

**IMPLEMENTATION OF THE EU THIRD INTERNAL  
ENERGY PACKAGE**

**FINAL DECISIONS AND ACCOMPANYING LICENCE  
MODIFICATIONS**

**September 2012**

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## ACRONYMS and GLOSSARY

AQ	Annual Quantity
Authority	Utility Regulator
CCNI	Consumer Council for Northern Ireland
CER	Commission for Energy Regulation
CIC	Customer Information Code
CIR	Customer Information Request
Department	Department of Enterprise, Trade and Investment
DETI	Department of Enterprise, Trade and Investment
Directive	Directive 2009/72/EC concerning common rules for the internal market in electricity. Directive 2009/73/EC concerning common rules for the internal market in natural gas.
DMC	Distribution Marketing Code
DSO	Distribution System Operator
ERA	Energy Retail Association
EU	European Union
FoIA	Freedom of Information Act 2000
GSS	Guaranteed Service Standards
Member State	UK government (undertaken by DETI in Northern Ireland)
MPRN	Meter Point Registration Number
MRC	Market Registration Code
NEA	National Energy Action (Northern Ireland)
NIE	Northern Ireland Electricity
Ofgem	Office of Gas and Electricity Markets
PAYG	Pay as You Go
PNGL	Phoenix Natural Gas Limited
PPM	Pre payment meter
PSL	Phoenix Supply Limited
Regulations	The Gas and Electricity (Internal Markets) Regulations 2011 which implement the majority of the requirements of the Third European Package of Directives on market liberalisation in the energy sector.
SEM	Single Electricity Market
SMP	Supply Meter Point
SMPN	Supply Meter Point Number
SoLR	Supplier of Last Resort
Third Energy Package (IME3)	The Third European Package of Directives on market liberalisation in the energy sector.
UR	Utility Regulator

## CHAPTER 1 INTRODUCTION

### *Background*

- 1.1 On 23 March 2011, the Department of Enterprise Trade and Investment (the “Department”) 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 two European Directives on market liberalisation in the energy sector. They form part of the Third Energy Package, namely Directive 2009/72/EC concerning common rules for the internal market in electricity (the **Electricity Directive**) and Directive 2009/73/EC concerning common rules for the internal market in natural gas (the **Gas Directive**) ( together the **Directives**).
- 1.3 Among other things, the Regulations give the Utility Regulator (the “UR”) the *vires* to give effect to certain requirements of the Directives. The UR is therefore realising the Regulations through licence modifications and new licence conditions, as necessary.
- 1.4 In July 2011, the UR published a consultation paper which set out the rationale and interpretation which was brought to bear when drafting these licence modifications and conditions.
- 1.5 The UR sought views and comments as to its implementation of the Regulations which are reflected through new draft licence conditions and modifications to existing licence conditions.
- 1.6 Following the publication of the consultation document, the UR held a workshop in September 2011 on the proposals to fulfil the requirements of the Directives as outlined in the consultation paper. A wide cross section of industry, third sector and consumer groups were in attendance.
- 1.7 Following the closure of the consultation window in October, the UR received 13 responses.

- 1.8 In January 2012, the UR held a further meeting with industry, third sector and consumer groups to provide further clarification on some of the issues raised via the consultation responses and to provide an update on the next steps. The Gas Branch also held individual meetings with the distribution licence holders to go through the distribution licence conditions.
- 1.9 Having considered all the representations made during the consultation window, in March 2012, the UR published notification of its proposed final decisions and accompanying licence modifications. Although not a statutory requirement, this additional five week consultation was in keeping with the UR's policy on transparency. The UR received 8 responses.
- 1.10 Having taken on board representations made during this time, the UR finalised its decisions and sought the consent of the Department of Enterprise, Trade and Investment for the licence modifications. This consent was received on 2 August 2012.
- 1.11 The Directives set out certain high level provisions together with more specific requirements. Each Member State, including the relevant Regulatory Authority, is therefore responsible for interpreting the requirements of the relevant Directive, and implementing them according to the unique circumstances of their markets and taking into account any specific problems that are currently evident.
- 1.12 In light of the significant body of research considered, and the information received during the extensive consultation process, the UR is now setting out the final licence modifications necessary to deliver the requirements of the Directives for ensuring high levels of consumer protection for Northern Ireland consumers.
- 1.13 In preparing this final set of licence modifications to implement the Regulations, we have given due consideration to the responses received to

the July 2011<sup>1</sup> and March 2012<sup>2</sup> consultations, as well as representations made at the workshops, individual meetings and other correspondence, including matters relating to the potential for undue burden or cost on market participants. Where appropriate, we have made changes to our original proposals to ensure appropriate implementation at best value for customers.

- 1.14 This paper specifically addresses the representations made to the March 2012 consultation paper and outlines our final decisions. Further reasoning for the modifications are included in the earlier consultation papers published in July 2011 and March 2012. Interested parties should refer to these papers also, if further clarification on the decisions reached is required.

***Directive issue coverage in this Decision Paper***

- 1.15 This paper is divided into sections to reflect the various areas of decisions – Retail and Consumer Issues; and Gas Distribution. Drafts of the new licence conditions and modifications for each category of licence (i) electricity supply, (ii) gas supply, (iii) electricity distribution and (iv) gas distribution are set out in Annex 1-4.
- 1.16 As noted in the two previous consultation papers, these modifications do not deal with the requirements for unbundling of the ownership of electricity and gas transmission networks. The UR will consult on this issue in a separate consultation exercise at a later date.
- 1.17 Additionally, the two licence modifications in relation to cross border capacity and duty to promote effective competition consulted on for gas transmission in the July 2011 consultation, together with the transmission unbundling modifications, will be dealt with later in the year.

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<sup>1</sup>

[http://www.uregni.gov.uk/uploads/publications/Implementation\\_of\\_EU\\_Third\\_Energy\\_Package\\_Notification\\_of\\_proposed\\_final\\_decisions.pdf](http://www.uregni.gov.uk/uploads/publications/Implementation_of_EU_Third_Energy_Package_Notification_of_proposed_final_decisions.pdf)

<sup>2</sup> [http://www.uregni.gov.uk/uploads/publications/UR\\_Implementation\\_of\\_IME3\\_July\\_11.pdf](http://www.uregni.gov.uk/uploads/publications/UR_Implementation_of_IME3_July_11.pdf)

### ***Equality considerations***

- 1.18 Section 75 of the Northern Ireland Act places a duty on public authorities to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations between different categories.
- 1.19 We aim to promote equality of opportunity between nine categories of persons, namely between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependents and persons without.
- 1.20 As part of the consultation exercise we asked whether any of the nine groups defined above are significantly affected, either positively or negatively, or did the policy under consideration create differential impacts between groups within each Section 75 category and was this impact adverse or beneficial.
- 1.21 Having considered the responses and completed an Equality screening process, the UR considers that these proposals, which are intended to have a positive impact on those groups affected, do not need to be subject to an Equality Impact Assessment and the policy revisions can proceed.
- 1.22 This document is available in accessible formats. Please contact Laura Boyd on 02890311575 or [laura.boyd@uregni.gov.uk] to request this.

### ***Next steps***

- 1.23 Following the consent of the Department of Enterprise, Trade and Investment, the new licence conditions detailed in this paper came into effect on 13 September 2012. Individual licence holders affected will be provided with individual written notice of the changes.

1.24 The UR understands that suppliers and distributors may require some time following the implementation of the licence modifications to update their policies, procedures and practices to ensure compliance with the new licence conditions. The UR will work with industry to ensure the smooth implementation of the new licence conditions and where deemed necessary will be proportionate and practical in our approach to compliance and enforcement action. However in all cases we will wish to see clear and timely implementation plans to comply with the new licence conditions put in place by all industry participants.



## CHAPTER 2      RETAIL AND CONSUMER PROTECTION ISSUES

### 2.1 Introduction

2.1 This chapter of the UR's final decisions paper deals primarily with the range of customer focused Retail and Customer Protection measures that we deem necessary to deliver full implementation of the Directives in the Northern Ireland regulated energy markets. While the majority of licence modifications in this chapter relate to supply licences, there are a number (including, brand unbundling, customer information and three week switching) which also relate jointly to gas and electricity distribution licences and supply licences. Where this is the case we have cross referenced text in this chapter to the gas distribution systems chapter (Chapter 3). This paper does not include a separate chapter on electricity distribution as electricity distribution licence changes will, for the most part, be dealt with separately at a later date. However electricity distribution licence changes which relate to or arise from changes to supply licences are dealt with in this chapter.

2.1.2 As a key general introductory point to our modifications in this section, the UR recognises that the Third Energy Package clearly and deliberately places a new and increased emphasis on consumer protection measures and consumer information. It recognises, for example, the importance of Member States and Regulatory Authorities taking measures to “protect final customers, and shall, in particular ensure that there are adequate safeguards to protect vulnerable customers”<sup>3</sup>. More generally, the preamble to the Directives notes 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:

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<sup>3</sup> Article 3.3 Directive 2009/72

*“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 In reaching our final decisions on enhanced consumer protection as outlined in this paper, the UR carefully considered all the written responses to our 2011 consultation, the feedback received at both the September 2011 and January 2012 workshops and meetings, responses to the March 2012 consultation, as well as considering a wide base of sources of evidence including:

- i. The Third Energy Package (including in particular the Directives).
- ii. The Department of Enterprise Trade and Investment’s consultation on the Third Energy Package dated October 2010, the responses received<sup>4</sup> and decision paper published in 2011.
- iii. Published notes on the interpretation of the Third Energy Package<sup>5</sup>.
- iv. The UR’s Social Action Plan consultation paper published 5 Jan 2009 and the responses to that consultation<sup>6</sup>.
- v. The research report on “Helping customers to avoid debt and manage their way out of debt” published by the UR in June 2010<sup>7</sup>.
- vi. Ofgem’s “Retail Market Review, Findings and Initial Proposals” published on 21 March 2011<sup>8</sup>.
- vii. A consumer research report on electricity supply companies jointly published by the UR and the Commission for Energy Regulation (CER) on 14 June 2010<sup>9</sup>.

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<sup>4</sup>[http://www.detini.gov.uk/consultation\\_on\\_the\\_implementation\\_of\\_the\\_eu\\_third\\_internal\\_energy\\_package\\_25\\_october\\_2010](http://www.detini.gov.uk/consultation_on_the_implementation_of_the_eu_third_internal_energy_package_25_october_2010)

<sup>5</sup> 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

<sup>6</sup> [http://www.uregni.gov.uk/uploads/publications/2009-08-11\\_SAP\\_Decision\\_Paper\\_2009-2012.pdf](http://www.uregni.gov.uk/uploads/publications/2009-08-11_SAP_Decision_Paper_2009-2012.pdf)

<sup>7</sup> [http://www.uregni.gov.uk/publications/view/helping\\_customers\\_avoid\\_manage\\_debt/](http://www.uregni.gov.uk/publications/view/helping_customers_avoid_manage_debt/)

<sup>8</sup> <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=1&refer=Markets/RetMkts/rmr>

- viii. A research report on the “Views and Experiences of Electricity and Gas Customers” published by the UR on 17 May 2011<sup>10</sup>.
- ix. The UR’s six month review of the opening of the NI domestic electricity market (work programme published 21 February 2011<sup>11</sup>). The findings of this review were published at the beginning of July 2011. As the review identified immediate concerns for customers, it is our view that the findings of the review are intertwined with the Third Energy Package goal for a high level of customer protection.
- x. Responses to the UR’s IME3 consultation published in July 2011<sup>12</sup>.
- xi. Points made by stakeholders at IME3 workshops held by the UR in September 2011 and January 2012.
- xii. Responses to the Notification of Proposed Final Decisions Paper published by the UR in March 2012.

2.1.6 In summary, based on all the above, the UR believes that these modifications directly reflect the intent of the Directives, which is to deliver a high level of customer protection measures for energy consumers in Northern Ireland.

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<sup>9</sup> [http://www.uregni.gov.uk/news/view/consumer\\_research\\_report\\_on\\_electricity\\_supply\\_companies\\_published/](http://www.uregni.gov.uk/news/view/consumer_research_report_on_electricity_supply_companies_published/)

<sup>10</sup> [http://www.uregni.gov.uk/publications/views\\_and\\_experiences\\_of\\_electricity\\_and\\_gas\\_customers\\_in\\_northern\\_ireland](http://www.uregni.gov.uk/publications/views_and_experiences_of_electricity_and_gas_customers_in_northern_ireland)

<sup>11</sup> [http://www.uregni.gov.uk/uploads/publications/040711\\_Domestic\\_Mkt\\_Opening\\_6\\_month\\_Review\\_-\\_Findings\\_for\\_publication\\_v0\\_2.pdf](http://www.uregni.gov.uk/uploads/publications/040711_Domestic_Mkt_Opening_6_month_Review_-_Findings_for_publication_v0_2.pdf)

<sup>12</sup> [http://www.uregni.gov.uk/news/implementation\\_of\\_ime3\\_consultation\\_and\\_ni\\_domestic\\_market\\_opening\\_six\\_month\\_review\\_findings\\_paper/](http://www.uregni.gov.uk/news/implementation_of_ime3_consultation_and_ni_domestic_market_opening_six_month_review_findings_paper/)

## **2.2 UNIVERSAL SERVICE**

### ***(Article 3(3), Electricity only)***

#### Policy Background

2.2.1 Article 3(3) of the Electricity Directive 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 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.

