply licences contain (effectively via Condition 38 of NIE Energy Limited's licence which is replicated in all electricity supply licences and Condition 2.19 of Phoenix Supply Ltd's Licence which is replicated in all gas supply licences) obligations dealing with the provision of information to customers.
- 2.4.5 In summary suppliers are required:
- i. To send a bill or statement to the customer on at least an annual basis. In electricity this requirement applies in respect of all customers but in the gas sector the obligation does not apply in respect of customers who are taking a supply through a prepayment meter
 - ii. To use their "reasonable endeavours" to obtain an actual meter read on at least an annual basis.

- iii. Where the bill/statement is based on a estimated read, to (i) inform the customer of how they can provide their own meter reading, and (ii) where the customer does so provide their own meter reading, to issue a revised bill based on the customer read.
- iv. To inform customers of the Consumer Council's role in relation to the investigation of complaints and to provide the Consumer Council's telephone number.
- v. To publish and provide on request the arrangements they have made with regard to consumer protection measures and safeguards.
- vi. To provide information relating to safety and security of supplies, namely by way of the details of an enquiry service.

2.4.6 The requirements in the supply licences are supplemented by the Electricity and Gas (Billing) (No2) Regulations (Northern Ireland) 2010. The Regulations effectively require that where a supplier sends a bill to a customer and the supplier has continuously supplied the same customer at that same premises since the start of the same period in the previous year, the supplier shall also include on the bill a comparison of the amount consumed in the current billing period and that same period in the previous year.

2.4.7 As there are currently no specific licence requirements or obligations which facilitate the customer giving access to information to a supplier that is not the customer's current supplier, the Department also consulted on the possible need for a new licence condition to ensure that electricity suppliers pass on consumption data to another supplier when requested to do so by the customer.

Proposed Modifications

2.4.8 The UR proposes that the relevant licence conditions should be modified to include also the following:

- i. An obligation on suppliers to provide customers with relevant consumption data on at least an annual basis on or with bills and annual statements. (Paragraph 4(f) of Condition 38 in Annex 1).

- ii. An obligation on suppliers to provide relevant consumption data on receipt of a request from a customer or an appointed representative of the customer. (Paragraph 5 of Condition 38 in Annex 1).
- iii. A requirement for suppliers to maintain, for at least 3 years, evidential records of the 'reasonable endeavours' they have used to obtain actual meter readings. (Paragraph 3(b) of Condition 38 in Annex 1).
- iv. An obligation on network operators, where in line with the industry rules and processes they hold the relevant metering/consumption data, to facilitate the transfer and sharing of that data between the relevant suppliers. (Condition F Annex 3)
- v. A new licence condition, see Condition 44 in Annex 1, requiring suppliers to provide customer consumption data held by them to each other, on request and where the customer has given express consent for the data to be so provided.
- vi. Aligning the gas provisions with electricity so that consumption information is made available also to pre-payment meter customers at least annually or on request. (Paragraph 2 of Condition 38 in Annex 1).

2.4.9 Given the comments from respondents to the Department's consultation, on the environmental impact of paper bills/statements and the advanced nature of technology, the UR does not propose to mandate that the bill/statement is sent in hard copy form. The precise method of delivery can be whatever is agreed with the customer so it can be provided either by traditional paper or via electronic means for example via e-mail, text message, etc.

2.4.10 Additionally, in order to meet the requirements of Annex 1(j) of the Directives, we have proposed a modification to the effect that suppliers are required to send a final bill to customers within 6 weeks of the date that they stop supplying them.

2.4.11 Finally, we have proposed an alignment between the gas and electricity provisions such that the presentation and format of the information to be provided on bills/statements should be determined by the Licensee in consultation with the General Consumer Council and the UR.

Reasons and Effect

- 2.4.12 In its October 2010 consultation, the Department invited views on whether the current requirement to provide domestic customers with billing information should be increased to provision of a quarterly bill/statement as opposed to an annual requirement and whether domestic customers should receive better and more detailed information about tariffs and consumption.
- 2.4.13 A range of views were received from respondents. The view taken by the Department was that providing information to customers about their consumption, terms of their supply contract, costs and the right to switch would enhance the ability of consumers to monitor their energy usage and make informed decisions based on such information.
- 2.4.14 In light of the Directive requirements and having seen respondents' views to the Department's consultation, the UR proposes the above licence modifications in order to (i) enhance the requirements relating to billing information, and (ii) to align the requirements between gas and electricity so as to ensure consistency between the treatment of electricity and gas customers.
- 2.4.15 The Department's consultation mooted the possibility of obliging suppliers to send billing and consumption data on a more frequent basis, e.g. quarterly, and indeed the UR's research published on 17 May 2010¹⁰, indicated that customers would like more frequent billing.
- 2.4.16 However, given the potential cost considerations for suppliers, the UR does not, at the present time, propose to change the minimum requirement for billing to be on an annual basis. However, suppliers will be obliged to provide customers with their consumption data on request. Although there was no express discussion in the Department's consultation on the provision of information to pre-payment meter (PPM) customers, the Directive is clear that all customers should be provided with relevant information, often

¹⁰

http://www.uregni.gov.uk/publications/views_and_experiences_of_electricity_and_gas_customers_in_northern_ireland/

enough to regulate and be informed of their consumption. There is no exception for PPM customers.

- 2.4.17 The effect of these modifications will be that all customers will receive information on their energy consumption at least once a year, or on request, which will help them to monitor and make informed decisions regarding their energy use and supply. The modifications will also ensure consistency between electricity and gas suppliers in the provision of consumption data and a minimum standard.
- 2.4.18 The modifications proposed above will enhance and strengthen customer rights in relation to the provision of consumption data. In particular, it will help to ensure that meters are read frequently, and where the company is unable to gain access to meters, the efforts which the company took in order to read the meter are recorded.
- 2.4.19 The UR's debt research found that there are a number of causes of consumer debt with a variety of factors at play. Just one cause can be inaccurate billing due to estimated bills being used. This can mean that customers get into difficulty, through no fault of their own, because of the difference between estimated and actual consumption.
- 2.4.20 The UR considers this to be unacceptable. Although suppliers are required to use all reasonable endeavours to obtain an actual meter reading on at least an annual basis, this obligation alone may not be sufficient as the UR has no mechanism in place to monitor compliance with these conditions. The UR has therefore proposed that suppliers must keep evidential evidence of their endeavours to read the meter.
- 2.4.21 The UR is also considering if additional safeguards are necessary for consumers in circumstances where the supplier is at fault for under-billing a domestic customer, for example because the customer has not been sent a bill in the last two years or because the supplier cannot produce evidence that it has made reasonable efforts to obtain an actual meter reading etc.

2.4.22 If additional safeguards were considered necessary they could be introduced by way of licence obligation or through other alternative means, for example, through Codes of Practice.

Question 9. Do respondents agree that all customers, including prepayment customers, should receive relevant consumption data on at least an annual basis but also at any time on request?

Question 10. Do respondents agree that suppliers should be obliged to keep a record of the reasonable endeavours they have used to obtain an actual meter reading? If so, is the period of 3 years reasonable?

Question 11. Do respondents consider that suppliers' obligations on billing and meter readings should be supplemented by additional safeguards dealing with under-billing and/or back-billing matters? If so, please outline the further safeguards and how they could be implemented.

Question 12. Do respondents consider that further provisions are required in order to meet the requirements of the Directives relating to customer access to consumption data? If so, please outline the further provisions considered necessary.

2.5 **CUSTOMER INFORMATION: CONSUMER CHECKLIST**

(Article 3(16), Electricity; Article 3(12), Gas)

Policy Background

- 2.5.1 In accordance with the Directive requirements, the European Commission has undertaken to establish a new “consumer checklist” for electricity and gas customers in consultation with relevant stakeholders. The purpose of the checklist is to provide clear, concise, practical information to consumers concerning their rights in relation to the energy sector.
- 2.5.2 The requirement on Member States is to ensure that consumers receive a copy of the checklist and that it is publicly available. Following its October 2010 consultation the Department has decided that the UR should, in consultation with the Consumer Council, be responsible for preparing and publicising the Northern Ireland checklist and that suppliers should also make the checklist available to their customers on at least an annual basis. This has been transposed by imposing an obligation on the UR under the new Article 7(5) of the Energy Order (inserted by Regulation 37).

Current Position

- 2.5.3 This is a new requirement and there are no current licence provisions which meet the aims or requirements of the Directives.

Proposed Modifications

- 2.5.4 The UR therefore proposes to modify the conditions of electricity licences to require suppliers to provide a copy of the latest consumer checklist to each customer (i) with the initial contract i.e. when the supplier gains the customer, (ii) on at least an annual basis i.e. by sending it with a bill/statement, and (iii) any time that a customer requests a copy. These obligations can be found in (i) see paragraph 4(b)(i) of Condition 27 in Annex 1, (ii) paragraph 2(b) of Condition 38 in Annex 1 and (iii) paragraph 1(b) of Condition 38 in Annex 1, respectively.

- 2.5.5 The Checklist can be provided in electronic form but if the customer so requests it must be provided in hard copy format.
- 2.5.6 Further, the UR proposes that the consumer checklist should be available, on the suppliers web-site and on request, in alternative formats (for example in Braille) or in an alternative language (where it is reasonably practicable for the supplier to do so).
- 2.5.7 These obligations are set out in paragraph 1 of Condition 38 in Annex 1 and exactly the same requirements will apply to gas suppliers.

Reasons and Effect

- 2.5.8 The provision of the Checklist is now a mandatory legal requirement. However, the UR has also, as part of its recent customer research project, conducted a survey on customer information requirements¹¹. The results of the survey indicate that whilst most customers (81%) are happy with the current provision of information on their rights as a customer of energy companies, 39% (the most popular response to the question on what type of information they would like) said that a list of their rights would be useful and the same number thought that the information should be provided with their bill.
- 2.5.9 The UR considers it important that customers have access to an up to date version of the consumer checklist to ensure that all customers are made aware of their rights. It will therefore publish the most up to date checklist on its website. The UR, in conjunction with the Consumer Council, will prepare and publish the first version by December 2011.
- 2.5.10 However, the vast majority of consumers are more likely to have regular contact with suppliers. For that reason the UR considers it appropriate that suppliers should also publish the checklist on their web-site.