#### UR Proposal in March 2012 Consultation

2.2.3 The Department consulted on the universal service requirements and determined it was not necessary to update the Regulations in relation to universal service.

2.2.4 Based on the Department's decision the UR did not propose to introduce or amend a licence condition which would have the effect of extending the universal service standard to small enterprises.

#### Responses to March 2012 Consultation

2.2.5 CCNI noted they would like the UR to make reference to 'reasonable prices' in its final decision to fully enforce the full article 3(3) of the Electricity Directive. They believe that clarification is also required in practical terms about 'reasonable prices' in the context of affordability of new connections. They

note they would like included the provision of financial assistance for new connections to low income families.

### UR Final Decision

2.2.6 The UR has not introduced licence modifications on universal service as, given the Regulations, we consider they are unnecessary at this time.

### Reasons and Effects

2.2.7 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. Additionally, 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 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.

2.2.9 The Department has not extended the universal service standard to small businesses and on that basis the UR will not introduce or amend a licence condition which would have the effect of extending the universal service standard to small enterprises.

2.2.10 CCNI referenced Article 3(3) of the Directives which note that customers have the right to be supplied with electricity at 'reasonable, easily and clearly comparable, transparent and non-discriminatory prices'. The UR notes that the connection price for Northern Ireland customers is regulated and is therefore deemed reasonable. Additionally, CCNI questioned the affordability of new connections for low income families following the removal of the 40%

subsidy for new electricity connections. We note however any subsidy of this nature would need to be funded by all customers, including low income families. Such subsidies may be considered discriminatory. The Directive states Universal Service must be available at non-discriminatory prices.

#### Cost Benefit Considerations

2.2.11 No additional costs or benefits are relevant as there are no proposed changes to universal service provisions.

## **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 Directives is to promote competitive energy markets that deliver customer benefits through allowing customers to effectively and easily engage in the market and “shop around” for the best deals and service levels. Part of that drive is about ease of information and processes around customer switching between energy suppliers. 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/gas customer can change supplier within three weeks of signing up to do so. 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.

### UR Proposal in March 2012 Consultation

2.3.3 The UR proposed 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.

2.3.4 The proposed modifications included:

- i) A requirement that all energy supply contracts should have at least a 10 working day cooling off period.
- 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 new 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.

- 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.
- 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.

### Responses to March 2012 Consultation

2.3.5 CCNI noted they were disappointed that the 10 day cooling off period was not contained within the three week switching limit. They urged the UR to review the maximum switching period at the earliest opportunity. firmus noted the inclusion of the 10 working day cooling off period and explained it would be part of their licence when the ten towns market opens to competition and agree the three week switching period should start after the 10 working day cooling off period has lapsed. Power NI noted they were unclear how the ten day cooling off period would be monitored and pointed out that it could be open to abuse if it was not effectively monitored.

2.3.6 PSL reiterated their previous response that they are not drivers of customer switching activity therefore it is unreasonable to expect PSL to flag up if the 15 business days is likely to be breached. They note they need to be adequately resourced under the price control to deal with these eventualities.

2.3.7 NIE noted that some of the specific reporting elements included in condition 44 will require a change to some systems and processes following the introduction of the Enduring Solution<sup>13</sup>. PNGL also remain unhappy with the reporting requirements in paragraph two (condition 1.23) and feel they should only be required to report switches 'in standard' and 'out of standard'.

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<sup>13</sup> The Enduring Solution is a new IT system which removed the switching limits in the NI electricity market. It also introduced the same access to all market processes for all market participants. It went live on 21 May 2012.



2.3.8 PNGL noted that under the current PNGL Network code, if a supplier submits a registration request that does not meet the criteria set out in code (ie. not a valid registration request), then the request is rejected and new request must be submitted. PNGL therefore suggested that Condition 1.23 should be amended to clarify that the 15 working days will only apply on receipt of a valid registration request from a supplier

#### UR Final Decision

2.3.9 We have taken on board the various comments made and it is now proposed to introduce the modifications with some minor amendments from those modifications appended to the March 2012 consultation.

2.3.10 The reporting requirements on distribution companies as set out in Conditions 44 (electricity) and 1.23 (gas) have been amended to require distributors to report only on the number of switches carried out within 15 working days, and those which fall outside of the 15 working day limit.

2.3.11 Additionally, the wording has been amended in Condition 44 (electricity) and Condition 1.23 (gas) to clarify that the 15 working days will only apply on receipt of a valid registration request from a supplier.

Electricity Supply – Conditions 27, Condition 43

Gas Supply – Condition 2.6, Condition 2.18

Electricity Distribution – Condition 44

Gas Distribution – firmus Condition 1.23, PNGL Condition 1.23

#### Reasons and Effects

2.3.12 Each Directive is explicit in its requirement that all gas and electricity consumers must be able to switch supplier within three weeks. Following the opening of both the gas and electricity supply markets in Northern Ireland, consumers are free to choose their energy supplier and can therefore avail of the benefits that competition can bring to the market. The ability to switch supplier within a three week window helps to provide consumers with a clear

switching timetable, creating greater transparency in the market. These modifications directly reflect the requirements of the Directives and are in the best interests of consumers.

2.3.13 In order to ensure the three week standard can be met, suppliers and distributors alike need to ensure that their internal systems, processes and procedures are sufficiently robust and able to effect the transfer within that relevant period. These modifications therefore include licence conditions to that effect.

2.3.14 As noted in our previous consultations, the obligation to start supplying a customer 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.

2.3.15 All energy supply contracts must, in accordance with licence conditions, provide for at least a 10 day cooling off period. We again note CCNI's comment that they would like this period to be included in the three week standard and would refer to section 2.3.14 of our March 2012 consultation for our response to these comments. Additionally, and also to address Power NI's note that the 10 day cooling off period must be monitored to prevent its abuse, we would like to reassure respondents that we will closely monitor compliance with these licence conditions in order to ensure the requirements of "cooling off" and three week switching are delivered. Indeed, we have introduced new reporting requirements on distribution companies to help us monitor compliance with the three week switching standard.

2.3.16 When looking at these reporting requirements, we have carefully considered comments raised by PNGL and NIE in relation to the practicalities and value of providing the breakdown of metrics as originally outlined. We concur that the key statistics required are those which show the number of switches completed within the three week standard, and those outside the standard. We have therefore amended the proposed reporting requirements to reflect these comments. We also note that the information requested can be

provided by the NIE systems following the introduction of the Enduring Solution project.

2.3.17 We consider that it is reasonable to expect licensees to inform the UR if/when they become aware that their procedures may not, as a result of the number of notifications it is receiving, be able to facilitate compliance with three week switching. The UR recognises that there will inevitably be some cases where three week switching is not possible through no fault of one particular participant in the process. It is reasonable however to assume that the vast majority of switches will be facilitated within the mandated three week timeframe. Therefore it is appropriate that the systems, processes and procedures of both suppliers and distributors should be designed to enable three week switching. The modifications proposed ensure such ability. It is also reasonable that the licensee should notify the UR (if possible in advance) if a particular event such as a large increase in the number of switches means that their systems may no longer be able to cope. The UR may need to investigate if a significant number of switches slipped beyond this window, as this may be an indication that the systems, policies and procedures could be insufficient.

2.3.18 The UR accepts PNGL's suggestion that the wording in Condition 1.23 should be amended to clarify that the 15 working days will only apply on receipt of a valid registration request from a Supplier. The UR now proposes to amend this condition in line with PNGL's suggestion. The revised wording is shown in Annex 4 to this paper.

### Cost Benefit Considerations

2.3.19 Following the introduction of the Enduring Solution in May 2012, electricity supplier and distributor practices and processes should now as a "norm" be able to facilitate customer switches within 15 days. The current gas switching systems can already facilitate a change of supplier within 15 days. There will therefore be no additional costs associated with the three week switching proposals for suppliers or distributors.

2.3.20 The introduction of three week switching is a mandatory Directive requirement which not only allows customers to switch freely in a clear and understandable timeframe, but also helps to ensure that all customers can fully avail of the benefits of a competitive market. These modifications will help to deliver the benefits of competition and ensure that all customers can fully engage in the energy market.

## **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 Customer consumption information is important to the customers themselves, as well as market participants, as it is a fundamental factor affecting the commercial terms that may be given, and also fundamental to customer behaviour patterns relative to usage and cost. The Directives therefore provide for all customers (both domestic and non-domestic) to be entitled to receive their relevant consumption data.

2.4.2 In particular the Directives provide that, as a minimum, domestic customers should have their consumption data at their disposal and also by explicit agreement to have that data given to other 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 business customers.

### UR Proposal in March 2012 Consultation

2.4.4 The UR proposed that the relevant licence conditions should be modified to include 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.

- 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.
- iii) A requirement for suppliers to maintain, for at least 3 years, evidential records of the 'reasonable endeavours' used to obtain actual meter readings.
- v) 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.
- vi) A new licence condition 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.
- vii) Aligning the gas provisions with current electricity licence conditions, so that consumption information is made available also to prepayment meter customers at least annually or on request.

2.4.5 Given the comments from respondents to the Department's consultation, on the environmental impact and cost of paper bills/statements and the advanced nature of technology, the UR did 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 and therefore can be provided either by traditional paper or via electronic means (for example via e-mail) to save costs.

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

2.4.7 Finally, we proposed 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 CCNI and the UR.

## Responses to March 2012 Consultation

2.4.8 firmus noted that their IT systems for a period of time will not be able to print 'like for like' periods of consumption on bills. However, they propose that should a customer request a comparison that they have the means to produce documents manually that will show a 'like for like' comparison.

2.4.9 Some respondents again noted their dependence on the network provider for meter reading. NEA welcomed the condition that requires suppliers to maintain records of their reasonable endeavours to read meters noting that accurate billing helps customers avoid slipping into debt and helps vulnerable customers to budget for their energy costs. This will help in both prevention of debt and help address issues of repayment of debt.

2.4.10 PSL noted that the condition which requires them to provide customer data held by them to other suppliers should refer to the provision of metering data held by the supplier, not consumption data. They note gas suppliers hold consumption information relating to the period between meter reads but if the Customer Information Request (**CIR**) specifies a different period, gas consumption will need to be estimated. Gas consumption varies significantly throughout the year and is weather dependant. Therefore it is more appropriate to provide metering data. Power NI note they would need to see evidence of the customer's permission to share their consumption information. They note significant costs would be incurred if there was a large number of requests and these would need to be spread across all customers. The turnaround time of 5 days to respond to a request for data would also be subject to the level of demand.

2.4.11 NIE listed a number of modifications within Condition 28 which they feel need changed, however only item 3(g) was proposed to be modified as part of this consultation. They note however that item 3(g) (the requirement to retain and provide information of the data collection activities undertaken by licensee on behalf of the supplier) cannot be fulfilled following the introduction of the Enduring Solution and NIE systems and processes will require to be changed. PNGL feel the condition for gas distributors to facilitate provision of

information on gas consumption to and between suppliers is inappropriate as gas distributors do not read meters, suppliers do. They also continue to be concerned with the proposed 5 working day timescale for the provision of information.

### UR Final Decision

2.4.12 The UR intends to introduce all modifications as outlined, with clarification that the response to a CIR, must be provided within five *working* days.

2.4.13 We also propose to introduce Condition 1.25 (gas distribution) with an amendment from the proposal in the March 2012 consultation. We propose to amend the licence so that it will apply where the information is available to or held by the licensee.

Electricity Supply – Condition 38, Condition 44

Gas Supply – Condition 2.19, Condition 2.28

Electricity Distribution – Condition 45 (Renumbered from Condition F)

Gas Distribution – firmus Condition 1.25, PNGL Condition 1.25

### Reasons and Effects

2.4.14 Both the Gas and Electricity Directives are clear that all customers should be provided with relevant information often enough to be informed of their consumption and thereby able to regulate it. The Directives clearly do not differentiate between the types or payment methods of customers. It is therefore necessary that all customers receive this information, including prepayment customers, regardless of the functionality of their meters.

2.4.15 The UR considered a number of sources of information when formulating our proposals. One of the sources of information was our Social Action Plan, launched in 2009, and all the responses to our Social Action Plan consultation. We note that some respondents to the Social Action Plan raised concerns about the ability of vulnerable customers to access information from meters. In particular the Citizens Advice Bureau stated in their response that



"clients with physical or mental health problems have difficulty in using pre payment meters". We note that it is an existing requirement in electricity supply licences to provide consumption information at least annually to prepayment customers, but this will be a new requirement for gas supply companies. The Directives' specific requirement for the availability of consumption data to all energy consumers is an important one which was supported by consumer groups who responded to this consultation. The UR considers that this data needs to be set out clearly to ensure that customers, particularly vulnerable customers, can access the information in a clear and comprehensive manner. This information will be provided in addition to the other information that is required to be provided at least annually and should therefore not be an onerous burden to gas suppliers, and is already a licence condition of electricity suppliers. If the supply company is sending out all the required information more frequently in bills (e.g. quarterly) there would be no need to send an additional annual statement, as the requirement to send the information at least annually would have already been met.

2.4.16 The term "Reasonable Endeavours" is not a new concept. Suppliers already have an existing licence obligation to use reasonable endeavours to read meters. What is new is that suppliers must now keep records of what the reasonable endeavours were in order to ensure that there is an evidence base to show that the existing condition is being met. Again to clarify, examples may include: keeping a record of the dates when attempts to read the meter were made and the reasons why the meter reader could not access the meter, or a record of correspondence to the customer, or (in the case of electricity) a record of correspondence with the common services provider. The UR recognises the fact that in electricity, the distribution company carries out meter reading on behalf of suppliers through a common services agreement. The UR therefore has also added a corresponding condition in NIE 's licence so that both distribution and supply obligations work in tandem to ensure reasonable endeavours are being made to read meters often enough to comply with Directive requirements.

2.4.17 PSL noted that they felt it was more appropriate to supply metering data, as the consumption data they hold will only be between meter reads and they may not have the appropriate information in relation to the CIR. We note that as in Condition 2.19 paragraph 6 (b), where no meter reading is available, the amount of gas consumed shall be determined according to the estimate of the Licensee. This provides for estimates to be determined by the supplier, should the relevant consumption data not be available and similar estimates can be used in the case of a CIR.

2.4.18 Power NI noted they would need to see evidence of the customers permission to share their consumption information. As noted in our March 2012 paper, Condition 44 paragraph 3 in supply licences notes that an electricity supplier must have, and retain records of, the explicit consent of the customer to obtain the information which is specified in the request to the other electricity supplier. To address Power NI's additional comment that significant cost would be incurred with many requests that would need to be spread across all customers, and that a turnaround time of 5 days would also be subject to the level of demand, we note that consumption data is required to be made available to customers through annual statements and/ or with their bills. It is envisaged that most customers will therefore use the bill to locate (and relay to other gas suppliers) their consumption information, limiting the need for individual Customer Information Requests, therefore limiting additional cost.

2.4.19 We carefully considered NIE's comments that the requirements of Condition 28 paragraph 3(g) would require system changes following the introduction of the Enduring Solution. We are aware that NIE may require to make some changes in order to facilitate the provision of information to suppliers and will monitor the volume of such requests going forward to ascertain the need for significant systems changes.

2.4.20 The UR has carefully considered PNGL's responses to the March 2012 consultation in relation to proposed Condition 1.25. The UR realises that the DSO will not always have the information available (ie. actual meter readings) to provide actual consumption information, therefore we now propose to amend Condition 1.25 so that the Licensee is only required to provide

information to a gas supplier where that information is available to or held by the Licensee. The newly amended condition is shown in Annex 4 to this paper.

### Cost Benefit Considerations

2.4.21 Suppliers are already required to use reasonable endeavours to read meters at least annually. The modification in relation to meter reading simply requires suppliers and distributors alike to keep records of such endeavours. No respondent to the March 2012 consultation indicated that this requirement would incur a significant cost. It is vital that customers are supplied with accurate bills and effective meter reading helps to ensure customers are billed accurately. The retention of this information can be achieved at a low cost and is vital in the billing process.

2.4.22 These modifications do require some additional information to be displayed on bills. It is reasonable therefore to assume that suppliers will need to alter their bills to include this information, which will incur a one off cost (these changes should not result in recurring costs once the billing system has been altered). Again, respondents to the March 2012 consultation did not highlight that these changes would result in significant additional costs. We are therefore satisfied that the necessity for the provision of this information outweighs the reasonable cost of implementation.

2.4.23 Some respondents noted that there will be additional costs incurred to provide consumption information to pre-payment customers. We note that the provision of this information is not a new requirement for electricity supply companies and therefore cannot incur additional IME3-related costs. We also note that all supply companies in both gas and electricity already write to pre-payment customers to inform them of a tariff change. It is therefore possible for the consumption data requirements outlined, to be provided to prepayment customers at the time of the tariff change, therefore not incurring additional costs. Prepayment meters are read quarterly in electricity, and checked twice annually for safety and fraud prevention purposes in gas. The consumption information can therefore be gathered at the time of the meter read and

safety/fraud prevention meter checks. This again would ensure the costs of supplying this information are reasonable.

2.4.24 The provision of accurate information allows customers to manage their consumption, budget more effectively and reduce debt. The costs of providing this information are believed to be minimal and may result in reducing the overall levels of debt or fraud. With more accurate billing, costs relating to debt or fraud and inaccurate bills are likely to reduce. Therefore these modifications will have a positive impact on all customers, particularly vulnerable customers.

## **2.5 CUSTOMER INFORMATION: CONSUMER CHECKLIST**

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

### Policy Background

2.5.1 In accordance with each Directive's 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 and 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 CCNI, 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). The Consumer Checklist is available on the Utility Regulator website [www.uregni.gov.uk](http://www.uregni.gov.uk)<sup>14</sup>

### UR Proposal in March 2012 Consultation

2.5.3 The UR proposed to modify the conditions of electricity and gas licences to require suppliers to (before entering or concluding a contract with any domestic customer):

- (i) inform the domestic customer of the Energy Consumer Checklist and the sources from where the customer may obtain a copy.
- (ii) provide a copy of the Energy Consumer Checklist free of charge to any customer requesting it

and:

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<sup>14</sup> [http://www.uregni.gov.uk/customer\\_information/energy\\_consumer\\_checklist/](http://www.uregni.gov.uk/customer_information/energy_consumer_checklist/)

- (iii) keep each of its customers informed that the Energy Consumer Checklist can be accessed from the Licensee's web-site and that the Licensee will, on request, send a copy to the customer free of charge.

2.5.4 The Checklist can be provided in electronic form but if the customer so requests it must be provided in hard copy format.

2.5.5 Further, the UR proposed that the Checklist should be available, on the suppliers website 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).

#### Responses to March 2012 Consultation

2.5.6 firmus and PSL noted they were happy with the amended Conditions however PSL suggested that the UR should publish the Checklist in the alternative formats that it believes are appropriate.

#### UR Final Decision

2.5.7 The UR intends to introduce the modifications as proposed.

Electricity Supply – Condition 27, Condition 38
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Gas Supply – Condition 2.18, Condition 2.19
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#### Reasons and Effects

2.5.8 The provision of the Checklist is now a mandatory legal requirement. The UR considers it important that all customers have access to an up to date version of the Checklist to ensure that they are made aware of their rights. The UR, in line with its statutory deadline, has already published a full copy of the Checklist on its website.

2.5.9 Through these modifications, customers will 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 the change of supplier process.

2.5.10 The UR considers that in order to comply with equality legislation it is necessary to require that the Checklist is made available in alternative formats such as Braille and large print. Further, suppliers should be able to comply with the requirement to make the Checklist available on their website at no additional cost to their business. In relation to PSL's comment that they feel the UR should provide copies of the Checklist in alternative formats, we feel it appropriate to note that the vast majority of consumers are more likely to have regular contact with their supplier and are most likely to request this information from them. In addition, the Checklist is likely to be updated on a regular basis and therefore it is better for the alternative formats to be provided on request or proactively where the supplier is aware of the needs of the customer. It is the responsibility of suppliers to allow for the information needs of all their customers and are required to provide information in a format that promotes equality of access to information and consumer rights.

#### Cost Benefit Considerations

2.5.11 Concerns in relation to cost were raised in response to the July 2011 consultation which proposed that the Checklist be provided to customers annually or when a customer switches supplier. Directly addressing these concerns, the UR has subsequently changed these proposals and no longer requires copies to be sent to customers annually or when switching supplier. The updated Condition states that the customer should be made aware of the Checklist when they sign a contract and the Checklist should be provided on request to the customer free of charge. They must also continue to keep the customer informed of where they can receive an up to date version of the Checklist. It is expected that there will be limited costs associated with printing and supplying copies of the Checklist when requested, and also with any requests for copies in alternative formats eg Braille.

2.5.12 The provision of a Checklist is an explicit requirement of the Directives which require that *“suppliers in cooperation with the regulatory authority, take the necessary steps to provide their consumers with a copy of the energy consumer checklist and ensure that it is made publicly available”*. The provision of this information will help to ensure that all customers, particularly vulnerable customers, are provided with detailed information about the NI energy market and therefore have the information to enable them to effectively engage in the energy market.



## **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.

### UR Proposal in March 2012 Consultation

2.6.3 Licence modifications were proposed which oblige suppliers to inform customers of:

- i) Their right to initiate the supplier’s complaint handling procedure.
- ii) The role of CCNI in assisting to resolve complaints.
- iii) The role of the UR in relation to the resolution of billing complaints.
- iv) The contact details of supplier’s complaints handling department and CCNI.

2.6.4 It was proposed that suppliers will be required to provide this information in or with each bill/statement sent to the customer (which as noted previously 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.

### Responses to March 2012 Consultation

2.6.5 firmus agreed that the general provision of the Gas Directive is sufficient to ensure gas and electricity customers are treated equally as to the provision of this information on promotional materials. PSL maintained that it was outside the scope of the Directive to have this information on promotional materials.

Power NI suggested that promotional materials be categorised as those materials which promote the uptake of an electricity supply contract rather than other materials e.g. an information leaflet on how to use a keypad meter.

### UR Final Decision

2.6.6 The UR intends to introduce the modifications as proposed.

Electricity Supply – Condition 38, Gas Supply – Condition 2.19
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### Reasons and Effects

2.6.7 The Directives are clear that customers should be made aware of their rights in relation to dispute settlement. Customers should be 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 CCNI, and in certain cases the UR, can assist in the resolution of complaints should the customer remain unsatisfied with the supplier's response.

2.6.8 Aligning gas and electricity provisions will ensure consistency between the treatment of electricity and gas consumers as regards the interpretation of the Directives in relation to the provision of information to customers. As noted in section 2.6.9 in our March 2012 consultation, the UR has carefully considered the objections raised to the proposal that information about complaints handling does not need to be made available on promotional materials. The UR notes that this is a specific requirement of the Electricity Directive and therefore in electricity is not subject to interpretation. The UR considers that in order to avoid customer confusion and allow adequate customer information transparency, it is appropriate wherever possible to treat gas and electricity customers the same. In addition, we consider that the general provision in the Gas Directive which requires that Member States shall ensure

high levels of consumer protection, particularly with respect to transparency regarding dispute settlement mechanisms, are sufficient to require that the gas customer is treated equally to the electricity customer as regards the provision of this information on promotional materials.

2.6.9 We have also considered Power NI's comments in relation to the definition of promotional materials on which this information is to be displayed. The UR considers it acceptable that 'promotional materials' refer to all marketing materials and other such materials which promote the uptake of an electricity or gas supply. It will not therefore apply to information leaflets eg on how to read a keypad meter.

#### Cost Benefit Considerations

2.6.10 This information is quite concise, and is to be outlined on materials that suppliers already publish. The inclusion of this information will therefore not add cost to the production and delivery of such materials.

2.6.11 It is vital that customers are provided with information on their right to avail of existing dispute settlement procedures and their rights as an energy customer. The provision of this information will have a positive impact on customers, particularly vulnerable customers who may have been unaware of the protection available. It ensures customers remain informed and understand the role of suppliers, UR and CCNI in this regard.

## **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, the Directives require transparency regarding contractual terms and conditions and general information. Transparency of contractual conditions is key to customers' understanding and protection in modern energy supply markets. In addition to the energy efficiency considerations, 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 and enhances competition.

2.7.2 The Department's final decision on its 2010 consultation, 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 Directive requirements.

### **UR Proposal in March 2012 Consultation**

2.7.3 *In relation to bills:* The UR proposed 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 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 2.15).
  - vii) Information about customer's rights in relation to complaints and contact details for the CCNI.
  - 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.
  - xi) A statement to the effect that the licensee has a Code of Practice which sets out the services, advice and assistance it provides to customers who may be having difficulty in paying for the supply of electricity or gas.

2.7.4 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 CCNI and the UR.

The UR also proposed that where the customer takes and notifies the supplier of a self-read, the Licensee shall within 14 days send an updated bill to the customer reflecting the self-read provided by the customer.

2.7.5 *In relation to transparency of information in contracts:* The UR considered 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 therefore proposed a licence modification to this effect.

2.7.6 In this context the UR proposed to define the principal terms such that it is consistent with the definition used by Ofgem in GB licences. 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.
- vi) Any other term that may reasonably be considered to significantly affect the evaluation of the contract by the customer.

#### Responses to March 2012 Consultation

2.7.7 Electric Ireland noted they do not feel it is appropriate to have the requirement to set out tariffs on a "pence per kWh" basis for business customers as this will not always be possible. They would like this requirement limited to just domestic customers only. They would also like to remove clause 38(4)(c)(ii) (the requirement to provide a comparison to the suppliers standard evergreen tariff) for business customers and want it for domestics only as it is not practical for business customers. They also feel the clause to provide 12 month consumption information (38(4)(f)) to business customers would not be beneficial and should be limited to domestic customers only.