¹¹

http://www.uregni.gov.uk/publications/views_and_experiences_of_electricity_and_gas_customers_in_northern_ireland/

- 2.5.11 In addition, because not all customers have access to on-line services, it is appropriate to require suppliers to give a copy of the checklist at the time of their initial contact with the customer and at regular intervals thereafter, including on at least an annual basis on, or with, each bill/statement and whenever requested by a customer.
- 2.5.12 The effect of the proposed modifications will be that customers have easy access to, and regular provision of, an information checklist which will assist their understanding of the market, provide information on the relevant players in the market and inform them of their rights in relation to relevant market arrangements, including for example change of supplier processes.
- 2.5.13 Finally, through an analysis of the sources of evidence noted at the beginning of Chapter 2 the UR has concluded that customers with multiple vulnerability characteristics may have lower levels of awareness of help available to them.
- 2.5.14 In order to promote equality of access to information on consumer rights, the UR considers that suppliers should be required to make the consumer checklist available in accessible formats and languages.
- 2.5.15 This is consistent with the Directives' requirement that safeguards for vulnerable customers should be "adequate" and also consistent with the UR's overall duty to promote equality under Section 75 of the Northern Ireland Act. It is also consistent with proposals in our Social Action Plan.

Question 13. Do respondents agree with the above proposals in relation to the Consumer Checklist?

2.6 **CUSTOMER INFORMATION: DISPUTE SETTLEMENT RIGHTS**

(Articles 3(7) & 3(9)(c), Electricity; Article 3(3), Gas)

Policy Background

- 2.6.1 Article 3(7) of the Electricity Directive and Article 3(3) of the Gas Directive state, among other things, that member states shall “...*ensure high levels of consumer protection particularly with regard to transparency regarding...general information and dispute settlement mechanisms*”.
- 2.6.2 Additionally Article 3(9)(c) of the Electricity Directive requires electricity suppliers to ensure that customers are given information, both on or with bills and in relevant promotional materials, about their rights in relation to the availability of dispute settlement mechanisms.

Current Position

- 2.6.3 The current position is that gas and electricity suppliers are already obliged by licence condition (generally Condition 38 in electricity licences and Condition 2.19 in gas licences) to inform, on at least an annual basis but more frequently if the customer receives more frequent bills/statements, customers that the Consumer Council can assist with regard to resolution of complaints and to provide the contact details for the Consumer Council.

Proposed Modifications

- 2.6.4 Licence modifications are proposed which oblige suppliers to inform customers of:
- i. Their right to initiate the supplier’s complaint handling procedure;
 - ii. The role of the Consumer Council in assisting to resolve complaints;
 - iii. The role of the UR in relation to the resolution of billing complaints;
and
 - iv. The contact details of supplier’s complaints handling department, the Consumer Council.

- 2.6.5 Each of these provisions are found in paragraph 10 of Condition 38 in Annex 1.
- 2.6.6 Suppliers will be required to provide this information in or with each bill/statement sent to the customer (which as already noted above must as a minimum be sent on an annual basis) and in other materials issued to customers that contain information about the supplier's activities. See paragraph 11 of Condition 38 in Annex 1.

Reasons and Effect

- 2.6.7 Having given full consideration to the current position, the requirements of the Directive, respondents' views to the Department's consultation and Department's final decision, as well as the findings from the UR's own customer research, the UR is of the view that both gas and electricity licences should be strengthened with regard to the provision of information on dispute settlement rights.
- 2.6.8 The UR considers that the above provisions, taken together with other licence requirements, meet the Directives' consumer protection aims. The UR agrees that customers should be made aware of their rights to refer, in the first instance, complaints to their supplier and to expect such complaints to be managed and dealt with according to a clear, transparent, robust and effective procedure. It is also important for customers to know that the Consumer Council and in certain cases the UR can assist in the resolution of complaints should the customer remain unsatisfied with the supplier's response.
- 2.6.9 Aligning the gas and electricity provisions will ensure consistency between the treatment of electricity and gas customers as regards the interpretation of the Directives in relation to the provision of information to customers. While in gas there is no direct read across to Article 3(9) (c) of the Electricity Directive there is a requirement in Article 3(3) of the Gas Directive to require high levels of transparency regarding dispute settlement.

2.6.10 The effect of the proposed modifications will be to ensure that customers are well informed with regard to their rights, and the support available from the Consumer Council, in relation to any complaints they may have with regard to their relationship with their supplier (past or present). They will also be made aware of the UR's role in the resolution of billing complaints.

Question 14. Do respondents agree with the UR's proposals in relation to dispute settlement?

2.7 **CUSTOMER INFORMATION: TRANSPARENCY OF INFORMATION** ***(Article 3(7), Electricity; Article 3(3), Gas)***

Policy Background

2.7.1 Another key aim of the Directives is to provide greater transparency for consumers. In particular, as noted above, the Directives require transparency regarding contractual terms and conditions, general information and dispute settlement. The main objective for customers being able to access objective and transparent consumption data is so they can invite other suppliers to make offers based on such data. Transparency of information thereby facilitates the change of supplier process.

2.7.2 In its October 2010 consultation the Department proposed that the following information should be set out on, or with, every bill/statement sent to domestic customers:

- i. The MPRN (Meter Point Registration Number);
- ii. Name of the tariff;
- iii. Consumption data for the same period for the previous year (including applicable dates), broken down by quarter or month as the billing cycle will allow (where the contract has been held for less than one year, the consumption from the beginning of the contract to date would need to be shown);
- iv. The total cost of supply (including and excluding VAT) for the period;
- v. An illustrative projection of the costs of the same amount of gas and electricity in the next 12 months;
- vi. Details of any premium or discount that applies to that tariff in relation to the supplier's standard tariff (if the customer pays by direct debit) and applicable dates;
- vii. Details of the relevant principal terms of the contract;
- viii. Information about switching;
- ix. Reliable, comparable information regarding the overall fuel mix used for generation in the case of electricity; and
- x. Information on rights and dispute settlement.

- 2.7.3 At the time the Department considered that the above requirements could be implemented by amending the Electricity and Gas (Billing) (No. 2) Regulations (Northern Ireland) 2010. Domestic customers would therefore receive this additional information on at least an annual basis.
- 2.7.4 While most respondents supported the idea of giving customers useful information, some raised concerns about the cost of providing extensive information on a frequent basis and in paper format, the environmental impact of the additional use and disposal of paper, the possibility of confusing customers by providing too much information on bills and the possibility of providing information to customers using new technology.
- 2.7.5 The Department's final decision was not to amend the Billing Regulations as initially proposed but to allow industry a further opportunity to contribute to the practical outworking of these obligations by requiring electricity and gas licence conditions to meet the Directive requirements.

Current Position

- 2.7.6 As noted above suppliers are already required to provide regular billing information to customers. Some suppliers will also provide more detailed information on a voluntary basis or at least on request to customers.

Proposed Modifications

- 2.7.7 The UR proposes that at least the following information should be set out on or with each bill or statement that is sent to the customer (and as noted above that must be done on at least an annual basis):
- i. The identity and address of the supplier.
 - ii. The MPRN (Electricity)/SMPN (Gas) applicable to the customer/customer's premises.
 - iii. The following information about the tariff on which the customer is being supplied:
 - Name of tariff;

- The applicable unit rate, expressed in pence per kWh;
 - If a standing charge applies, the amount payable and/or how it is calculated; and
 - The details of any discount or premium applicable to that tariff as compared with the supplier's standard tariff and the length of the discount period.
- iv. All relevant consumption data for the current billing period and consumption for the same period for the previous year (including applicable dates), broken down by quarter or month as per the billing cycle. However, where the supplier has not supplied the customer in that corresponding period, for example because the contract has been held for less than one year, the consumption from the beginning of the contract would need to be shown. This consumption data is to be included on all bills/statements sent to the customer including for the avoidance of doubt the supplier's final (closing) bill for that customer.
 - v. The total charges (including and excluding VAT) applicable for the period.
 - vi. Fuel Mix Information (electricity only) (as noted in paragraph 2.14).
 - vii. Information about customer's rights in relation to complaints and contact details for the Consumer Council.
 - viii. Whether the bill or statement is based on estimated or actual consumption.
 - ix. For estimated bills, details of how the customer can register a self read and of the customers' right to be sent a new bill based on the self read.
 - x. A reminder that the customer can change supplier and information about where the customer can obtain further information about changing supplier.

2.7.8 As with billing information, the UR considers it appropriate that the presentation and format of the information should be in a form that is determined by the Licensee in consultation with the Consumer Council and the UR.

- 2.7.9 These modifications are found in paragraphs 4 and 7 of Condition 38 in Annex 1.
- 2.7.10 The UR considers that the provision of the above information on or with bills should not prove overly onerous and that the majority of the information is either already required to be included on bills due to some other part of the Directives (e.g. information on dispute settlement) or should normally be provided as a matter of good practice.
- 2.7.11 Furthermore, as suppliers can, where the customer expressly agrees to receiving the information in such format, provide the information electronically, any impacts on costs and on the environment of additional paper billing should be minimised.
- 2.7.12 In any event the UR considers that the above information is necessary to ensure that customers can actively participate in the market and can help customers to manage their energy consumption.
- 2.7.13 In light of concerns expressed by respondents' to the Department's consultation, the UR has decided that for the present time it is not necessary for suppliers to provide on or with each bill/statement (i) an illustrative projection of the costs of the same amount of gas and electricity in the next 12 months, or (ii) details of the relevant principal terms of the contract.
- 2.7.14 The UR considers at this time that the provision of such information on or with each bill, which was proposed in the Department's consultation, may prove to be onerous to suppliers or confusing to customers.
- 2.7.15 However, the UR considers it important that domestic customers are aware, when entering into an energy supply contract, of the principal terms of that contract at the time that they sign up to it. The UR is therefore proposing a licence modification to this effect.
- 2.7.16 The proposed modification can be found at paragraph 4(a) of Condition 27 in Annex 1.

2.7.17 In this context the UR proposes to define the principal terms such that it matches Ofgem's definition. This means the principal terms of the contract which will need to be explained and drawn to the customer's attention before the contract is agreed will, as a minimum, encompass:

- i. The charges for the energy supply;
- ii. Any requirement to pay the charges through a prepayment meter;
- iii. Any requirement for a security deposit;
- iv. The duration of the contract;
- v. The customer's rights to end the contract, including any obligation to pay a termination fee, or the circumstances in which it will end and
- vi. Any other term that may reasonably be considered to significantly affect the evaluation by the customer of the contract.

Reasons and Effect

2.7.18 The UR considers that the proposed modifications are necessary for full transposition of the Directives and is of the view that in a developing and increasingly competitive market it is right that customers should receive clear, comprehensible and transparent information both for the purposes of managing their existing use and supplier relationship (i.e. to manage consumption, have a clear understanding of charges etc.) and for the purposes of having sufficient information to make informed decisions about switching supplier.