- 2.7.8 firmus note they are comfortable with the approach of informing customers of their right to switch supplier. NEA supports the inclusion of the statement regarding the Code of Practice on the payment of bills and feel robust enforcement of this additional licence requirement will be essential to its success. NEA also believe that informing customers of their right to switch is an essential piece of information and crucial for ease of switching. PSL maintain it is inappropriate to provide customers with details about switching on each bill.
- 2.7.9 Power NI note they provide daily comparison information rather than for the billing period and do not propose to change this approach as it provides more useful information.
- 2.7.10 PSL note gas supply licences already secure transparency by requiring written terms and conditions to be given to customers before entering a contract. They again note that it is important that customers read all the terms and conditions and that it is inappropriate for suppliers to draw customers' attention to only a few specific terms when arguably each or the terms are of equal importance.
- 2.7.11 One respondent noted they would like paragraph 5(d) removed as they see no call in the Directive to have termination fees approved in advance by the UR.
- 2.7.12 PSL note their concern at the UR's requirement to send an updated bill to consumers within 14 days of them submitting a self read. They feel this is actually a detriment to consumers as it crystallises debt. Power NI note that if bills are to be issued randomly outside of the normal billing window, it will introduce significant issues and costs. Therefore they propose providing a new bill when a customer reading is provided within the billing window only, unless exceptional circumstances exist.

#### UR Final Decision

- 2.7.13 The UR intends to introduce the modifications as outlined however notes that:

- i) Clarification has been added to Condition 38 paragraph 4(c)(ii) that the unit rate is to be expressed as kWh where applicable.
- ii) Condition 38 paragraph 8 now requires that where a customer received a bill showing an estimated meter reading and registers a self-read with the Licensee, the Licensee shall take all reasonable steps to reflect the self-read in the next bill sent to the customer or where requested by the customer, send an updated bill to the customer reflecting the self-read.

Electricity Supply – Condition 27, Condition 38

Gas Supply – Condition 2.18, Condition 2.19

### Reasons and Effects

2.7.14 In a developing and increasingly competitive market, it is important that customers should receive clear, comprehensible and transparent information both for the purpose of managing their existing use and supplier relationship (ie to manage consumption, have a clear understanding of charges etc.) and for the purpose of having sufficient information to make informed decisions about switching supplier.

2.7.15 The above provisions will have the effect of enabling customers to understand the key terms of their contracts before agreeing to enter into them and ensure that customers receive regular billing information and updates about their consumption (including comparisons between corresponding periods where appropriate). They will also mean customers are able to request information about their consumption and have information readily available which will help them to exercise their right to change supplier and be aware of their rights in relation to their energy supply.

2.7.16 The UR considers that the provision of the information noted above either on or with bills should not prove overly onerous. Indeed, the majority of the information is either already required to be included on bills due to some other



part of the relevant Directive or should normally be provided as a matter of good practice.

2.7.17 Electric Ireland noted that they did not feel that some of the mandated information that is listed to be provided on each bill or statement is applicable to business customers and should therefore be required for domestic customers only. We have provided clarification in the licence that the unit rate for the tariff must be expressed as kWh where applicable only. Therefore if this metric does not apply to business customers it need not be included. Similarly, the requirement to note a discount that applies to the tariff when compared to the Licensee's standard evergreen tariff (Condition 38 paragraph 4(c)(ii), only needs expressed if this is applicable. We have not made any changes to the requirements outlined by Condition 38 paragraph 4(f). As noted in section 2.4 of this paper, customers are to be made aware of their consumption information frequently enough to allow them to regulate their consumption. This condition ensures that this information is provided to all customers. If any licensee wishes to exceed this requirement for a particular class or all classes of their customers, this condition does not prevent them from doing so.

2.7.18 As regards PSL's comment on switching information, the Directives clearly state that customers should be easily able to switch and that they should be provided with transparent information including general information and information regarding contract terms. The UR considers that informing customers of their right to switch is an essential piece of information necessary to deliver the required level of transparency. Informing customers of their right to switch is also a prerequisite to ensuring that customers can easily switch. Indeed, NEA noted in their response that informing customers of their right to switch is an essential piece of information and crucial for ease of switching.

2.7.19 The UR again notes PSL's comment that they feel it is inappropriate to highlight certain terms and conditions to customers and that all are equally important. We would refer PSL to section 2.7.12 of our March 2012 consultation for our response to these comments.

2.7.20 We note one respondent commented that they see no call in the Directive to have termination fees agreed in advance by the UR. This is an existing licence requirement to which suppliers should already be complying and it is not a new requirement under these IME3 modifications.

2.7.21 We have considered PSL's and Power NI's comments in relation to the condition which requires suppliers to send customers an updated bill within 14 days of the customer submitting a meter read. We agree that this may prove costly and onerous for suppliers if universally mandated, and have therefore amended this condition so that where a customer received a bill showing an estimated meter reading and registers a self-read with the Licensee, the Licensee shall take all reasonable steps to reflect the self-read in the next scheduled bill sent to the customer. However, where it is specifically requested by the customer, the supplier must send an updated bill to the customer reflecting the self-read.

#### Cost Benefit Considerations

2.7.22 The UR notes that there may be limited, one off system changes required in order to include this information on the format of bills. However there will be no recurring costs once these changes have been made. It is believed these costs will be minimal and no respondent to either the July 2011 or March 2012 consultations provided detailed cost information that indicated this would not be the case.

2.7.23 The provision of this information will ensure that customers are fully aware of key pieces of information to help them understand both their rights, their charges and their consumption. This could help customers to better manage their consumption and could also encourage customers to engage early with suppliers where problems occur (for example in relation to paying for bills). This could therefore help with the early identification of customers having difficulties and reduce costs which occur after difficulties arise for example in chasing debts. Furthermore suppliers can, where the customer expressly agrees to receiving the information in such format, provide the information

electronically. Therefore any impacts on costs and on the environment of additional paper billing should be minimised.

## **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, protecting consumer interests is the key intent of the Directives. The Directives therefore require Member States to take appropriate measures which enable all customers to be safeguarded by high levels of consumer protection, and in particular to ensure that there are adequate safeguards to protect vulnerable customers.

### UR Proposal in March 2012 Consultation

2.8.2 Implementation of the Directives is not a discretionary matter but terms such as “appropriate measures” and “adequate safeguards” are open to interpretation in terms of the scope of the requirements of the Directives.

2.8.3 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 proposed 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.

2.8.4 The UR’s March 2012 proposal was for the existing requirements to continue but 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 40% from each such advance payment as payment towards the customer’s debt. 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. A customer will be able to request in writing a higher debt recovery percentage rate to apply.

- ii) Extending the requirement on suppliers not disconnecting during the winter months any domestic customers who are of pensionable age to cover also domestic customers who are chronically sick or disabled.
- iii) Where the customer is in debt, requiring suppliers 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.
- 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.
- 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.
- vi) Obliging suppliers to have complaints handling procedures which provide for customer complaints to be processed and dealt with by the supplier within 3 months.
- vii) Requiring suppliers to comply with an industry Marketing Code of Practice for domestic and non domestic customers.
- viii) Take steps to help customers using prepayment (also known as Pay as You Go) meters to avoid self-disconnection.
- ix) Provide the UR with enhanced monitoring information on the implementation of the Codes.
- x) Ensure that the UR can require the Codes to be updated, reviewed and modified following consultation with the licensee and CCNI .

2.8.5 It was also proposed that 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.) in order that their supply is maintained.

2.8.6 Some changes were 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.

2.8.7 The proposals also sought to ensure: consistency between electricity and gas Codes of Practice provisions; that compliance with Codes was enforceable under the licence; and that Codes were regularly reviewed and reported against.

### Responses to March 2012 Consultation

2.8.8 in relation to prepayment debt payments, CCNI noted that they felt the 40% limit is too high and that the recovery rate should be set at 20%. CCNI have concerns over suppliers' fairness and impartiality when assessing customers' ability to pay and want the UR to strengthen this provision by requiring the use of the Common Financial Statement by all energy suppliers. They also want suppliers to make arrangements that overpayments towards arrears can be made by a customer, outside the fixed recovery amount. firmus feel it is reasonable to have a 40% limit on debt recovery. NEA believe 40% debt recovery is too high but are reassured by the licence condition to ensure individual circumstances are taken into account. They seek clarification on how the suppliers will evidence this process of debt recovery. PSL reiterated comments made to the July consultation that it is not appropriate to set a percentage limit on debt recovery as it is a 'one size fits all' approach and that a weekly amount is better. Power NI assumes that this requirement would not apply in the instances where there had been fraud or if the supplier had deemed that the customer had an obvious ability to pay.

2.8.9 CCNI would like to extend to all consumers of gas the 'no disconnection' policy as it is for electricity consumers. CCNI believe there should be a requirement for the UR and suppliers to meet with Section 75 groups to monitor the impact that the disconnection policy is having, particularly amongst vulnerable customers. Electric Ireland note the revised Condition 31(3)(a) to provide services e.g. special controls and adaptors for electrical

appliances and meters and reposition meters and comment they are not in a position to either provide such controls and adaptors or to provide them free of charge and therefore want this condition deleted. They note they assume Condition 31(3)(b) (providing special means, including agreeing a password with the customer, of identifying officers authorised by the Licensee) applies to customer field activity only. They also seek clarification on Condition 31(3)(d). They question if, as per this modified condition, they are now required to send the bill to two or more persons if requested and feel this will cause confusion. They also believe Condition 31(4)(c)(i) could be read and understood to mean that no customer can be disconnected during winter months and want the word 'and' added to the end of Condition 31 paragraph 4(c)(i) to remove any possible ambiguity. NEA welcome the condition to extend the no disconnection policy during winter months to domestic customers who are chronically sick or disabled.

2.8.10 NEA were fully supportive of the condition that requires suppliers to, where a customer is in debt, 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 in the winter months. They suggest however a 'trusted third broker' for example needs to be used to promote and disseminate information on energy efficiency grants to those customers identified by the supplier as being at risk of self-disconnection. They also note that the reasonable steps outlined by the UR are not onerous on the supplier. PSL feel that it is not always possible for a supplier to know or confirm the occupancy of a household and as the supplier must be allowed to recover debt they maintain that Condition 31 paragraph 4(d)(ii) (to take all reasonable steps during the winter months not to disconnect the supply to domestic premises where the customer has not paid the charges for the supply and where the occupants in that premises include a person who is of pensionable age, disabled or chronically sick) is too subjective and should be removed.

2.8.11 Electric Ireland believe 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 is too prescriptive for business customers as they need very specific energy efficiency advice. They use tailored services to provide business customers with advice which they do not believe can be delivered by call centre staff. They would like this condition changed so that it just applies to domestic customers. firmus is supportive of the condition to extend energy efficiency advice to non-domestic customers. PSL do not agree that suppliers should provide this telephone service. They feel it is unnecessary bureaucracy and will increase costs to consumers.

2.8.12 CCNI welcome the Marketing Code requirement and calls on the UR to adopt the CCNI Marketing Code of Conduct as a blueprint for the final document. firmus welcome the extension of the Marketing Code of Practice to all customers.

2.8.13 NEA welcomes the condition that requires suppliers to take steps to help customers using prepayment meters to avoid self-disconnection and note that the issue of disconnection of those prepayment meters needs to be further investigated.

2.8.14 PSL again note they are unable to record customers of the Phoenix Energy Care Scheme. They also note their previous concerns in relation to dispute settlement reporting are covered by the change of wording to "within which it is intended that complaints will be processed and resolved".

2.8.15 NEA strongly welcomes the ability for the UR to require Codes to be updated, reviewed and modified following consultation. They believe it provides a robust foundation for the protection of customers in NI now and into the future, thus giving this legislation a level of sustainability previously unseen. PSL note any licence modifications must be made following consultation and consent of the licence holder. PSL do not accept this condition and feel it goes beyond the remit of the Directive and should be removed. Power NI is of the view that any modifications to licences should be subject to normal best practice ie full consultation.

UR Final Decision



2.8.16 The UR intends to introduce all the modifications as proposed.

Electricity Supply – Condition 30, Condition 31, Condition 32, Condition 33, Condition 34, Condition 35, Condition 35A, Condition 36, Condition 40.

Gas Supply – Condition 2.12, Condition 2.11, Condition 2.10, Condition 2.8, Condition 2.9, Condition 2.13, Condition 2.22A, Condition 2.23, Condition 2.21.

### Reasons and Effects

2.8.17 The requirements of the Directives are not discretionary matters but terms such as ‘appropriate measures’ and ‘adequate safeguards’ are open to interpretation. 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.

2.8.18 Now that the gas and electricity sectors are 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 to allow potential inconsistency in the scope and nature of the consumer protection measures. These modifications will not only align consumer protection measures in gas and electricity sectors to provide clarity and consistency of approach, but also to enhance and strengthen the consumer protection afforded to consumers. This is the intent of the Directives and within which the overall enhanced customer protection frameworks apply equally to both sectors.

2.8.19 In our March 2012 paper (section 2.8.19) we outlined the importance and reasoning behind the 40% debt repayment cap. We noted that we believe it is fundamentally important to ensure supply companies are not able to disadvantage customers in debt further by taking an unmanageable amount of debt recovery from a single customer transaction. At present there is no limit on the level of debt per transaction which can be recovered from a customer who tops up their supply through a prepayment meter. The UR feels it is necessary to impose the 40% upper limit, but clarified that the supplier will also be required to take into account the customer’s ability to comply with repayment rates. This is indicated via existing licence Condition 30 paragraph 3 (c). This condition allows the customer to specifically

request, in writing, a higher debt recovery limit to pay the debt off quicker, if they wish and can afford to do so. The UR considers that due to the high levels of fuel poverty and vulnerability in Northern Ireland it is necessary to include this additional protection, yet still allow suppliers to recover debt. The UR's research found that while vulnerability does not cause debt as such, each characteristic of vulnerability appears to heighten the risk of debt. Therefore this safeguard is in line with the UR's duty to have due regard for vulnerable customers. The UR notes again that it does not object to a supplier using a fixed sum debt recovery approach if they feel it best suits the needs of their customers. However, in order to recover the set weekly monetary value, the supplier must not recover more than 40% of the value from any single transaction. Additionally, it is also important to note that this licence condition does not prevent customers from also arranging to pay additional repayments directly to the supplier to clear the debt quicker as suggested by CCNI. We also note Power NI's comments that they do not believe the 40% debt recovery limit should apply in circumstances of fraud or obvious ability to repay. We note however that the 40% limit on debt recovery applies irrespective of the underlying reason as to why the customer has a prepayment meter. This is confirmed by reading sub-paragraph (h) of Condition 30 with sub-paragraph (g). Sub-paragraph (g) provides that irrespective of the reasons for supplying through a prepayment meter, any calibration of a such a prepayment meter to recover outstanding charges has to take into account ability to pay but then sub-paragraph (h) then confirms that any such calibration cannot be set to more than 40% of the top up. This applies irrespective of customer's ability to pay more. The only exception is if the customer requests to pay more.

2.8.20 We note CCNI's comments that they feel the disconnection policy for electricity should be extended to gas customers. It is important to note that there are key fundamental differences in how customers use electricity and gas. Subsequently, there are also differing resulting effects should an electricity or gas supply be disconnected. It is important, should the disconnection policy for gas be revised, that such factors are carefully examined before any policy revision can take place. We also note that we continue to meet regularly with interested stakeholders, not only as part of specific consultation exercises, but also to ensure an informed and practical approach to our work. We will therefore continue to engage with section

75 groups on a number of key issues, including the disconnection policy. We will also be consulting on the Codes of Practice and the UR's Social Action Plan during 2012 through which this issue will be considered and views sought.

2.8.21 In their response, Electric Ireland noted that they are not in a position to provide special controls and adaptors as indicated in Condition 31 and asks this condition be removed. The UR notes however that as explained, it is important that gas and electricity customers are treated equally. This requirement is a current condition in gas licences and it is important that such conditions are mirrored in electricity licences.

2.8.22 Electric Ireland also questioned if Condition 31 paragraph 3(d) now requires them to send a bill to a customer and also a person nominated by the customer. We note that this condition provides for a bill to be sent to a nominated person and/or the customer. The supplier must ensure that if the customer also wishes to receive a bill, as well as it being sent to a nominated person, that this request is facilitated. It is unlikely that such requests will be frequent. We also note Electric Ireland's clarification of Condition 31 paragraph 4(c) who suggest the word 'and' should be added to the end of paragraph (4)(c)(i). This is however unnecessary as the use of 'and' after paragraph 4(c)(ii) means that all of the requirements need to be met/satisfied (i.e. sub-paragraphs (i), (ii) and (iii)).

2.8.23 As noted in our March 2012 paper (section 2.8.24), we consider that the proposal to provide a dedicated telephone advice service for energy efficiency matters to non-domestic customers goes no further than the existing provision in gas supply licences which require that arrangements must be put in place to provide advice on the efficient use of gas. As noted it is important that gas and electricity customers are treated equally. Currently, most gas companies use third parties to help provide information on energy efficiency. The UR is satisfied that providing the consumer with details of a third party who can provide energy efficiency advice is sufficient to meet this condition. The amendment to an existing licence condition to require the supplier to make available advice and information on energy efficiency to non-domestic customers seeks firstly to add clarity and secondly to standardise the conditions between electricity and gas. Domestic customers make up the vast

majority of the market and suppliers already have an existing requirement to provide such advice to this class of customer. The extension of this condition to business customers therefore is not onerous. If, as noted by Electric Ireland, suppliers want to provide more detailed advice to business customers, this licence condition does not prohibit the provision of such advice. A telephone advice line must be available as a minimum.

2.8.24 The UR points to section 2.8.29 of its March 2012 paper for its response to PSL's comments on recording customers registered on the Phoenix Energy Care Scheme.

2.8.25 The UR considers that the proposed licence modifications (35 and new 35A) in relation to the Codes will allow for full implementation of the customer protection requirements of the Directives. However, we also believe that the high level of customer protection required by the Directives is itself only achieved if the energy Codes are capable of being adequately updated and reviewed as relevant circumstances change. The UR is 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 Codes of Practice or indeed introduce new Codes as and when the need arises. This updating provision allows the UR to take into consideration future changes in practice or technology which would require the Codes to be updated or added to, and gives the UR after due consultation, the route to keep the Codes up to date as circumstances change. We welcome NEA's comment that this condition provides a robust foundation for the protection of customers in NI now and in the future, thus giving this legislation a level of sustainability previously unseen. In relation to PSL's and Power NI's comments, we note our response in section 2.8.30 on our March 2012 paper and reiterate that any changes to the Codes will be subject to full public consultation.

### Cost Benefit Considerations

- 2.8.31 Only one of the proposed modifications in this section have been identified by respondents as having a potential cost impact (the extension of energy efficiency advice to business customers). It is not believed that any of the other conditions outlined will incur a significant cost as none were highlighted as part of the consultation.
- 2.8.32 Suppliers already have a system in place which enables them to recoup debt from prepayment meters. This new condition will not incur additional costs as it merely limits the value of debt recovery from a single transaction. The supply company must simply ensure that the 40% limit is not breached. For customers who have difficulty in repaying debt, this measure may help reduce the temptation to commit fraud or abscond. This could therefore reduce the overall level of debt seen by supply companies, thus reducing their debt chasing costs.
- 2.8.33 The proposals outlined see the extension of energy efficiency advice to business customers. Current licences already require suppliers to provide energy efficiency advice to domestic customers, who make up over 90% of the market. The cost of the addition of the provision of advice to non domestic customers is minimal but could be limited further if suppliers agree to use a common service provider. It is not believed that this cost will be significant.
- 2.8.34 These modifications will significantly help those customers in debt, further protect vulnerable customers and will help supply companies avoid the costs associated with customers in debt. The Directives are clear in their intent to ensure high levels of customer protection. These modifications help to deliver that intent and ensure also the most vulnerable customers are protected.

## **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 the key intent 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 Directives do not specifically limit or prohibit their application to domestic customers only. The Department has therefore determined, per its final decision paper and Regulations, 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 review of the NI domestic market opening and some of the findings from the review centre on issues relating to contractual terms and conditions.

## **2.10 ENERGY SUPPLY CONTRACTS – SPECIFIC PROVISIONS**

### ***(Annex 1(a), Electricity & Gas)***

#### Policy Background

2.10.1 Paragraph 1(a) of Annex 1 of each Directive 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.

#### UR Proposal in March 2012 Consultation

2.10.2 The UR proposed to modify the relevant licence 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.
- ii) Requires that each set of the supplier's standard terms and conditions are published on the supplier's website.
- 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).
- 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.
- 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.

2.10.3 The UR also decided to include a new condition relating to deemed contracts in the gas supply licence. The licence Condition (Condition 2.1) could have been implemented under the powers available under the Energy (Northern Ireland) Act 2011 (the **2011 Act**) rather than the licence modification powers available under the Regulations. However, it was considered appropriate to include this new condition in the Directive modifications given that the Directives include provisions relating to transparency etc. of contractual terms and the UR's desire to synchronise all customer protection measures across electricity and gas. In this context the UR also proposed to modify the supply licence condition which relates to deemed contracts, 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.

#### Responses to March 2012 Consultation

2.10.4 CCNI noted that any compensation scheme for billing issues should be formally developed in the form of their Financial Remedy Framework (FRF). We note they would like to work with the UR to update and develop the FRF in order that it can be used as a framework for inclusion in energy contracts.

2.10.5 CCNI also welcomed the proposal to have a standard tariff for evergreen contracts for each different case, area etc. Electric Ireland note this proposal talks about domestic customers in the UR decision paper but the licence condition relates to all customers. They note they do not agree that these can be deployed sensibly or efficiently to business customers and have requested that the condition be amended so it relates to domestic customers only.

2.10.6 One respondent noted that they feel it is expensive and costly to add the date for commencement into terms and conditions. Power NI seek clarity on the issue of standard evergreen tariffs. They note they assume it is possible to



either - have a standard tariff for a credit customer that then shows a discount for a particular payment type or have an already discounted tariff for a payment type (which is the standard evergreen tariff for that payment type).

2.10.7 PSL do not feel that the detail of relevant tariffs should be included within the body of the terms and conditions. They note that sending the full set of revised terms and conditions as a result of tariff changes would make this costly. They note the tariff rate is not included in the terms and conditions in GB and feel they should only be required to provide details on where the customer can locate the tariff information.

2.10.8 CCNI are disappointed with reference to 'reasonable steps' to enter into a contract as soon as practicable in relation to deemed contracts. They note that given suppliers repeated failure to address this issue, CCNI calls on the UR to impose a deadline on suppliers to issue a deemed contract scheme. PSL feel the requirements of Condition 2.1 paragraph 4(a) are too broad and they require clarification as to the meaning of 'significantly exceeds'. They note the over-recovery of the tariff due to fall in gas prices results in PSL revenue significantly exceeding costs which would lead to a technical breach of this condition.

#### UR Final Decision

2.10.9 The UR intends to introduce the modifications as proposed. Clarification has been added to Condition 27 (2.18 in gas) paragraph 9(b) which requires suppliers to also state the name and unit rate, expressed as “pence per kWh”, of the domestic customer’s current tariff when notifying them of the end of their fixed term period.

Electricity Supply – Condition 27, Condition 28

Gas Supply – Condition 2.18, Condition 2.1

#### Reasons and Effects

2.10.10 The Directives detail a list of matters that a supply contract must specify, and requires contractual conditions to be fair and well known in advance. If suppliers' terms and conditions are publicly available, all customers will have free and easy access to them at all times. Having a standard evergreen tariff and standard unit rates (& applicable charges) improves tariff comparability and makes it simple for domestic consumers to compare prices and choose a deal that best suits their needs. Ofgem research shows that the large number of tariff options available to GB energy consumers is one of the main reasons why many consumers currently find it difficult to decide whether it would be in their best interests to switch or not. (Since 2008 the total number of available tariffs online and offline in GB has increased by over 70%). Setting a limit on the number of standard evergreen products on offer will reduce the suppliers' ability to segment the market between active and inactive customers on such products. This proposal is proportionate and may help to prevent the level of consumer confusion observed in the energy retail markets in GB and is proportionate in terms of costs.

2.10.11 The Directives detail a list of matters that contracts must specify, and requires contractual conditions to be fair and well-known in advance. Therefore customers who are on a tariff for a fixed term should be notified in advance of any changes to their contract to ensure they can make a positive choice for another fixed term contract or revert back to a standard evergreen tariff. Automatic rollovers should not be allowed or unilateral variations permitted. To ensure maximum clarity for customers, we have also added to Condition 27 (2.18 in gas) paragraph 9(b) which requires suppliers to also state the name and unit rate, expressed as "pence per kWh", of the domestic customer's current tariff when notifying them of the end of their fixed term period. The modifications in this area are consistent with the Directives' requirements to ensure transparency for consumers and help them make informed decisions in the energy market.

2.10.12 As noted in our March 2012 paper, compensation arrangements must be set out as described in terms and conditions only if they exist, as per Annex 1 of both the Directives. It is therefore not appropriate as part of this consultation

to consider how compensation schemes will work. This is an area however that the UR will be looking at in the future and we will engage with CCNI following their comments at that time.

2.10.13 Addressing concerns raised by Electric Ireland, we note that Condition 27 paragraph 6 on standard evergreen tariffs does apply to domestic customers only as noted in the March 2012 paper.

2.10.14 The UR notes that one respondent felt it is unnecessary and costly to provide a specific 'date of commencement' in the terms and conditions. We point out however that this is not a modification under these IME3 modifications and it is indeed an existing licence condition to which supply companies must comply.