2.7.19 As part of the UR's customer research conducted in March 2011, respondents were asked a number of questions on information. Results indicate that 87% of respondents to the survey said that they would find it useful if they were provided with details of current usage compared with previous periods and 52% of electricity customers said that it is important to them personally that information on the environmental impact and carbon content of electricity supplied to them in the previous year is shown on their bill. The UR considers that the provision of consumption information with comparative data for the previous year and the fuel mix disclosure

information should help to facilitate customers to reduce their use of energy and their carbon footprint.

2.7.20 Provision of tariff information and relevant charges will help increase customer awareness of their current energy provision and enable them to make informed decisions on whether another tariff or supplier would provide a service better suited to their needs.

2.7.21 In combination the above provisions will have the effect of customers understanding the key terms of their contracts before agreeing to enter into them, receiving regular billing information and updates about their consumption (including comparisons between corresponding periods where appropriate), being able to request information about consumption, having information readily available which will help them to exercise their right to change supplier and their rights in relation to their energy supply and how to complain if they have problems.

Question 15. Do respondents agree with the UR's proposals in relation to transparent information?

2.8 **ENHANCED CUSTOMER PROTECTION PROVISIONS** *(Article 3(7) & Annex 1, Electricity; Article 3(3) & Annex 1, Gas)*

Policy Background

2.8.1 As noted previously, consumer interests are at the heart of the Directives. The Directives therefore require Member States to take appropriate measures which enable all customers to enjoy high levels of consumer protection, and in particular to ensure that there are adequate safeguards to protect vulnerable customers.

Current Position

2.8.2 Both the gas and electricity supply licences contain provisions relating to the protection of consumers, including in particular vulnerable consumers. To date the implementation approach in each sector has been slightly different. In electricity, the licence conditions require suppliers to have Codes of Practice which set out the Services they will provide for certain categories of customer in relation to the matters set out in the licence conditions. In gas, licence conditions require suppliers to make arrangements in relation to the provision of certain specified services. It is also the case that in some instances the scope and range of services differ between the two sectors.

2.8.3 In brief, the current licence conditions require suppliers to provide particular services or facilities for customers who are having difficulty in paying their bills, for customers who are elderly, chronically sick or disabled and for customers who pay through a prepayment meter. Suppliers are also obliged to provide services relating to energy efficiency advice and to have systems and procedures for dealing with customer complaints.

2.8.4 The table below provides a comparative overview of the existing provisions in gas and electricity licences.

COMPARATIVE OVERVIEW OF EXISTING CONSUMER PROTECTION PROVISIONS IN GAS AND ELECTRICITY

Electricity licence current position			Gas licence current position		
Condition	Code of practice	What does the code contain?	Condition	Arrangements	What should the arrangements provide?
30	Payment of bills	<p>The code must set out the licensee's methods to;</p> <ul style="list-style-type: none"> • identify customers in difficulty, • give these customers advice on energy efficiency, • make arrangements which take account of ability to pay, • detect failures by customers in complying with arrangements for 	2.23	Payment of bills by household customers who may have difficulty in paying such bills	<p>The arrangements must set out how the licensee will;</p> <ul style="list-style-type: none"> • identify customers in difficulty, • give these customers advice on energy efficiency, • make arrangements which take account of ability to pay • detect failures by customers in complying with arrangements • provide prepayment meters for customers to comply with arrangements,

Electricity licence current position			Gas licence current position		
Condition	Code of practice	What does the code contain?	Condition	Arrangements	What should the arrangements provide?
		<p>payment,</p> <ul style="list-style-type: none"> • calibrate prepayment meters to take account of ability to pay, • have particular regard to helping customers to avoid disconnection, • consult the Consumer Council and the UR in relation to the code, • monitor compliance with the code. 			<ul style="list-style-type: none"> • have particular regard to helping customers to avoid disconnection.
31	Vulnerable	Describe the special services available and any charges	2.11	Services for pensioners,	Licensee shall provide household customers who are pensioners,

Electricity licence current position			Gas licence current position		
Condition	Code of practice	What does the code contain?	Condition	Arrangements	What should the arrangements provide?
	customers	made or to be made to persons who are of State pensionable age, disabled, blind or deaf	2.12 2.13	<p>chronically Sick or Disabled Persons.</p> <p>Facilities for blind and deaf people</p> <p>Pensioners not to have supply cut off in winter</p>	<p>chronically sick or disabled (except where they may live with another person who is not in this category) with;</p> <ul style="list-style-type: none"> • Special adaptors, • Meter repositioning, • Advice on the use of gas fittings, • Invoices and bills to nominated persons, • If the customer is unable to read the meter (quarterly meter readings), <p>The licensee must also keep a list of disabled, sick or chronically ill customers</p>

Electricity licence current position			Gas licence current position		
Condition	Code of practice	What does the code contain?	Condition	Arrangements	What should the arrangements provide?
					<p>(who wish to be on it) and details from the list to other gas license holders.</p> <p>For blind or partially sighted customers provide details of meter readings and charges and details of enquiry and complaints services by telephone or other appropriate means.</p> <p>Provide deaf or partially hearing customers with details of facilities to assist them in making enquiries or complaints.</p>
32	Efficient use of electricity	Set out ways in which the Licensee will make available to domestic customers guidance on the efficient use of	2.10	Efficient use of gas	Make arrangements for the provision, at the request household customers of advice on the efficient use of gas.

Electricity licence current position			Gas licence current position		
Condition	Code of practice	What does the code contain?	Condition	Arrangements	What should the arrangements provide?
		electricity.			
33	Complaint handling	Set out for Domestic customers simple, transparent, inexpensive procedures for complaint handling and make it available to domestic customers without charge	2.22	Complaints handling procedure	Establish and operate a transparent, simple, accessible, and inexpensive complaints procedure which shall enable any household consumer to bring and have dealt with complaints. Have the arrangements made available to household customers without charge.
34	Prepayment Meter	Sets out the services which the licensee offers to Prepayment customers			
35	Preparation of compliance with and	Applies to each of the above codes and requires; <ul style="list-style-type: none"> • Consultation with the 	2.9 2.20	Social Obligations Approval of	Within 6 mths of the licence coming into force submit to the UR and the Consumer Council the arrangements for conditions 2.10, 2.12, 2.22 and 2.23. The UR then

Electricity licence current position			Gas licence current position		
Condition	Code of practice	What does the code contain?	Condition	Arrangements	What should the arrangements provide?
	review of Codes of Practice	<p>consumer council,</p> <ul style="list-style-type: none"> • UR approval, • review the code when requested to do so by the UR, • draw the codes to the attention of consumers, • send the code to anyone who requires it, • In so far as is reasonably practical ensure that the codes are complied with, 		Arrangements in relation to service quality, compensation and refund, standards of performance for household customers.	<p>has 60 days to say if the arrangements are not sufficient.</p> <p>Once made the arrangements shall not be modified except with the consent of the UR.</p> <p>The licensee must take reasonable steps to inform customers of the arrangements</p> <p>In so far as is reasonably practical the licensee must conduct itself in conformity with the arrangements.</p>

Electricity licence current position			Gas licence current position		
Condition	Code of practice	What does the code contain?	Condition	Arrangements	What should the arrangements provide?
		<ul style="list-style-type: none"> provide information on monitoring the codes 			

Proposed Modifications

2.8.5 The requirements of the Directives are not discretionary matters but terms such as “appropriate measures” and “adequate safeguards” are open to interpretation.

2.8.6 Given the high levels of customer protection required under the Directives and some concerns about the effectiveness of the current customer protection arrangements, the UR proposes that all energy suppliers will be required to prepare, implement and comply with Codes of Practice (Codes) which set out how the supplier will provide at least the minimum services and facilities (as outlined in the relevant licence condition) for certain, specified categories of customers.

2.8.7 The existing requirements will therefore continue but will be aligned (between electricity and gas) and strengthened as follows:

- i. In relation to prepayment meter customers who are also paying off a debt through the prepayment method, for each advance payment purchased by the customer, suppliers cannot use more than a specified amount from each such advance payment as payment towards the customer’s debt.

The UR proposes that the amount which can be recovered from each ‘top up’ purchased by the customer as payment towards the debt should be limited to a specified percentage e.g. no more than 40% of the total payment purchased, unless a higher relevant amount/percentage has been specifically requested by the customer. The UR is also of the view that if the customer has evidence to support their inability to pay the upper limit, a lower amount should be agreed upon.

The proposed modification is included as a requirement for inclusion within the supplier’s code of practice on payment of bills and can be found at paragraph 3(h) of Condition 30 in Annex 1.

- ii. The existing requirement on suppliers not disconnecting during the winter months domestic customers who are of pensionable age will be extended

to cover also domestic customers who are chronically sick or disabled. This modification is set out as a requirement of the suppliers code of practice for such customers and can be found at paragraph 4(c) of Condition 31 in Annex 1.

- iii. Suppliers will, where the customer is in debt, be required to take reasonable steps to ascertain whether the household of that customer includes a person who is elderly, chronically sick or disabled and to take reasonable steps to avoid disconnection of any such customer's premises in the winter months. See paragraphs 4(d) and (e) of Condition 31 in Annex 1. In the event of a disconnection the licensee shall retain records of the steps they took to identify customers who are of pensionable age, disabled or chronically sick. Such records should be retained for at least 6 months following the disconnection or where the customer within that six months made a complaint about the disconnection, 6 months from the resolution of the complaint. See paragraph 6 of Condition 31 in Annex 1.
- iv. All suppliers to keep a register, which identifies those of its customers who are elderly, chronically sick or disabled and have asked to be included on the register, for the purposes of the supplier having the information about customer's particular needs and requirements and to publicise the existence of the register. See paragraph 5 of Condition 31 in Annex 1.
- v. Extending the requirement for the supplier to make available advice and information on energy efficiency matters so that it applies in relation to non-domestic customers also. This is reflected in Condition 32 in Annex 1.
- vi. Obliging suppliers to have complaints handling procedures which provide for customer complaints to be processed and dealt with by the supplier within at least 3 months, as included in paragraph 3(a) of Condition 33 in Annex 1.