2.10.15 In addressing Power NI's comments in relation to their understanding of an evergreen contract, we note that the licence conditions are clear. All suppliers must have, for any different case, class of case or area, one standard tariff for evergreen contracts. The examples outlined by Power NI comply with this condition however it is important to note that Condition 27 also requires that the actual pence per kWh is displayed in the original contract with the customer and also in any communications regarding price changes, whether it be due to the end of a fixed term period or not.

2.10.16 We note again PSL's comments that they feel the details of the tariff should not be included in the terms and conditions of the contract. It is important however to note that in order for customers to be fully informed about the contract they are entering in to, the price must be clearly identified. Additionally, we note that when there is a change in tariff, a supplier is required to notify the customer of the *proposed variation* in their terms and conditions in clear, transparent and easy to read and understandable language. They are not required to send out a full set of the terms and conditions.

2.10.17 In relation to CCNI's comments on deemed contracts, we would like to refer to section 2.10.12 of our March 2012 paper. We note PSL's comments in relation to the scope of Condition 2.1 paragraph 4(a) and note that they must

consider paragraphs 4(a) and (b) together. In summary, this condition states that the revenue derived from the supply of gas to deemed customers must not significantly exceed the Licensee's costs of supplying gas to those premises and exceed the costs of supplying gas by significantly more than the Licensee's other classes of customers.

### Cost Benefit Considerations

2.10.18 The UR does not believe the modifications outlined as points i) to iv) of paragraph 2.10.2 of this section will incur any additional costs. Indeed no respondents to the July 2011 or March 2012 consultations raised cost concerns in relation to this section of modifications. We acknowledge that the modification in paragraph 2.10.2 v), which requires notification to be given to consumers when they are coming to the end of their fixed term period, may result in some limited additional costs to suppliers. However, most supply companies already fulfil this requirement in their continued marketing of customers and any additional costs will be minimal and of no significant material value.

2.10.19 The provision of this information to customers helps to ensure they have a clear understanding of their energy contracts and will help them to fully engage in the competitive energy market. It will also help to ensure that they have a clear understanding of their terms and conditions and are fully aware of when any offers may be finishing and can therefore properly consider their future options.

## **2.11 ENERGY SUPPLY CONTRACTS: CONTRACT VARIATIONS**

### ***(Annex 1(b), Electricity & Gas)***

#### Policy Background

2.11.1 Annex 1(b) of each Directive requires that, at least, domestic customers are given adequate and direct 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).

#### UR Proposal in July 2011 Consultation

2.11.2 Whilst the licences are already substantially compliant, in order to fully implement the Directives, taking into account outcomes from the domestic market review, the UR proposed 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 and direct 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 21 days in advance.
- iii) A subsequent notice of the date a price variation actually takes effect is no longer required.

#### Responses to March 2012 Consultation

2.11.3 CCNI welcomed the final decision in relation to contract variations, in particular the requirement of a 21 day notification for a change in tariff. They noted this is in line with 3 week switching period and should effectively remove potential barriers to switching from a contractual point of view. Electric Ireland welcomes the decision but wishes to highlight that in complying there is a dependency on timely availability of all regulatory and SEM cost elements affecting customer bills. firmus noted the proposal and

raised no objection. Power NI noted their concerns that by not including current Condition 27(7)(b), this means a significant change. They outlined three options for meeting this condition for their annual tariff change: i) insert this information into bills in the current billing cycle so that all customers receive the information before the end of December, ii) change the tariff timetable to include an insert in bills so they reach customers before 1 October or iii) provide a dedicated mailing which they maintain would incur significant cost.

### UR Final Decision

2.11.4 The UR intends to introduce the modifications as proposed. The wording of Condition 27 (2.18 in gas) paragraph 8 has been modified to ensure customers are informed of their current and new tariff rates in pence per kWh following a change in their tariff.

Electricity Supply – Condition 27

Gas Supply – Condition 2.18

### Reasons and Effects

2.11.5 The Directives are clear that the existing rights of consumers need to be strengthened and guaranteed and that greater transparency needs to be provided, reinforcing consumer rights. With the continuing increase in energy costs, it is vital that consumers are accurately informed about their tariffs and therefore energy costs. The Directives explicitly require suppliers to directly inform customers of a change in their terms and conditions, which includes a change in tariff. The UR considers it vital therefore, in order to fulfil the requirement of the Directives, that suppliers directly inform consumers about any changes to their tariff. General statements in the press and media coverage are not adequate to meet this condition. It should be noted however that the consumer can agree for this information to be provided electronically

or in another form that is satisfactory to them – but only with their explicit agreement.

2.11.16 To ensure complete transparency, following the March 2012 consultation, the wording of Condition 27 (2.18 in gas) paragraph 8 has been modified to ensure customers are informed of their current and new tariff rates in pence per kWh following a change in their tariff. This will ensure they are provided with comparable, clear and comprehensive information in relation to the change in their tariff.

2.11.6 We would point Electric Ireland to section 2.11.6 of our March 2012 paper which addresses the issue of the availability of tariff information.

2.11.7 In order to comply with the new licence conditions, all suppliers must provide direct written notice to their customers of a variation to their terms and conditions (including price), at least 21 days in advance. Due to the structure of the tariff timetable, we feel that only the third option as noted by Power NI of a dedicated mailing will be compliant with this condition, and this can be sent electronically if agreed with the customer.

### Cost Benefit Considerations

2.11.8 This modification will require all electricity and gas suppliers to directly write to customers to inform them at least 21 days in advance of a change in their tariff. All gas suppliers currently write to customers in advance when there is a change in their tariff. Some electricity suppliers only write to pre-payment meter customers in advance to inform them of a change in their tariff, with their remaining customers being notified with their next bill. There will therefore be additional costs associated with this modification which clearly and explicitly requires all suppliers to write to customers clearly at least 21 days in advance of a change in their terms in conditions, which includes a change in tariff.

2.11.9 The Directives are clear that suppliers must give customers direct notice of an increase in their charges. Regardless therefore of when the information is

provided to customers, it must be in the form of a direct notice. The UR notes that in order to minimise costs, suppliers would be able to group their communications with customers in order to minimise the number of individual pieces of communication that are sent incurring a cost. For example, suppliers can align their billing schedule with the tariff timetable to allow notification of a tariff change to be sent with the most recent bill. This information can also be supplied electronically if such a method of communication is acceptable to the customer.

2.11.10 The provision of this information to customers helps to ensure they have a clear understanding of their tariffs and will help them to fully engage in the competitive energy market. It will help to ensure consumers can budget for their energy costs and help them to avoid debt. The benefits to customers of receiving this information in a timely manner significantly outweigh its costs.



## **2.12 ENERGY SUPPLY CONTRACTS: CHOICE OF PAYMENT METHODS**

### ***(Annex 1(d), Electricity & Gas)***

#### Policy Background

2.12.1 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.

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

#### UR Proposal in March 2012 Consultation

2.12.3 It was proposed that the existing provisions be modified to make clear that any difference 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).

#### Responses to March 2012 Consultation

2.12.4 CCNI noted their support for the modification and would welcome the opportunity to discuss with the UR the preferred reporting method for providing evidence to demonstrate cost reflectivity of payment methods.

#### UR Final Decision

2.12.5 The UR intends to introduce the modifications as proposed.

Electricity Supply – Condition 27

Gas Supply – Condition 2.18

## Reasons and Effects

2.12.6 The modifications are necessary to fully implement the requirements of the Directives. The effect of the modifications will be to ensure that any difference in the terms or conditions of contracts arising because of the payment option chosen by the customer is reflective of the costs to the supplier of providing the relevant payment method.

2.12.7 The UR will, as with all licence conditions, continue to monitor the market to ensure compliance with this condition to ensure that customers are not unduly discriminated against.

## Cost Benefit considerations

2.12.8 The UR does not believe the modifications outlined in this section will incur any additional costs. These modifications however will ensure that a customer is not over-charged depending on the choice of payment option that they chose and the costs will be wholly cost reflective. This will ensure no customer is discriminated against as a result of their individual choice of method of payment.

## **2.13 DISPUTE SETTLEMENT PROCEDURES**

### ***(Annex 1(f), Electricity & Gas)***

#### Policy Background

2.13.1 Annex 1(f) of each Directive notes that customers should benefit from transparent, simple and inexpensive procedures for dealing with their complaints. In particular, all consumers shall have a right to a good standard of service and complaint handling by their energy service provider.

#### UR Proposal in March 2012 Consultation

2.13.2 The UR proposed 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 their supplier's complaint handling procedures and of the role of the CCNI and 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 CCNI, and contact details for the CCNI and the supplier's complaint handling department, and the role of the UR with regard to billing disputes.

#### Responses to March 2012 Consultation

2.13.3 There were no responses to these proposals. Details in relation to the inclusion of this information on promotional materials is included in section 2.6 of this paper.

#### UR Final Decision

2.13.4 The UR intends to introduce the modifications as proposed.

Electricity Supply – Condition 33, Condition 38

Gas Supply – Condition 2.8, Condition 2.19

### Reasons and Effect

12.13.5 These modifications help to ensure all the requirements in relation to dispute settlement in the Directives are implemented. It also helps to align the gas and electricity sectors in relation to dispute settlement. These modifications will ensure that all customers will be fully informed as to their rights in relation to complaints they 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.

### Cost Benefit Considerations

2.13.6 The UR does not believe the modifications outlined in this section will incur any additional costs. These modifications will have a positive impact on customers, particularly vulnerable customers who may have been unaware of the protection available in relation to dispute settlement.

## **2.14 UNBUNDLING DISTRIBUTION AND SUPPLY: COMMUNICATIONS & BRANDING**

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

### Policy Background

2.14.1 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.

2.14.2 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 and hence its coverage in this chapter.

2.14.3 This is found in Article 26(3) in each Directive which requires 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.

### UR Proposal in March 2012 Consultation

2.14.4 In March the UR said that in order to implement Article 26(3) of the Directives it is appropriate to modify the separation condition in network licences in order to:

- 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.

2.14.5 In March it was proposed that the obligation would, 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 NIE and to PNGL<sup>15</sup> with immediate effect (i.e. once the modification is in effect); but as firmus has fewer than 100,000 connected customers, it will not apply to firmus until such time as its customer connections exceed that number.

2.14.6 The UR did not propose any modifications to the existing condition in NIE's licence - which incidentally will be included in the new separate electricity distribution licence to be granted to NIE in accordance with the implementing regulations. However, the provisions in (existing) paragraph 3E of Condition 12 of NIE's licence will be 'switched on' by way of issuing a direction to NIE under paragraph 3F.

2.14.7 In addition, the UR considered that it would be prudent to ensure that the respective related supply businesses of NIE, PNGL<sup>15</sup> and firmus, ensure that they act in a manner that is consistent with the branding separation obligation of their respective affiliated network business. It was proposed 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.

### Responses to March 2012 Consultation

2.14.8 firmus welcomed the clarification that this condition will apply to them only when they reach 100,000 customers connected by firmus. They also noted

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<sup>15</sup> At the time the March 2012 consultation was published and responses received, this obligation would have applied to PNGL, however the subsequent sale of PSL to Airtricity Gas Supply (NI) Ltd means that this obligation will no longer immediately affect PNGL. Refer to section 3.1.6 of this paper for further information.

the new conditions in relation to the independence of the compliance manager.

2.14.9 PSL maintained that it is wrong to place an obligation on them to act in a manner which is consistent with an arrangement (ie the Distribution company's compliance plan) to which it is not party and request this condition be removed.

#### UR final decision

2.14.10 The UR intends to introduce the modifications as proposed.

Electricity Supply – Conditions 45

Gas Supply – Condition 2.29

Electricity Distribution – Condition 12 (unchanged from existing licence)

Gas Distribution – firmus Condition 1.16, Condition 1.17, PNGL Condition 1.16, Condition 1.17

#### Reasons and Effects

2.14.11 The proposed modifications are necessary 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. These modifications will require that distribution companies ensure that their branding and communications do not cause such confusion and for their associated supply companies to act in a manner that is consistent with the network business obligations.

2.14.12 We refer PSL to section 2.14.18 of our March 2012 paper which addresses their comments in relation to their ability to comply with the distributors compliance plan.

#### Cost Benefit Considerations

2.14.13 The UR does not believe compliance with the proposed modifications will incur significant additional costs and can be met within the current allowances. Relevant distribution operators already have a business separation compliance plan and these requirements are an extension of that plan. They also already have a compliance manager in place and the requirement now is simply that this manager is to be independent and should therefore not incur significant additional cost. Suppliers are required to ensure that their behaviours do not conflict with the Distribution System Operator (DSO) compliance plan. This is not expected to incur any significant cost.

2.14.14 It is an explicit requirement of the Directives that DSO's 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. These modifications will help to fulfil the requirements of the Directives and minimise confusion for customers in the energy market.



## **2.15 FUEL MIX INFORMATION**

### ***(Article 3 (9), Electricity)***

#### Policy Background

2.15.1 The Electricity 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.

2.15.2 The requirement to provide environmental information on or with bills and in promotional material is not new. The second Electricity Directive<sup>16</sup> (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.

#### UR Proposal in March 2012 Consultation

2.15.3 At present, the requirement to provide fuel mix information is delivered through voluntary agreements with suppliers. The UR considered that in order to achieve full transposition of the Electricity 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.