- vii. Requiring suppliers to comply with an industry Marketing Code of Practice – see paragraph 2(a) of Condition 40 in Annex 1. In this context the UR proposes to work with the industry to develop such a standard Code which will set out the practices and procedures to be followed by suppliers when undertaking their marketing activities. Our current proposals are that, the Code will supplement and work in conjunction with the existing licence condition rather than replace it.
 - viii. Take steps to help customers using prepayment (also known as pay as you go) meters to avoid self-disconnection. This requirement is included as a requirement for the supplier's code of practice on prepayment meter services and is found in paragraph 3(a) of Condition 34 in Annex 1. Such steps may include the provision of more information, the use of emergency credit facilities or taking steps to ensure that meters do not self-disconnect during public holidays.
 - ix. Provide the UR with enhanced monitoring information on the implementation of the codes as found in paragraph 10 Condition 35 and Condition 36 Annex 1.
- 2.8.8 Suppliers will also be required to ensure that, should they exit the market (whether planned or otherwise) they have in place arrangements which will enable prepayment meter customers to continue, for at least an interim period to purchase credit on their key, tokens, cards etc. See paragraph 2 of Condition 34 in Annex 1.
- 2.8.9 Some changes are also proposed in order to clarify the existing requirements, including for example clarifying that a person is disabled according to the definition in the Disability Discrimination Act 1995, updated by the Disability Discrimination (NI) Order 2006 (paragraph 7 of Condition 31 in Annex 1).

2.8.10 In proposing the modifications our aims are to ensure that customers are afforded proper and appropriate protection with regard to their relationship and dealings with suppliers. We therefore require suppliers to:

- i. Provide consistent and standard levels of consumer protection across both the electricity and gas sectors.
- ii. Comply with their Codes and provide the services/facilities to the standard and in the manner expected
- iii. Regularly review, revise and update their Codes either in line with regulatory intervention where required or to improve and provide a better standard of service and range of appropriate services. This means that Codes will need to be reviewed, updated and refined at regular intervals and when circumstances change.
- iv. Report against performance of service provision.

2.8.11 The UR is also mindful that as each of the sectors develop, whether as a consequence of increased levels of competition or as consequence of other technical or innovative solutions, and as consumer experiences of the fully competitive market come to the fore, it may be necessary to further enhance and strengthen some of the consumer protection measures.

2.8.12 In light of this, the UR considers it both necessary and appropriate for it to have the ability to introduce further consumer protection measures as/when evidence indicates that it is necessary to do so. Consequently the UR has proposed provisions which enable it, following consultation with relevant parties, to modify licence conditions for this purpose and/or for the purpose of ensuring further compliance with the Directives. The provisions implementing these proposed decisions can be found in paragraph 5 of Condition 35 and in proposed new Condition 35A in Annex 1.

2.8.13 In addition to the above, with regard to matters relating to fuel poverty, the UR considers that the Department of Social Development (“DSD”) Fuel

Poverty Action Plan fulfils Northern Ireland's requirement to have an action plan on fuel poverty. The UR will continue to contribute to the DSD Fuel Poverty Action Plan.

Reasons and Effect

- 2.8.14 The proposed modifications are required in order to improve consumer protection in Northern Ireland and to ensure that it meets the Directives' requirements to ensure high levels of consumer protection.
- 2.8.15 The different approaches in the current gas and electricity supply licences reflect the different issues in consideration within each of the sectors at the time of the introduction of the provisions. However, now that the sectors are much more closely aligned both in terms of consumers' exercising their right to choose supplier and more generally in terms of market rules and processes etc. we consider it inappropriate going forward to continue with such different approaches and more importantly to continue with the potential inconsistency in the scope and nature of the consumer protection measures. Indeed responses to the UR's Social Action Plan indicated some support from respondents for a more harmonised approach to consumer protection issues across electricity and gas.
- 2.8.16 The UR has undertaken a comprehensive review of suppliers' consumer protection obligations and their current effectiveness. It has also taken into account consumer experience and views of their dealings with suppliers. In light of this work and given the principles of the Directives, the UR proposes not only to align consumer protection provisions in the gas and electricity sectors in order to provide clarity and consistency of approach but also to enhance and strengthen the consumer protection afforded to consumers (including where appropriate extending the requirements to apply also to non-domestic customers).

- 2.8.17 The UR published a research report in June 2010 on helping customers to avoid/manage debt¹². The research incorporated a survey of 900 gas and electricity customers, in-depth case studies, interviews with key stakeholders and energy suppliers, stakeholder workshops and a literature review.
- 2.8.18 The aim of the research was to 'review existing debt and disconnection policies and sample their application in relation to individual customers who are in debt' and based on this 'make recommendations for a best practice model for energy suppliers in dealing with debt and disconnection'.
- 2.8.19 The modifications proposed have taken into account the main findings and recommendations arising from this research. While the research acknowledges that there is evidence of good practice from electricity and gas suppliers; there was also evidence of hardship among customers.
- 2.8.20 The survey found that almost a quarter (24%) of electricity customers using prepayment meters and 41% of gas customers using prepayment meters had gone without energy in the previous 12 months because they could not afford a top up. There was also evidence of a significant level of self-rationing among the sample, with the majority (56%) saying that they use less energy than they need because of the cost of their energy bills.
- 2.8.21 This problem was even more pronounced among customers in arrears to their energy company, with 67% of these households reporting that they self-ration because of their energy bills. Key messages emerging from the research included a need for:
- i. Greater consistency across suppliers;
 - ii. Explicit recognition of the current financial context i.e. greater levels of fuel poverty;
 - iii. Pro-activity (rather than reactivity) regarding identifying vulnerable clients (including financially vulnerable);
 - iv. Referral of customers for energy efficiency advice and grant opportunities; and

¹² http://www.uregni.gov.uk/publications/view/helping_customers_avoid_manage_debt/

- v. An enhanced role for the UR in respect of monitoring compliance with Codes of Practice.

2.8.22 Specific recommendations which are also relevant to the above modifications include:

- i. Develop and deploy affordable repayment plans for customers in debt;
- ii. Sustain and strengthen an ethos/culture that supports an empathetic approach to vulnerable customers;
- iii. Consider revisions to the repayment levels of arrears via pre-payment meters, especially for those on low incomes; and
- iv. Consider a cap on repayment levels for vulnerable customers.¹³

2.8.23 Given the findings contained in the above report and the Directives' requirements on consumer protection, the UR considers a cap on the level of debt collected per pre payment meter transaction is necessary to protect vulnerable customers from self disconnection.

2.8.24 The UR also considers that the additional proposal that licence holders should take steps to help pre payment customers avoid self disconnection are also necessary for full Directive implementation.

2.8.25 The above report also noted that just under half (46%) of electricity customers and (40%) of gas customers paying arrears via pre payment meters considered the repayment rate was too high. The UR considers that the level of self disconnection noted above is unacceptable and that the proposed modifications will help to address this situation.

2.8.26 The UR published a Social Action Plan 2009-2012 in November 2009 following an extensive public consultation. A number of organisations representing various vulnerable groups responded to the consultation highlighting the problems faced by these groups, the reasons why they may get into arrears with their energy bills and the potential consequences if they are disconnected from their energy supply. We have been mindful of these

¹³ http://www.uregni.gov.uk/news/view/helping_customers_avoid_manage_debt/

responses whilst developing the above modifications in particular, extending the requirement for suppliers not to disconnect households which include a person who is chronically sick or disabled during the winter months.

- 2.8.27 Defining disability using the updated definition from the Disability Discrimination Act 1995 will provide clarification for suppliers and customers on who should be included and ensure that those who are most in need will be protected. The requirement to keep and to publicise the existence of a register of customers who are elderly, chronically sick or disabled will help with targeting special services at those who need them particularly in emergency situations e.g. when energy supply is disrupted.
- 2.8.28 The Department's decision paper on the Directives¹⁴ concludes that the definition of vulnerable customers should remain as per the Energy Order, namely those electricity customers who are of pensionable age, who are disabled or chronically sick, or on low income, or dwelling in rural areas, and those gas customers who are of pensionable age, who are disabled or chronically sick or on low incomes.
- 2.8.29 The UR considers that the proposed modifications implement the Directives' requirement to ensure that those vulnerable customers that are particularly susceptible to difficulties arising from disconnections have adequate protections afforded to them.
- 2.8.30 At the present time there is no evidence to suggest that customers living in rural areas need any particular additional protections with regard to disconnections. However, the UR will keep this matter under review and assess whether any additional safeguards are required in light of such review.
- 2.8.31 The application of an industry Marketing Code of Practice will be aimed at protecting customers, in particular vulnerable customers, from inappropriate marketing practices and ensuring that they can make an informed, unpressurized decision on whether or not to change their energy supplier.

¹⁴ http://www.detini.gov.uk/branded_decision_paper_on_implementation_of_eu_third_internal_energy_package.pdf

Obliging suppliers to have complaints handling procedures which deal with complaints within three months will ensure customers complaints are processed properly within an appropriate time period.

- 2.8.32 The proposed modifications with regard to customer protection measures should have the effect of standardising the protection measures across the gas and electricity supply industry and extending them to ensure that customers, and in particular vulnerable customers, get the protection that responses to our debt research and social action plan consultation have told us that they need. Respondents should note, that the UR intends to carry out further work on developing the proposed codes of practice after the licence modifications are finalised. This will give the UR further opportunities to engage stakeholders and ensure customers enjoy high levels of consumer protection.

Question 16. Do respondents have any views on the appropriate maximum level of debt repayment from each credit amount purchased? Respondents are asked to submit their views on the maximum percentage that should be permitted.

Question 17. Do respondents agree with the proposals for protecting prepayment customers from self disconnection?

Question 18. Do respondents agree that there should be alignment between the licence obligations in electricity and gas?

Question 19. Do respondents have any views on the proposal to standardise the definition of disabled?

Question 20. Are there any further comments that you would like to make on the proposed enhancements to consumer protection provisions, in particular the proposal in paragraph 2.8.12?

Question 21. Do respondents agree with the proposals to extend the prohibition on disconnection to include chronically sick and disabled?

2.9 **SUPPLY CONTRACTS: TRANSPARENCY**

(Article 3(7) & Annex 1, Electricity; Article 3(3) & Annex 1, Gas)

Policy Background

- 2.9.1 As noted in earlier sections of this paper, enhanced consumer protection is at the heart of the Directives. The Directives envisage consumer protection to be achieved not only through the provision of relevant services and clear, transparent information but also through the contractual relationship and in particular through transparency of contractual terms and conditions.
- 2.9.2 Many of the specific requirements relating to contractual terms and conditions are set out in Annex 1 of the Directives and therefore must apply in relation to domestic customers. However, the Directive does not specifically limit or prohibit their application to domestic customers only. The Department has therefore determined, see its final decision paper, that with regard to certain matters it is appropriate for all consumer contracts (i.e. domestic and non-domestic) to make appropriate provision for them. In addition, the UR has conducted a Six Month Review of NI Domestic Market Opening (due to be published at the end of June 2011) and some of the findings from the review centre on issues relating to contractual terms and conditions.

Current Position

- 2.9.3 All gas and electricity supply licences contain provisions relating to the terms and conditions of supply contracts. Some of the provisions apply in respect of all consumer contracts i.e. including contracts with business customers, whilst others apply only in respect of domestic supply contracts.
- 2.9.4 Many of the requirements of the Directives are not new and are therefore met by the obligations placed on suppliers under these provisions. For example, suppliers are required to determine standard terms and conditions (but may have a different set of standard terms and conditions for different cases, classes of cases or areas) and must supply on the standard terms and conditions applicable to the relevant customer/circumstances. They

must also ensure that the terms and conditions are in clear and comprehensible language and include all the information necessary for the customer to understand the terms of supply.

- 2.9.5 In addition, statutory provisions, namely paragraph 3 of Schedule 6 to the Electricity Order in relation to electricity and section 12 of the Energy Act 2011 in relation to gas, require suppliers to make a scheme for determining the terms and conditions of contracts deemed to have been made under those provisions (deemed contracts). As a result the express terms and conditions of deemed contracts are those which are provided for and therefore set out in the scheme.

Proposed Modifications

- 2.9.6 Notwithstanding the above, the UR considers it appropriate and necessary to strengthen some of the existing provisions in order to ensure full compliance with the provisions of the Directive. Further detail is set out below.

2.10 **ENERGY SUPPLY CONTRACTS – SPECIFIC PROVISIONS**

(Annex 1(a), Electricity & Gas)

Policy Background

2.10.1 Paragraph 1(a) of Annex 1 sets out a list of matters that the contract must specify. It also requires contractual conditions to be fair and well-known in advance and that the matters specified in paragraph (a) should be provided before the contract is concluded or confirmed.

Current Position

2.10.2 All electricity and gas supply licences currently include a condition which specifies the minimum provisions that must be included in domestic supply contracts. In this respect the current condition meets most, but not quite all, of the requirements of paragraph 1(a) of the Annex 1 of the Directives.

2.10.3 In addition to this, all electricity supply licences contain a condition (Condition 28) which sets out certain additional obligations in relation to deemed contracts.

2.10.4 A similar licence condition is to be included in gas supply licences by virtue of the provisions of the Energy Act 2011.

Proposed Modifications

2.10.5 The UR proposes to modify the relevant condition such that it also:

- i. Requires that any compensation arrangements relating to inaccurate and delayed billing should also be set out within the terms and conditions of the contract. See paragraph 7(i) of Condition 27 in Annex 1.
- ii. Requires that each set of the supplier's standard terms and conditions is published on the supplier's web-site (paragraph 5(e) of Condition 27 in Annex 1).

- iii. Provides that although suppliers can determine different terms and conditions for different cases, areas etc. the supplier must have a standard tariff for each such different case or area which applies to contracts of an indefinite length (i.e. one standard tariff for evergreen contracts for each different case, area etc). Paragraph 6 of Condition 27 in Annex 1 implements this proposal.
- iv. Requires suppliers' terms and conditions to (i) set out the unit rate (expressed in pence per kWh) of the applicable tariff together with any other applicable charge or payments including any standing charge, and (ii) where the tariff is not a standard evergreen tariff to show the comparison between the unit rate of the applicable tariff and of the standard evergreen tariff. See paragraph 7(g) of Condition 27 in Annex 1.
- v. Requires that where a contract with a domestic customer includes a fixed term period the customer is (a) informed at least 28 days but no longer than 42 days in advance of (i) the expiry date of that fixed term period, and (ii) the details of the standard evergreen tariff to which they will revert following the expiry of the fixed term, and (b) not given another fixed term period unless they can terminate during that period without payment of a termination fee and are clearly informed as such in advance. Paragraph 9 of Condition 27 in Annex 1 refers.

2.10.6 The UR also proposes to modify the electricity supply licence condition which relates to deemed contracts, see Condition 28 in Annex 1, so that it:

- i. Reiterates the requirement for suppliers to make and publish deemed contract schemes.
- ii. Requires suppliers to take reasonable steps to enter into a Contract with the customer as soon as practicable.

Reasons and Effect

- 2.10.7 Given that the present conditions do not meet all of the requirements of paragraph 1(a), the UR considers it appropriate to modify the licences as noted above. The effect of these modifications is that where suppliers have established arrangements or policies for paying compensation in respect of complaints relating to inaccurate or delayed bills, customers are aware that this is the case. Also that suppliers' standard terms and conditions are publicly available for the purpose of enabling customers to know the terms and conditions in advance if they wish to do so.
- 2.10.8 With regard to deemed contracts, it appears that there may be some industry misunderstanding as to what constitutes a deemed contract as provided for in the statutory provisions. It is also the case that no electricity supplier has yet made a deemed contract scheme. The UR will therefore work with electricity suppliers to discuss and understand the basis of any potential misunderstanding.
- 2.10.9 However, given that no supplier has yet made a deemed contract scheme the UR considers it appropriate to re-iterate the statutory obligation in a licence condition and for suppliers to take steps to ensure that customers are supplied under a deemed contract only for a relatively short period of time.

Question 22. Do respondents have any comments on the UR's proposals in relation to transparency requirements for energy supply contracts?

2.11 **ENERGY SUPPLY CONTRACTS: CONTRACT VARIATIONS**

(Annex 1(b), Electricity & Gas)

Policy Background

2.1.1 Annex 1(b) of the Directives requires that, at least, domestic customers are given adequate notice of any proposed variation of a contract, have the right to terminate the contract if they do not wish to accept the revised terms and are informed of their right to terminate the contract following any such notice (which must be transparent and comprehensible).

Current Position

2.11.2 Again both the gas and electricity supply licences include (via Condition 2.18 and Condition 27 respectively) an obligation for the supplier to give domestic customers at least 21 days advance notice of any proposed variation and where a variation which relates to price takes effect to give notice of it having taken effect within 28 days of the effective date. They also require that contracts with domestic customers include a right for the customer to terminate the contract where the supplier proposes a variation and the customer does not wish to accept the variation.

Proposed Modifications

2.11.3 Whilst the licences are already substantially compliant, in order to fully implement the Directive taking into account outcomes from the domestic market review in electricity, the UR proposes to modify the current conditions. The requirements will continue to apply only in relation to contracts with domestic customers but will be amended as follows:

- i. The notification to the customer has to be by way of an individual written notice, which is transparent and comprehensible.
- ii. The supplier has to give advance notice of any variation to the terms of the contract, including for the avoidance of doubt variations to price terms, at least 28 days in advance (extended from the current 21 days).

- iii. A subsequent notice of the date a price variation actually takes effect is no longer required.

2.11.4 These changes are found in paragraph 8 of Condition 27 in Annex 1.

Reasons and Effect

2.11.4 The above modifications implement the requirements of the Directives whilst at the same time reflecting the outcomes of the UR's review of the domestic electricity market. It is for this reason that the requirement to give a subsequent notice of actual variation is being removed.

2.11.5 The effect of the proposed modifications is that all domestic customers will receive at least 28 days advance notice in writing to them of any variation to the terms, including terms as to price, the supplier wishes to make to the contract. On receipt of this notice the customer can decide to terminate the contract but if he/she does not so terminate then the variation can take effect from the date specified in the notice.

2.11.6 The supplier is required to ensure that the notice can be easily understood by the customer, that it sets out the variation in clear and concise terms, sets out the date the variation will take effect (which cannot be less than 28 days from the date it is sent) and clearly informs the customer that if he/she does not wish to accept the variation he/she has the right to terminate the contract and how that right can be exercised.

Question 23. Are respondents in agreement with the UR's proposals in relation to contract variations?
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2.11 **ENERGY SUPPLY CONTRACTS: CHOICE OF PAYMENT METHODS**

(Annex 1(d), Electricity & Gas)

Policy Background

2.11.1 With regard to payment methods, the requirement of the Directives is that customers are offered a wide choice of payment methods which do not unduly discriminate between customers and in respect of which the terms and conditions of contracts, including terms as to price, reflect the costs to the supplier of providing the different payment methods.

2.11.2 This is not a new requirement although certain aspects have been enhanced or clarified.

Current Position

2.11.3 Existing conditions in both gas and electricity licences require suppliers to offer a wide choice of payment methods including, as a minimum, payment by direct debit and by prepayment meter.

2.11.4 It also requires any difference in charges associated with the choice of payment method to be cost reflective.

Proposed Modifications

2.11.5 The existing provisions will be modified to make clear that differences in, or between, any of the supplier's standard terms and conditions relating to choice of payment method(s) reflect the costs to the supplier of providing the different payment method(s). The amendment is found in paragraph 12 of Condition 27 in Annex 1.

Reasons and Effect

2.11.6 The modifications are proposed in order to implement fully the requirements of the Directive. The effect of the modification will be to ensure that any difference in the terms or conditions of contracts which arises because of the payment option chosen by the customer is reflective of the costs to the supplier of providing the relevant payment method.

2.11.7 The UR notes the high level of concern among stakeholders who responded to the Social Action Plan that pre payment customers in particular should not be penalised due to their choice of payment method.

2.11.8 These concerns are addressed through the above provisions.

Question 24. Do respondents have any comments on the UR's proposals in relation to choice of payment methods?

2.12 **DISPUTE SETTLEMENT PROCEDURES**

(Annex 1(f), Electricity & Gas)

Policy Background

2.12.1 Annex 1(f) of the Directives notes that customers should benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Coming out of the new Directives' drafting, there is a new requirement that all consumers shall have a right to good standard of service and complaint handling by their energy service provider.

Current Position

2.12.2 The Consumer Council has a specific statutory role in relation to the investigation of certain types of complaint. Customers are also able to refer other specified types of complaint to the UR under the domestic legislation, including for example disputes relating to the standards of performance which have been set by the UR and which ought to be achieved by electricity suppliers and distributors. Similar provisions will apply equally in the gas sector.

2.12.3 As noted in the section on enhanced consumer protection, gas and electricity suppliers are required to have in place a complaints handling procedure for domestic customers. It should also inform customers on at least an annual basis of the role of the Consumer Council in being able to investigate and assist in the resolution of complaints. In electricity this latter requirement currently applies for all customers whilst in gas it applies for domestic customers only.

Proposed Modifications

2.12.4 The UR proposes to modify suppliers' obligations as follows:

- i. The requirement for establishing and operating a transparent, accessible and inexpensive complaint handling procedure will apply in respect of all customers in both gas and electricity.

- ii. All customers are to receive information on at least an annual basis about the existence of the supplier's complaint handling procedures and of the role of the Consumer Council and of the UR with regard to billing disputes.
- iii. Any promotional materials issued by suppliers are also to include information about the supplier's complaint handling procedures and consumers' rights (as relating to the raising of complaints), of the role of the Consumer Council and contact details for the Consumer Council and the supplier's complaint handling department and the role of the UR with regard to billing disputes.