#### Responses to March 2012 Consultation

2.15.4 There were no responses raised to these modifications in the March 2012 consultation.

#### UR Final Decision

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<sup>16</sup> Directive 2003/54/EC

2.15.5 The UR proposes to introduce the modifications as proposed.

Electricity Supply – Condition 41
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### Reasons and Effects

2.15.6 As noted above, the Directive requires that all electricity suppliers provide fuel mix information to their customers on or with bills. As noted it is therefore appropriate to formalise the current voluntary arrangements to ensure that all electricity suppliers will provide reliable and comparable information on bills and with promotional materials. It will require suppliers to provide the fuel mix information that is applicable for each relevant period on each bill and on promotional materials which are issued or sent to customers on behalf of the supplier. This will ensure that the quality of environmental information to customers is improved, as required by the Directive.

### Cost Benefit Considerations

2.15.7 The UR does not believe the modifications outlined in this section will incur additional costs as it can be sent with other materials such as promotional materials or bills. They will however ensure that consumers are provided with significant environmental information, as required by the Directive, allowing customers to make informed choices about their energy consumption.

## **2.16 RECORD KEEPING – WHOLESALE CONTRACTS**

***(Article 40, Electricity; Article 44, Gas)***

### Policy Background

2.16.1 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. Gas and Electricity supply licence holders are to maintain such records in accordance with the Directives.

### UR Proposal in March 2012 Consultation

2.16.3 The UR proposed a new licence condition to be included in all supply licences. The proposed condition recognised 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 European Commission.

### Responses to March 2012 Consultation

2.16.4 There were no responses raised to these modifications in the March 2012 consultation.

### UR Final Decision

2.16.5 The UR intends to introduce the modification as proposed.

Electricity Supply – Condition 42

Gas Supply – Condition 2.27

### Reasons and Effects

2.16.6 This is a direct requirement of the Directives, Article 44 in the Gas Directive and Article 40 in the Electricity Directive and is not open to interpretation.

## Cost Benefit considerations

2.16.7 The UR does not believe the modifications outlined in this section will incur additional costs. This is an explicit requirement of the Directive and will ensure that the UR has access to key information that will assist with market monitoring.

## **2.17 SECURITY DEPOSITS**

### Policy Background

2.17.1 Although this issue is not covered by a specific requirement of the Directives, the UR thinks it necessary to consider the use of security deposits as it falls within the general customer protection intent of the Directives.

### UR Proposal in March 2012 Consultation

2.17.2 The UR proposed to introduce a new Licence Condition which requires domestic suppliers to ensure that:

- i) Security deposits are not to be required where the customer is prepared to take a supply through a prepayment meter or where it is unreasonable in all circumstances to demand a security deposit.
- ii) Security deposits must not exceed the charges of the supply of electricity or gas likely to be applicable for an average three month period of supply, as calculated by reference to the consumption of electricity or gas reasonably expected at the relevant premises by the domestic customer.
- iii) Suppliers should repay the security deposit within 28 days where, in the previous 12 months, the domestic customer has paid all charges for the supply of electricity or gas demanded from him within 28 days of each written demand made; or as soon as reasonably practicable; and in any event within 1 month, where the Licensee has ceased to supply the domestic customer and the customer has paid all charges for the supply of electricity or gas demanded from him.

### Responses to March 2012 consultation

2.17.3 NEA noted their concern that security deposits could be used as a method of 'cherry picking' customers. They welcomed the condition that means security deposits are not to be requested from customers willing to take a prepayment meter. They feel this will go some way to avoid suppliers 'cherry picking' customers. Power NI noted that in the case of fraud (ie illegal abstraction),

even if a prepayment meter is installed, they wish to retain the option of taking a security deposit.

2.17.4 CCNI were disappointed that the use of security deposits has not been prohibited but acknowledged that the cap that is to be placed on security deposits and its refund within twelve months will potentially limit any distorting effect on competition. They asked the UR to monitor the impact of security deposits on switching, particularly amongst low income families, within the context of the Social Action Plan.

2.17.5 Electric Ireland seek confirmation that their interpretation of 'relevant premises' in relation to this average limit is correct. PSL feel the limit is too low. They note the winter usage in gas is significantly more than the average and exposure for suppliers is more than one quarter consumption.

#### UR Final Decision

2.17.6 The UR will implement the modifications as proposed.

Electricity Supply – Condition 27A
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Gas Supply – Condition 2.22
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#### Reasons and Effects

2.17.7 The overall aim of the Directives is to improve the level of protection afforded to consumers. Suppliers are obliged to offer terms to all domestic customers that make a valid request. This is in line with the Directives' requirements on universal service and switching. There is a potential concern that certain groups of vulnerable customers could be excluded from the competitive market if suppliers demand unreasonable security deposits, which then become a barrier to switching and universal service. A key consideration in relation to security deposits is suppliers' ability to reasonably protect themselves against potential bad debt. Balanced with this is the protection of domestic customers against unduly onerous security deposits and mitigating

the risk that security deposits could be used as an indirect method of 'cherry picking' customers. We believe that these modifications strike an important balance between the suppliers' ability to protect themselves against bad debt, as well as preventing the 'cherry picking' of customers and exclusion of customers from the competitive market.

2.17.8 We have considered Power NI's wish to retain the option of taking a security deposit in the case of fraud, even if a PPM is installed. We note however that this will not be permitted under these licence conditions. If a supplier discovers evidence of fraud, they should have in place procedures to help them recover any under payment in relation to their cost of supply. Suppliers should also have in place follow up actions to help minimise any reoccurrence of such fraud from that customer. We do not feel the ability to charge a security deposit in this case would either prevent the reoccurrence of such fraud or act as a deterrent of fraud as supplier procedures will be much more effective at dealing with such instances. Additionally, if it was permitted in some cases to allow the use of security deposits for some PPM cases, this could be open to exploitation by suppliers and could exclude vulnerable customers from the competitive market.

2.17.9 We note Electric Ireland's comment in relation to 'relevant premises' as per Condition 27A paragraph 2 of the licence and can confirm Electric Ireland's interpretation is correct.

2.17.10 We also note PSL's comment that they feel an average three month limit on security deposits is too low due to usage variances depending on the season. Although going some way to protecting suppliers from bad debt, a security deposit will not cover all the potential costs of debt a customer may incur at any time of the year. Suppliers are encouraged to have procedures in place to help ensure that their customers do not get into debt in the first place and are afforded a security deposit as additional protection in some instances. We take on board PSL's comments therefore in relation to the variance between gas bills at different times of the year but feel that a three month average is both fair and easy to understand and operate for the supplier and customer.

2.17.11 The UR will be consulting on our Social Action Plan later in 2012 and welcome CCNI and NEA's comments to this consultation in relation to these matters.

#### Cost Benefit Considerations

2.17.12 The UR does not believe the modifications outlined in this section will incur significant additional costs although there may be minimal administration costs associated with the timely repayment of deposits following a 12 month period of timely payments.

2.17.13 These modifications will ensure that customers are given some guarantee about the use, amount of and repayment terms of security deposits. It will provide customer confidence when taking on an energy contract and act against the introduction of unduly onerous deposit terms, especially for vulnerable customers.



## CHAPTER 3 GAS DISTRIBUTION SYSTEMS

### 3.1 INTRODUCTION

- 3.1.1 This chapter of the decision paper deals with the licence modifications that have been proposed to gas conveyance licences.
- 3.1.2 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 (**PNGL**), and (ii) firmus energy (Distribution) Limited (**firmus energy**).
- 3.1.3 Both licensees own and operate their respective gas distribution systems and are therefore distribution system operators (DSOs). In this respect each is a designated distribution system operator under the Second Gas Directive on market liberalisation in the energy sector and will continue to be designated as a distribution system operator under Article 24 of the Gas Directive.
- 3.1.4 When the March 2012 Consultation was published and responses received, PNGL and firmus energy were both part of vertically integrated undertakings which carried out, through its subsidiaries, both gas network and supply activities in Northern Ireland.
- 3.1.5 The vertically integrated undertaking of which firmus energy (Distribution) Limited was a part undertook both gas transmission and gas supply activities through BGE (UK) and firmus energy (Supply) Limited respectively. This continues to be the case for firmus energy (Distribution) Limited.
- 3.1.6 The vertically integrated undertaking of which PNGL was a part undertook gas supply activities through Phoenix Supply Limited. However, Airtricity Energy Supply (Northern Ireland) Ltd agreed to purchase the entire issued share capital of Phoenix Supply Limited. This became effective from close of business on 22nd June 2012. Phoenix Supply was subsequently renamed Airtricity Gas Supply (NI) Ltd and now trades under the Airtricity banner. Therefore, PNGL are no longer part of a vertically integrated company.
- 3.1.7 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.

- 3.1.8 Given the relative infancy of competition in the gas supply sector and the role of each of PNGL and firmus energy in the development of the gas market the UR considers that some of the measures required to ensure high levels of consumer protection (as required by the Gas Directive) should be implemented or facilitated through licence obligations on each of PNGL and firmus energy.
- 3.1.9 Throughout chapter 3 we have set out each of the particular areas in respect of which modifications to gas distribution licences are proposed. We have summarised the original modification proposal and the responses received during the consultation period. We have then provided the UR's decision and the reasons and effect of each decision.

## **3.2 NON-DISCRIMINATORY CONDUCT AND EFFECTIVE COMPETITION**

*(Article 3, Article 25(2), Annex 1)*

### Policy Background

- 3.2.1 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.
- 3.2.2 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.
- 3.2.3 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.

### UR Proposal in March 2012 Consultation

- 3.2.4 The UR proposed to strengthen the obligations relating to the manner in which PNGL and firmus energy conduct their businesses and to enhance the non-discrimination provisions.
- 3.2.5 The proposed modifications included:
- i. Adding 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. (PNGL Condition 2.7 and firmus Condition 2.6).
  - 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. (PNGL Condition 2.7 and firmus Condition 2.6).
  - 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 any related supply business in a more favourable manner. (Condition 1.24).

- iv. Some consequential amendments to the existing provisions relating to the conduct of distribution businesses and to the existing disclosure of information condition in PNGL's licence for the purposes of alignment and uniformity between PNGL and firmus energy. (Condition 1.6).
- v. Adding a requirement for the licensee to facilitate supplier transfers within 15 working days and to report to the UR on the supplier transfers. There is also a clause to allow the UR to direct the DSO to review and improve its practices and procedures to comply with this condition. The March 2012 consultation also proposed a change to the condition which allows the UR to consult with the DSO before setting the date for compliance. We also proposed adding a clause to this condition in the firmus energy licence which will mean that the condition only takes effect when the market opens to competition (Condition 1.23).
- vi. Adding a requirement for the licensee to facilitate the provision of information relating to customer consumption, to and between gas suppliers. In the March 2012 consultation we also proposed a minor amendment to change the timeframe for information provision from 5 days to 5 working days (Condition 1.25).

3.2.6 The above provisions were set out in Annex 4 of the March 2012 consultation. The UR considers that to comply with the Gas Directive, in some cases related obligations must be placed on the DSOs and on the Suppliers. See sections 2.3 and 2.4 of this paper for details of the relating licence conditions proposed for suppliers.

#### Responses to March 2012 Consultation

3.2.7 We received a number of responses to the March 2012 consultation in relation to the proposed modifications listed above.

3.2.8 firmus energy noted in their response that they understood the proposed modifications to Condition 2.6 for firmus and 2.7 for PNGL in relation to non-discriminatory conduct.

3.2.9 firmus energy also stated that they welcome the modification in Condition 2.6/2.7 which will prohibit licensees from providing statements about the state

of play in the competitive supply market or about the activities of competing suppliers without such statement having been approved by the UR.

3.2.10 In relation to proposed Condition 1.24, PNGL stated that it was inappropriate for the UR to propose modifications outside the remit of IME3 as there are always cost implications for consumers in delivering licence requirements.

3.2.11 PNGL stated that they have engaged in numerous discussions with the UR and have developed appropriate systems to facilitate competition in the Greater Belfast market, while ultimately meeting the needs of those operating in the market at the lowest cost to consumers. PNGL believe decisions made to facilitate competition in the Greater Belfast market should be mindful of the size of the market and therefore costly and time consuming processes must be avoided if an alternative solution can provide the same outcome and does not restrict, prevent or distort competition.

3.2.12 PNGL also stated that the GB Transporter licence standard special condition A33(3) requires the licensee to operate its transportation business in a way that does not restrict, prevent or distort competition as regards supply and shipping of gas. PNGL believe this wording is closer to that in Article 3 of the Directive and is also similar to Condition 2.7.1(b) of the PNGL Licence.

3.2.13 In their response firmus energy stated that they understood the proposed modifications in relation Non-Discriminatory Conduct as proposed in Conditions 1.24 and 1.6.

3.2.14 PNGL stated that the requirement in Condition 1.23 to ensure practices, procedures and systems facilitate switches within 15 working days mirrors the current timeframes within the PNGL Network Code and PNGL Systems, and therefore arguably they are already meeting the requirements of IME3.