2.12.5 These obligations are found in Condition 33 and in paragraphs 10 and 11 of Condition 38 in Annex 1.

Reasons and Effect

2.12.6 Although in many respects the NI energy sector is largely compliant with the Directives, some minor changes need to be made to accommodate fully the additional Directive requirements and also to align the gas and electricity sectors.

2.12.7 The effect of the proposed modifications will be that all customers will be fully informed as to their rights in relation to complaints they may have about their energy supplier and to know that there are other organisations that can help in the resolution of complaints where the customer is dissatisfied with the supplier's response.

Question 25. Do respondents agree with the UR's proposal in relation to dispute settlement?
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2.13 UNBUNDLING DISTRIBUTION AND SUPPLY: COMMUNICATIONS & BRANDING

(Article 26(3), Electricity; Article 26(3), Gas)

Policy Background

2.13.1 The Directives include a number of provisions relating to the unbundling of network related activities from production and supply activities. Given the provisions of the second liberalising Directives, the focus of the Third Energy Package is on the separation of transmission system owners/operators from other market participants. However, as with the Second Directives they continue to require the managerial and operational separation of, at least those distribution system operators that have more than 100,000 connected customers, from related production/supply undertakings.

2.13.2 The UR will consult separately on its proposals to implement the technical aspects of the unbundling provisions. However, there is a particular aspect of the unbundling requirements which has a greater direct focus and emphasis on consumers and the competitive market.

2.13.3 This is found in Article 26(3) in each of the Directives which require the activities of distribution system operators who are part of a vertically integrated undertaking to be monitored so that they cannot take advantage of that vertically integrated position to distort competition. It also provides that such operators should not, in their communications and branding, create confusion as to the separate identity of the related supply business.

Current Position

2.13.4 There is currently one licensed distributor in the electricity sector (NIE plc) and two in the gas sector (PNG and firmus Energy).

2.13.5 NIE is within the ESB group of companies and therefore part of a vertically integrated undertaking which also undertakes and/or is authorised by licence to undertake electricity production and supply activities. NIE is required under Condition 12 of its licence¹⁵ to ensure the full managerial and

¹⁵ NIE plc has a licence to participate in transmission which also regulates its distribution activities.

operation separation of its transmission and distribution business from any other energy business and to have a compliance plan for doing so.

2.13.6 Each of PNG and firmus Distribution form, on a separate basis, part of vertically integrated undertaking which also undertakes gas supply activities. Their respective licences also contain conditions requiring the separation of the network business from the supply business and compliance plans setting out how they are to meet the requirements.

2.13.7 At present only NIE's separation condition makes any specific reference to branding. In brief, paragraphs 3E and 3F of Condition 12 of its licence provide that where the UR has, following consultation, issued a direction NIE is required to ensure that in carrying on the network business it does not in any of the names, brands, trade names or advertising of that business use a name, brand or trade name that is used by or associated with its related supply business.

Proposed Modifications

2.13.8 The UR is of the view that in order to implement Article 26(3) of the Directives it is appropriate to modify the existing separation condition in PNG's and firmus' respective network licences.

2.13.9 The proposed modifications, which can be seen in Condition 1.7 of Annex 3 in relation to PNG's licence) and Condition 1.16 of Annex 3 (in relation to firmus' licence). will:

- i. Place an obligation on the company to ensure that any brand used by it or any communications which refers to its brand and is issued to customers does not create confusion with regard to the separate identities of the network and related supply businesses.
- ii. Provide for the business separation compliance plan to set out how the licensee will meet the obligation.

2.13.10 However, the obligation will, in the first instance, apply automatically only where the network business has more than 100,000 connected customers. This means that it will apply to PNG with immediate effect (i.e. once the modification is in effect) but as firmus has fewer than 100,000 customers it will not apply to firmus until such time as its customer base exceeds that number or the UR has directed that the relevant obligation shall apply even though the customer base is less than 100,000. This latter scenario is compliant with the Directives as they confirm that member states have the discretion to decide when the provision of Article 26(3) should apply.

2.13.11 The UR does not propose any modifications to the existing condition in NIE's licence - which incidentally will be included in the new separate electricity distribution to be granted to NIE in accordance with the implementing regulations.

2.13.12 However, it is minded to 'switch on' the provisions in (existing) paragraph 3E of Condition 12 of NIE's licence by way of issuing a direction to NIE under paragraph 3F.

2.13.13 In addition, the UR considers that it would be prudent to ensure that the respective related supply businesses of NIE, PNG and firmus, ensure that they act in a manner that is consistent with the branding separation obligation of their respective network business. All supply licences will therefore include a licence condition to this effect. However, it will only apply to a supply licensee that has an associated network business and the licence of that associated network business contains conditions relating to the independence of the network business and requirement to produce a compliance plan for such independence.

2.13.14 The proposed new condition is Condition 45 in Annex 1.

Reasons and Effect

2.13.15 The proposed modifications are required to meet the requirements of the Directives and to ensure that there is no confusion caused by the branding

and communications of distribution companies and their associated supply companies.

2.13.16 The effect of the proposed modifications will be to require distribution companies to ensure that their branding and communication do not cause such confusion and for their associated supply companies to act in a manner that is consistent with the network businesses obligations.

Question 26. Do respondents agree with the UR's proposals for 'branding separation' in the gas sector in the manner proposed?

Question 27. Do respondents agree that the UR should issue a direction to NIE to 'switch' on the provisions in paragraph 3E of its current network licence?

Question 28. Do respondents agree that associated supply businesses (i.e. those within the same vertically integrated undertaking as a distribution businesses) should also be subject to licence provisions as proposed?

2.14 **FUEL MIX INFORMATION**

(Article 3 (9), Electricity)

Policy Background

2.14.1 The Directive aims to improve the quality of environmental information given to customers. It requires Member States to ensure that electricity suppliers indicate on or with bills, and in promotional materials the contribution of each energy source to their overall fuel mix over the previous year. Electricity suppliers must also include at least a reference to existing sources of information regarding the environmental impact resulting from the suppliers fuel mix over the same period.

2.14.2 The requirement to provide environmental information on or with bills and in promotional material is not new. The second Electricity Directive¹⁶ (Article 3(6)) contained similar provisions. What is new is that the UR is required to ensure that the information provided by suppliers in relation to their fuel mix is not only reliable, but is also provided at a national level and in a clearly comparable manner.

Current Position

2.14.3 Northern Ireland and the Republic of Ireland operate a single wholesale market for electricity known as the Single Electricity Market (SEM). The SEM Committee¹⁷ has determined that the methodology for calculating fuel mix disclosure information should be the same for all electricity suppliers operating in the SEM. This is the most appropriate way to ensure that the information is both reliable and comparable , as required by the Directive.

2.14.4 In line with the decision of the SEM Committee, electricity suppliers in Northern Ireland and Ireland already use the same methodology for calculating fuel mix and already include fuel mix information on their bills and

¹⁶ Directive 2003/54/EC

¹⁷ The SEM Committee was established in Ireland and Northern Ireland by virtue of section 8A of the Electricity Regulation Act 1999 (in Ireland) and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 respectively. The SEM Committee is a Committee of both CER and NIAUR (the Regulatory Authorities) which takes decisions to exercise relevant functions in relation to SEM matters.

promotional materials. However, at present in Northern Ireland this is done on a voluntary basis.

Proposed Modification

2.14.5 The UR considers that in order to achieve full transposition of the Directive it is appropriate and necessary to formalise the voluntary arrangements and to make it a licence requirement for suppliers to provide the appropriate fuel mix information on all bills/statements and promotional materials.

2.14.6 A new condition, see Condition 41 in Annex1, is therefore proposed to this effect for inclusion in all electricity supply licences.

Reasons and Effect

2.14.7 As noted above it is appropriate to formalise the current voluntary arrangements.

2.14.8 In brief the new condition will:

- i. Ensure that all electricity suppliers in Northern Ireland provide reliable and comparable information on bills and with promotional materials.
- ii. Require suppliers to provide within specified timescales the fuel mix information that is applicable for each relevant period on each bill and on materials which are issued or sent to customers on behalf of the supplier.
- iii. Provide that the information in relation to fuel mix will be calculated, verified and given to the licensee by the UR or a body appointed by the UR in accordance with the Fuel Mix Methodology notified to the licensee.

2.14.9 A high level decision paper on the calculation of Fuel Mix Disclosure in the SEM was published on 2nd April 2009 (SEM-09-33). The Regulatory Authorities in Northern Ireland and Ireland intend to produce a further paper within the three months.

Question 29. Do respondents have any comments on the UR's proposals in relation to fuel mix information?

2.15 **RECORD KEEPING – WHOLESALE CONTRACTS**

(Article 40, Electricity; Article 44, Gas)

Policy Background

2.15.1 The Directives provide that supply businesses should keep supporting documents and information with regard to transactions relating to wholesale supply contracts and derivatives and to provide them to the UR as/when requested.

2.15.2 This requirement has been transposed into domestic law by way of requiring a supply licence condition on gas and electricity suppliers to maintain such records in accordance with the Directives.

Current Position

2.15.3 As this is a new requirement, there are no current provisions which deal with the matter.

Proposed Modifications

2.15.4 The UR is proposing a new licence condition (see Condition 42 in Annex 1) to be included in all supply licences. The proposed condition recognises that there is no need to retain information about electricity/gas derivatives which are entered into before the guidelines referred to in the Directives are adopted by the Commission.

Reasons and Effect

2.15.5 The proposed condition implements the requirements of the Directive and its effect will be to require the supplier to:

- i. Retain for a period of at least 5 years the relevant details (as listed in the licence condition) of all wholesale supply contracts and derivatives entered into by the supplier.
- ii. Provide the information to the UR on request.

Question 30. Do respondents have any comments on the UR's proposals in relation to wholesale contracts?

CHAPTER 3 GAS TRANSMISSION SYSTEMS

3.1 This section of the consultation paper outlines modifications required to gas transmission licences, namely Premier Transmission Ltd (“PTL”), BGE (UK) Ltd (“BGE”) and Belfast Gas Transmission Ltd (“BGTL”), in order to implement the provisions of the Gas Directive (2009/73/EC) and to give effect to the implementing Regulations.

3.1.1 The proposed licence modifications can be found at Annex 2 to this paper. They relate to (i) cross border capacity and; (ii) the duty to promote effective competition.

3.1.2 As previously outlined, this consultation does not explore the licence modifications necessary to give effect to the unbundling provisions within the Directives. Some further amendments will be required once licensees have applied to be certified under a particular unbundling model. The UR intends to consult on these additional modifications in a further consultation at a later date.

3.2 **CROSS-BORDER CAPACITY**

(Article 13(2) of the Gas Directive)

Policy Background

3.2.1 Article 13(2) of the Directive requires that:

“Each transmission system operator shall build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply”.

3.2.2 One of the primary objectives of the Gas Directive, however, is the adequate provision of such capacity. In the case of Northern Ireland, this refers to:

- i. capacity between BGE’s network in Northern Ireland and its network in the Republic of Ireland; and

- ii. capacity in the Scotland-Northern Ireland Pipeline (SNIP.)

Current Position

- 3.2.3 Currently, there are no specific provisions in the transmission companies' licences for to provide for the provision of adequate cross-border capacity.

Proposed Modifications

- 3.2.4 The UR proposes to insert a new condition 2.8 (condition 2.21 in BGE's licence), "Cross Border Capacity", to reflect the provisions in the Directive related to cross border capacity. It requires the licence holder to provide sufficient cross-border capacity to optimise integration with network in other jurisdictions.

- 3.2.5 This licence amendment could promote the provision of cross-border capacity, if required.

Reasons and Effect

- 3.2.6 As there are no plans to increase cross-border capacity in the near future, these amendments will have little effect in practical terms, but are required to comply with the Gas Directive.

Question 31. The UR welcome views on whether or not the proposed new licence condition is appropriate to promote the provision of cross-border gas transmission capacity.

3.3 **DUTY TO PROMOTE EFFECTIVE COMPETITION**

(Article 3(1) of the Gas Directive)

Policy Background

- 3.3.1 The Directive is concerned with ensuring that transmission companies do not discriminate in favour of related undertakings (i.e. subsidiaries, parent companies or other members of the same conglomerate) in the provision of transmission services.
- 3.3.2 Paragraph 33 of the preamble envisages that regulators will be required to promote effective competition, and Article 40(g) of the Directive makes this obligation explicit. Article 3(1) places an obligation on Member States to *“ensure ... natural gas undertakings are operated ... with a view to achieving a competitive ... market in natural gas”*.

Current Position

- 3.3.3 There are various provisions in the transmission licences which require the companies not to act anti-competitively. In addition, UK and EU competition law require the companies not to act in this way. It appears that competition law is considered inadequate to address these concerns in the energy sector.

Proposed Modifications Licence modification required

- 3.3.4 Accordingly, the UR proposes inserting a new licence condition, 2.11, (condition 2.18 in BGE’s licence). This condition will ensure the transmission system operator does not prevent, restrict or distort competition. It also requires the licensee to:
- i. promote effective competition in undertaking its licensed activities; and
 - ii. to publish information to facilitate effective competition in the industry and the effective functioning of the industry.

Reasons and Effect

- 3.3.5 These amendments will have little effect in practical terms, but are required to comply with the Gas Directive. They duplicate provisions in the current licence. Anti-competitive behaviour is, in any case, prevented under various UK and EU laws, such as the Competition Act, 1998. Accordingly, the UR does not consider that this new licence condition will have a significant practical effect.

Question 32: The UR welcome views on whether or not the proposed new licence condition 2.11/2.18 is sufficient to require the TSOs to promote competition in the gas industry.

CHAPTER 4 ELECTRICITY SYSTEMS

4.1 ***Electricity Distribution Systems: Chapter VI of the Electricity Directive***

Policy Background

- 4.1.1 The Directive sets out the required duties and functions of Distribution system operators. Currently in Northern Ireland the function of distribution system operation lies solely with NIE Plc as part of their licence to participate in transmission.

Current Position

- 4.1.2 The Department recently published their “Decision Paper on the Implementation of the EU Third Internal Energy Package”. In this paper they set out that the Electricity Order will be amended to make it a “*criminal offence for a person to distribute electricity for the purposes of giving a supply unless that person is authorised by a licence or an exemption.*”
- 4.1.3 Article 31 of The Electricity (Northern Ireland) Order 1992 (as amended by the implementing Regulations) allows for an exemption until 30 September 2012 for an existing Distribution System Operator to be granted a distribution system operation licence.
- 4.1.4 The Department intends to consult further on exemptions for the purposes of distribution system operation in the near future. The UR has already begun drafting a new licence for this purpose, and it is the intention of the UR to consult separately on a new distribution system operator licence. The intention is to have the new distribution licence in place on or before 30 September 2012. Further details will be made available.

4.2 ***Electricity Transmission Systems: Designation and Certification of Transmission System Operators***

Policy Background

- 4.2.1 Modifications will be required to electricity transmission licences to make them consistent with the Electricity Directive (2009/EC/72) and to give effect to the implementing Regulations. The majority of these modifications cannot be completed until licensees have applied to be certified under a particular unbundling model.
- 4.2.2 Therefore, as previously outlined, the UR intends to consult on these further potential modifications in order to take account of the certification process, at a later date.

CHAPTER 5 GAS DISTRIBUTION SYSTEMS

- 5.1.1 The Gas Order does not distinguish the specific activity of gas distribution for the purposes of licences and exemptions. The activity of participating in the conveyance of gas covers both gas transmission and gas distribution activities. However, the licence distinguishes between conveyance of gas through transmission/distribution systems.
- 5.1.2 There are two licensees holding licences that authorise participation in the conveyance of gas through a gas distribution system. These are (i) Phoenix Natural Gas Limited (**PNG**), and (ii) firmus energy (Distribution) Limited (**firmus energy**).
- 5.1.3 Both licensees own and operate their respective gas distribution systems and are therefore distribution system operators. In this respect each is a designated distribution system operator under the Second Directive and will continue to be a designated as a distribution system operator under Article 24 of the Gas Directive.
- 5.1.4 PNG and firmus energy are respectively part of a vertically integrated undertaking which carries out, through its subsidiaries, both gas network and supply activities in Northern Ireland.
- 5.1.5 The Gas Directive contains a number of provisions which are applicable to the roles and responsibilities being undertaken by gas distribution licensees in Northern Ireland. These include provisions relating to consumer protection issues as well as those which place certain specific requirements on distribution system operators.
- 5.1.6 Given the relative infancy of competition in the gas supply sector, the vertically integrated undertaking structures within which PNG and firmus energy operate, the role of each of PNG and firmus energy in the development of the gas market and the incumbent position of their respective affiliated gas supply businesses, the UR considers that some of the measures required to ensure high levels of consumer protection (as

required by the Gas Directive) can be implemented or facilitated through licence obligations on each of PNG and firmus energy.

- 5.1.7 We set out below each of the particular areas in respect of which modifications to gas distribution licences are proposed. The proposed licence modifications may be found at Annex 3 of this paper.

NON-DISCRIMINATORY CONDUCT AND EFFECTIVE COMPETITION

(Article 3)

Policy Background

- 5.2.1 The Gas Directive contains a number of provisions relating to consumer protection, the experience of customers wishing to switch supplier and/or otherwise play a part in the competitive supply market and the promotion of effective competition in gas supply.
- 5.2.2 Although many of these provisions are applicable in the context of activities undertaken by gas suppliers, the UR is of the view that all market participants have a role to play in these areas.
- 5.2.3 The UR is therefore of the view that the conduct of distribution system operators can influence the level and extent of competition in the gas supply market and consumers' experience of a competitive market.

Current Position

- 5.2.4 At present both PNG and firmus energy have licence conditions (Condition 2.7/2.6 respectively) relating to the conduct of their respective gas distribution businesses.
- 5.2.5 These provide for the licensee to conduct their businesses in a manner best calculated to secure that neither they nor other companies in their group obtain an unfair commercial advantage.
- 5.2.6 In addition each licensee is obliged to provide regulated services, including for example use of system and connections, on a non-discriminatory basis.

Proposed Modifications

5.2.7 The UR is proposing to strengthen the obligations relating to the manner in which PNG and firmus energy conduct their businesses and to enhance the non-discrimination provisions.

5.2.8 The proposed modifications include:

- i. Including a requirement for the licensee to conduct its business in a manner that is best calculated to facilitate effective competition in the gas supply market.
- ii. Prohibiting the licensee from giving statements about the state of play in the competitive gas supply market or about the activities of competing suppliers, without such a statement having been approved by the UR.
- iii. the introduction of a new condition requiring the licensee to provide services on a non-discriminatory basis with particular emphasis on ensuring that in providing its services the licensee does not treat its related supply business in a more favourable manner.
- iv. Some consequential amendments to the existing provisions relating to the conduct of distribution businesses and to the existing disclosure of information condition in PNG's licence for the purposes of alignment and uniformity between PNG and firmus energy.

5.2.9 The above provisions are set out in Annex 3 – see New Condition E; PNG Amended Condition 1.6; PNG Amended Condition 2.7; and Amended firmus Condition 2.6.

Reasons and Effect

5.2.10 The gas distribution network in Northern Ireland has been developed relatively recently. As a consequence of this the companies are permitted a period of supply exclusivity to facilitate the gaining of connections at the important early stage of network development.

5.2.11 On relinquishing supply exclusivity it is important that new entrant suppliers are not disadvantaged with respect to the incumbent supplier.

5.2.12 The proposed changes to the licences will ensure that the activities of the distribution companies do not interfere with the competitive supply dynamic associated with effective competition. It will also give customers additional necessary protection afforded under the Directive.

Question 33. Do respondents agree that the existing obligations on gas distribution licensees should be strengthened in the manner proposed?

5.3 DESIGNATION OF DISTRIBUTION SYSTEM OPERATORS **(Article 24)**

Policy Background

5.3.1 Article 24 of the Gas Directive requires Member States to designate or required distribution system owners to designate one or more distribution system operators.

Current Position

5.3.2 Both PNG and firmus energy own and operate their respective gas distribution systems. They are therefore the system operator for their respective systems. In accordance with the requirements of the Second Directive, PNG is designated under Condition 2.14 of its licence and firmus energy is designated under Condition 2.15 of its licence, as a distribution system operator.

Proposed Modifications

5.3.3 The current position will continue and each of PNG and firmus energy will be designated as a distribution system operator in accordance with Article 24 of the Gas Directive.

- 5.3.4 However, minor changes will be made to the relevant licence condition so as to refer to the current (Third) Gas Directive.

Reasons and Effect

- 5.3.4 The proposed changes are for cross-referencing purposes and will ensure that each of the licensees are designated as distribution system operators in accordance with the current Gas Directive.

5.4 UNBUNDLING OF DISTRIBUTION SYSTEM OPERATORS ***(Article 26)***

Policy Background

- 5.4.1 In brief, Article 26 of the Gas Directive provides that where the distribution system operator is part of a vertically integrated undertaking it shall be independent from other activities not relating to distribution. The unbundling provisions are not new as they also formed part of the Second Gas Directive.
- 5.4.2 Similarly, both the second and third Gas Directives provide for member states not to apply the unbundling provisions to gas distribution system operators within a vertically integrated group where it has fewer than 100,000 connected customers.
- 5.4.3 There is however one new requirement, as mentioned at paragraph 2.13.3 of the Retail and Consumer Issues chapter of this paper. This is found in Article 26(3) of the Directive which requires that distribution system operators who are part of a vertically integrated undertaking should not, in their communications and branding, create confusion as to the separate identity of the related supply business.
- 5.4.4 As noted above both PNG and firmus energy are distribution system operators that are part of a vertically integrated undertaking.
- 5.4.5 The vertically integrated undertaking of which firmus energy is a part undertakes both gas transmission and gas supply activities through BGE (UK) and firmus Energy (Supply) Limited respectively. And the vertically

integrated undertaking of which PNG is a part undertakes gas supply activities through Phoenix Supply Limited.

Current Position

- 5.4.6 At present the PNG licence includes provisions (see Conditions 1.16 and 1.17) requiring the separation of the distribution business from any other gas business within the vertically integrated group and for PNG to prepare and comply with a business separation compliance plan and to appoint a compliance manager for the purposes of facilitating compliance with the business separation requirements.
- 5.4.7 However, the business separation obligations apply only if there is also a gas supply business being undertaken within the group.
- 5.4.8 The licence of firmus energy does not at present contain any such provisions. This is because Northern Ireland has taken advantage of the provision enabling it not to apply the unbundling provisions where there are fewer than 100,000 customers connected to the system. Therefore at the time the gas conveyance licence was granted to firmus energy it was considered unnecessary to include such provisions.

Proposed Modifications

- 5.4.9 The UR is proposing licence modifications arising from the updated unbundling provisions in the Gas Directive.
- 5.4.10 Firstly, the following modifications are proposed to the existing conditions in PNG's licence:
- i. Providing for the unbundling provisions to apply in circumstances where any other gas business is being undertaken within the group. However, there continues to be a carve out to allow for combined transmission and distribution system operation in relevant cases.
 - ii. Introducing the requirement for confusion not to be caused between the separate identities of the supply and distribution businesses in

terms of communications and branding – as further explained in paragraph 2.13 of Chapter 2 of this paper.

- iii. Extending the circumstances in which the UR can require the licensee to amend its compliance plan.
- iv. Requiring the appointed compliance officer to be an independent person.

5.4.11 Secondly, the UR proposes to include the conditions, modified as above, also in firmus energy's licence.

5.4.12 However, it is clear from an additional provision in the business separation condition in firmus energy's licence that the condition does not apply until either there are at least 100,000 customers connected to the distribution system or the Authority gives a direction that the condition applies. This direction can be given where the number of connected customers is fewer than 100,000.

5.4.13 Annex 3 includes (i) PNG Amended Conditions 1.16 and 1.17, and (ii) firmus New Condition 1.16 and 1.17, which reflect the above modifications.

Reasons and Effect

5.4.14 The conditions have been modified to reflect and ensure compliance with the requirements of the Gas Directive.

5.4.15 With regard to PNG's licence the proposed modifications, apart from those already discussed at paragraph 2.13 of Chapter 2 of this paper, are relatively minor. In essence they are modifications which clarify the position and/or the requirements rather than impose any additional requirements.

5.4.16 The key amendments relate to the communications being issued to consumers and the branding of the related distribution and supply businesses. The reasons and effect for these amendments have been explained in Chapter 2.

- 5.4.17 The other main amendment relates to the status of the compliance officer – which is required by the Gas Directive. The effect of this amendment is that PNG will need to appoint a compliance officer who is independent from its business whereas at present it can appoint a senior officer to this role.
- 5.4.18 In terms of firmus energy's licence, although the conditions are to be included as new conditions they will not apply immediately.
- 5.4.19 Their effect will therefore, at least initially, be negligible.
- 5.4.20 However, the UR considers it is wholly appropriate to include the conditions at this stage for the purposes of (i) ensuring, where helpful and appropriate to do so, uniformity between the PNG and firmus energy licences, and (ii) future proofing the firmus energy licence such that the business separation obligations apply once the number of connected customers go above 100,000 without the need for further licence modification.

Question 34. Do respondents agree that the proposed modifications are in line with the requirements of the Directive?

5.5 CONSUMER PROTECTION: MARKETING ACTIVITIES OF GAS DISTRIBUTORS ***(Article 3)***

Policy Background

- 5.5.1 As noted in Chapter 2, consumer protection is one of the key driving principles of the Gas Directive. Article 3(3) in particular refers to member states ensuring high levels of consumer protection whilst paragraph 1(d) of Annex 1 to the Directive provides that customers shall be protected against unfair or misleading selling methods.
- 5.5.2 The UR acknowledges that because gas suppliers are at the forefront of the consumer contact, in the main measures to achieve high levels of consumer protection will need to apply to gas suppliers.
- 5.5.3 However, given the recent rollout of the distribution network in Northern Ireland, gas distributors also have a significant role in terms of promoting and selling gas services to consumers. Indeed for those consumers who are not yet connected to the distribution system all of their initial contacts will be with the gas distributor.
- 5.5.4 The UR therefore considers it appropriate and necessary to regulate distributors' marketing activities.

Current Position

- 5.5.5 At present, there are no licence conditions or other provisions within the regulatory framework which deal with a distributor's marketing activities.

Proposed Modifications

- 5.5.6 The UR is therefore introducing a new licence condition which places certain obligations on distributors with regard to marketing activities.
- 5.5.7 The new licence condition:
- i. Requires gas distributors to jointly prepare a code of practice (Distribution Marketing Code) for approval by UR.

- ii. Requires gas distributors to comply with the DMC.
- iii. Sets out the objectives which the DMC is to achieve, including for example that in undertaking their marketing activities distributors do not restrict, prevent or distort competition in the supply of gas.
- iv. Specifies certain matters for which provision needs to be made in the DMC, including for example matters relating to training of personnel that are likely to be involved in consumer contact and communications.
- v. Provides for the DMC to be reviewed and revised upon the request of the UR.

5.5.8 The proposed condition is shown as new Condition B in Annex 3.

Reasons and Effect

5.5.9 The new condition is proposed to facilitate, improve and enhance customers' experience of their contact with gas distributors. As noted above gas distributors play a significant role in developing, promoting and publicising the gas market and in liaising with existing and potential customers.

5.5.10 They are also generally responsible for the initial contact with customers and providing clear, concise, and up to date information to customers, including for example about the advantages of gas supply, the process for getting a gas connection and thereby a gas supply and the way in which the market operates.

5.5.11 A key reason for the DMC is to ensure that distributors marketing activities are conducted in a fair, transparent, professional and non-discriminatory manner.

5.5.12 The effect of the new condition is that consumers can expect to receive clear, accurate, unbiased and timely information about the gas market and be confident in knowing that they are not being misled (deliberately or inadvertently) about the roles and responsibilities of the distributor and of competing suppliers.

Question 35. Do respondents agree with the UR's proposals to regulate the marketing activities of gas distributors?

Question 36. Are there any other matters which ought to be covered by the Distribution Marketing Code?

5.6 COMPLAINT HANDLING PROCEDURES

(Article 3(3), Annex 1)

Policy Background

- 5.6.1 The Gas Directive provides, at paragraph 1(f) of Annex 1, that consumers should benefit from transparent, simple and inexpensive procedures for dealing with their complaints. And Article 3(3) refers to high levels of consumer protection particularly with respect of dispute settlement mechanisms.
- 5.6.2 Formal dispute settlement mechanisms for consumers are provided for within the statutory and regulatory framework and gas suppliers are also required under licence condition to establish and operate effective complaints handling procedures.
- 5.6.3 However, as noted in above, distributors also have a key role to play in customer relationships and therefore customers may well have grievances about the manner in which that relationship has been conducted or handled.

Current Position

- 5.6.4 At present there are no licence obligations on distributors in relation to the handling of complaints.

Proposed Modifications

- 5.6.5 The UR is therefore proposing a new condition for the gas distribution licence which requires the distributor to prepare a code of practice which sets out its arrangements for establishing and operating a complaints handling procedure.

5.6.6 The proposed condition is new Condition C in Annex 3.

Reasons and Effect

5.6.7 The new condition is included to implement the requirements of the Directive with regard to the ability of consumers being able to utilise and benefit from clear and fair complaints handling procedures.

5.6.8 The effect of the proposed modification is as follows –

- i. Distributors will need to establish and operate a procedure for dealing with and handling customer complaints.
- ii. Customers can expect to have their complaints processed and resolved within a 3 month timescale and free of charge.

Question 37. Do respondents agree that gas distributors should have a licence obligation to establish and operate a complaints handling procedure?

5.7 CUSTOMER INFORMATION: TRANSPARENCY OF INFORMATION ***(Article 3(3), Annex 1)***

Policy Background

5.7.1 As discussed in Chapter 2 one of the key aims of the Third Energy Package is to provide greater transparency relating to information that is given to consumers. In this context, Article 3(3) refers in particular to transparency regarding general information and paragraph 1(c) of Annex 1 refer to customers rights to receive transparent information in respect of access to and use of gas services.

5.7.2 As noted earlier, gas distributors have a particular role to play in terms of the development and promotion of the gas market, including in particular in providing information to consumers about the operation of the market.

Current Position

5.7.3 At present gas distribution licensees do not have any particular licence requirements relating to the provision of information to customers.

Proposed Modifications

5.7.4 The UR is therefore proposing a new licence condition for gas distribution licensees which require them to jointly prepare a Customer Information Code (**CIC**), for the CIC to be approved by the UR and for licensees to comply with the CIC.

5.7.5 The proposed condition (see new Condition D in Annex 3) also:

- i. sets out the relevant objectives of the CIC,
- ii. specifies certain matters which need to be catered for by the CIC and
- iii. provides for the review and revision of the CIC in specified circumstances.

Reasons and Effect

5.7.6 The new licence condition implements, in the context of distributors' roles and activities, the requirements relating to consumer information in the Gas Directive.

5.7.7 The effect of the modification is that customers will be entitled to:

- i. receive and have regular access to information on the gas distributor's activities and the services that it provides to them,
- ii. receive information that is clear, complete and accurate and which is set out in a style and language that can be easily understood.

5.7.8 This will include, for example, information about:

- i. the processes that customers may need to follow for their premises to get connected to the distributor's system,

- ii. the contractual terms and conditions that may govern the connection, and
- iii. the licensee's complaints handling procedure.

Question 38. Do respondents agree that gas distribution licensees should have a licence obligation to prepare and comply with a Customer Information Code which has the objective of ensuring customers receive clear, accurate and up to date information from gas distributors?