3.2.15 PNGL noted that under the current PNGL Network Code, if a supplier submits a registration request that does not meet the criteria set out in the Code (ie. not a valid registration request), then the request is rejected and a new request must be submitted. PNGL therefore suggested that Condition 1.23

should be amended to clarify that the 15 working days will only apply on receipt of a valid registration request from a supplier.

3.2.16 In their response, NEA welcomed UR's work to date in constructing a transparent, customer-centric switching system. NEA believes an open & competitive energy market in NI must be advantageous to the domestic customer, especially those in fuel poverty. Establishing and providing a robust & transparent switching system is crucial for vulnerable customers across NI. The need to get the building blocks of a switching system right is further exacerbated by the infancy of competition in NI. NEA added that they were reassured to hear 3-week switching can already be facilitated. NEA welcomed the UR's statement that they foresee no direct costs with the proposals that could be passed to customers.

3.2.17 In their response PNGL stated that they believe paragraph 2 of Condition 1.23 goes beyond the requirements of IME3. PNGL see no basis for reporting requirements to be contained in the licence condition. PNGL added that the reporting requirements proposed by UR would add admin burden to PNGL and would require system changes with cost implications and no additional benefits. PNGL stated that the only information UR would require in order to monitor compliance with the 3 week switching is the number of switches "out of standard". PNGL also noted that under the PNGL Network Code, a supplier could choose to lengthen the switch timeframe by up to 3 months. PNGL stated that they will not report switches as "out of standard" when it is not due to any failure by PNGL to comply with the 15 working days.

3.2.18 In relation to the reporting requirements proposed in paragraph 2 of Condition 1.23, PNGL also stated that they have worked with the UR to agree reporting templates which reflect the maturity of competition. PNGL are unclear whether the reporting requirements proposed in Condition 1.23 will replace the current agreed switching reports and are unclear why changes are necessary given the time spent by PNGL and UR in developing the switch reporting templates to date. PNGL add that the reporting requirements in paragraph 2 allow no flexibility for UR and PNGL to develop more appropriate reporting templates as competition advances.

3.2.19 In their response, firmus energy noted the proposal for the additional clause in Condition 1.23 to state that this condition will only apply to firmus energy when their market opens to competition. firmus energy requested additional information prior to implementation to assist with their understanding of this.

3.2.20 In relation to proposed Condition 1.25, PNGL state that the meter reading requirement in gas falls on suppliers, not DSOs. Therefore the DSO cannot provide actual consumption data to suppliers as they do not hold record of customer meter reads. As the suppliers hold the meter reads, they are the only party in a position to provide appropriate consumption information to consumers. PNGL add that the only consumption data available to them for Non Daily Metered SMPs (Supply Meter Points) is the Annual Quantity (**AQ**). The AQ may not correspond to actual consumption and regardless PNGL have no obligation to maintain historic AQs. Introducing this condition to facilitate the transfer of AQ to suppliers would not provide the consumer with appropriate consumption data.

3.2.21 PNGL also added that through their systems, suppliers can currently access relevant details for each SMP. For Daily Metered customers, the information available includes the consumption data for the last 365 days.

3.2.22 PNGL noted that they were concerned with the 5 working day timeframe for provision of consumption data as they can only provide AQs for SMPs as listed on the asset register. They stated that if a supplier submits a SMP information request and PNGL can't locate the address they will have to undertake data validation which could involve supplier liaison and site visits to confirm details. PNGL state that this would be difficult to complete in 5 working days, particularly if there is no control over the quantity of requests that can be submitted.

3.2.23 PNGL stated that if Condition 1.25 is introduced, the UR must have robust processes in place to ensure gas suppliers comply with their obligation to obtain customer consent before accessing such data. This will ensure compliance with data protection legislation and ensure DSOs aren't exposed to data protection challenges for complying with licence requirements.

3.2.24 firmus energy stated in their response that they are comfortable with the 5 working day timeframe proposed in Condition 1.25.

### UR Final Decision

3.2.25 The UR intends to introduce Conditions 2.6 and 2.7 for firmus energy and PNGL respectively as originally proposed.

3.2.26 We also intend to implement Condition 1.24 and Condition 1.6 as originally proposed.

3.2.27 The UR proposes to introduce Condition 1.23 with some amendments in addition to the amendments outlined in the March 2012 consultation. Paragraph 1.23.1 will be amended so that the requirement will be to facilitate supplier transfers taking place within 15 working days of the receipt of a valid registration request. We also propose to simplify the reporting requirements under paragraph 1.23.2(c) so that the licensee will report on the number of supplier transfers which took more than 15 working days to complete.

3.2.28 We propose to introduce Condition 1.25 with an amendment from the proposal in the March 2012 consultation. We propose to amend the licence so that it will apply where the information is available to or held by the licensee.

PNGL Amended Condition 2.7 and firmus energy Amended Condition 2.6

New Condition 1.24 for PNGL and firmus energy

PNGL Amended Condition 1.6

New Condition 1.23 for PNGL and firmus energy

New Condition 1.25 for PNGL and firmus energy

### Reasons and Effects

3.2.29 The only responses received from the March 2012 consultation in relation to Condition 2.6 for firmus energy and 2.7 for PNGL, and Condition 1.6 for PNGL were supportive of the proposed conditions. Therefore the UR intends to



introduce these licence conditions as previously proposed with no further amendments.

3.2.30 In relation to proposed Condition 1.24, PNGL stated that it was inappropriate for the UR to propose this modification as it was outside the remit of IME3. The UR does not consider proposed Condition 1.24 to be outside the remit of IME3. Article 25(2) of the Directive prohibits a DSO from discriminating between system users or classes of system users, particularly in favour of its related undertakings. The UR therefore intends to introduce Condition 1.24 as previously proposed to comply with the Directive.

3.2.31 In their response, PNGL make a comparison to the GB Transporter licence standard special condition A33(3) stating that the wording in the GB licence is closer to that in Article 3 of the Directive. However, as stated above proposed Condition 1.24 is required under Article 25(2) of the Directive.

3.2.32 The UR would agree with PNGL that costly and time consuming processes should be avoided where an alternative solution can provide the same outcome and complies with licence requirements. The UR will continue to work with PNGL and other DSOs to discuss and assess potential process solutions prior to implementation.

3.2.33 In relation to the proposal in Condition 1.23 to facilitate switches within 15 working days, PNGL argue that they are already meeting the requirements of IME3. The UR does not disagree with this; however we consider it necessary to introduce this as a licence condition to ensure compliance with the Directive.

3.2.34 However, the UR accepts PNGL's suggestion that the wording in Condition 1.23 should be amended to clarify that the 15 working days will only apply on receipt of a valid registration request from a Supplier. The UR now proposes to amend this condition in line with PNGL's suggestion. The revised wording is shown in Annex 4 to this paper.

3.2.35 In their response PNGL stated that they see no basis for reporting requirements to be contained in the licence condition. PNGL added that the

only information UR would require in order to monitor compliance with the 3 week switching is the number of switches “out of standard”. PNGL also stated that they will not report switches as “out of standard” when it is due to supplier choice, rather than any failure by PNGL to comply with the 15 working days. The UR would refer to section 3.2.30 of the March 2012 paper where an explanation for reporting requirements to monitor compliance is given. We have carefully considered PNGL’s comments on the information that would be required to monitor compliance and we now propose to amend the condition to simplify the reporting requirements. As shown in Annex 4 to this paper, Condition 1.23 Paragraph 2(c) will now only require the DSO to report on the number of supplier transfers which took more than 15 working days to complete.

3.2.36 PNGL expressed concern in their response that the reporting requirements proposed in Condition 1.23 Paragraph 2 would not allow flexibility for UR and PNGL to develop more appropriate reporting templates as competition advances. The UR would point out that the reporting requirements proposed in Condition 1.23 will not replace the current agreed switching reports, and therefore the UR and PNGL can continue to develop additional switching reports which are applicable to the maturity of competition in the market.

3.2.37 firmus energy requested additional information on the proposal for the additional clause in Condition 1.23 to state that this condition will only apply to firmus energy when their market opens to competition. This additional clause will simply mean that firmus energy will only be required to meet the requirements of Condition 1.23 when their market opens to competition (in October 2012 for large I&C customers and April 2015 for small I&C and domestic customers). It would make no sense to require firmus energy to be able to facilitate 3 week switching and to report on switching before the market opens to competition.

3.2.38 The UR has carefully considered PNGL’s responses to the March 2012 consultation in relation to proposed Condition 1.25. The UR realises that the DSO will not always have the information available (ie. actual meter readings) to provide actual consumption information, therefore we now propose to

amend Condition 1.25 so that the Licensee is only required to provide information to a gas supplier where that information is available to or held by the Licensee. The newly amended condition is shown in Annex 4 to this paper. Section 2.4 of this paper details the licence conditions proposed for suppliers in relation to provision of actual consumption information.

3.2.39 firmus energy stated that they are comfortable with the 5 working day timeframe proposed in Condition 1.25, however PNGL are concerned that if they cannot find an SMP listed on their asset register then they will need to liaise with suppliers and possibly carry out site visits to confirm details which would be difficult to complete in 5 working days. The UR would consider that if such a situation should occur where an SMP or address provided by a supplier is not listed on the asset register; the DSO should act immediately to investigate and resolve and therefore the UR intends to introduce Condition 1.25 with the 5 working day timeframe.

3.2.40 Annex 4 to this paper sets out the conditions as proposed above. See PNGL Amended Condition 2.7; firmus Amended Condition 2.6; New Condition 1.24; PNGL Amended Condition 1.6; New Condition 1.23; and New Condition 1.25.

### Cost Benefit Considerations

3.2.41 The UR does not envisage any substantial costs being incurred by the DSO to comply with the proposed conditions. There may be some initial costs required to ensure systems are capable of providing consumption information where requested and where the information is available, and to ensure reporting requirements in relation to supplier transfers can be met. The costs for this should be immaterial and would be covered by the existing allowance. DSO's can currently facilitate supplier transfers within 15 working days; therefore there will be no cost implications to comply with this proposed licence condition.

3.2.42 Having these provisions as licence conditions will give greater assurance to customers that suppliers and distribution companies behave in a non-discriminatory manner.

### **3.3 DESIGNATION OF DISTRIBUTION SYSTEM OPERATORS**

#### ***(Article 24)***

#### Policy Background

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

#### UR Proposal in March 2012 Consultation

3.3.2 The UR proposed that the current position would continue with each of PNGL and firmus energy continuing to be designated as a distribution system operator in accordance with Article 24 of the Gas Directive. However, minor changes were proposed to be made to the relevant licence conditions so as to refer to the current (Third) Directive.

#### Responses to March 2012 Consultation

3.3.3 No responses were received on designation of distribution system operators.

#### UR Final Decision

3.3.4 The UR intends to make minor amendments to the licences to make reference to the Third Directive.

PNGL Amended Condition 2.14

firmus energy Amended Condition 2.14, 2.15 and 3.3

#### Reasons and Effects

3.3.5 As stated in the March 2012 consultation paper, 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 Directive.

3.3.6 Condition 2.14 will be amended in the PNGL licence as detailed in Annex 4 to this decision paper.

3.3.7 Condition 2.15 will be amended in the firmus energy licence. We also intend to amend the numbering of this condition from 2.15 to 2.14 to align it with the PNGL condition. All other references to condition 2.15 throughout the firmus energy licence will be amended to 2.14 to reflect the re-numbering.

3.3.8 Finally, we intend to delete Condition 3.3 from the firmus energy licence as this is a duplication of the current licence Condition 2.15. The amended conditions are detailed in Annex 4 to this decision paper (see PNGL Condition 2.14; and firmus energy Conditions 2.14, 2.15 and 3.3).

#### Cost Benefit Considerations

3.3.9 Amending the licences to refer to the current (Third) Directive will have no cost impact.

## **3.4 UNBUNDLING OF DISTRIBUTION SYSTEM OPERATORS**

*(Article 26, Article 27)*

### Policy Background

- 3.4.1 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 Directive.
- 3.4.2 Similarly, both the Second and Third 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.
- 3.4.3 There is however one particular new requirement in the Third Directive concerning branding. This is found in Article 26(3) 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.
- 3.4.4 At the time the March 2012 consultation was published and responses received, both PNGL and firmus energy were distribution system operators that were part of a vertically integrated undertaking. As noted in section 3.1.6 of this paper, PNGL is no longer part of a vertically integrated undertaking.
- 3.4.5 The vertically integrated undertaking of which firmus energy (Distribution) Limited is a part undertakes both gas transmission and gas supply activities through BGE (UK) and firmus energy (Supply) Limited respectively.

### UR Proposal in March 2012 Consultation

- 3.4.6 The PNGL licence already included 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 PNGL 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. However, the business separation obligations apply only if there is also a gas supply business being undertaken within the group.

- 3.4.7 The firmus energy licence did not contain any such provisions. This is because Northern Ireland took 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.
- 3.4.8 The UR therefore proposed licence modifications arising from the updated unbundling provisions in the Third Gas Directive to amend PNGL's licence and to include such provisions in the firmus energy licence.
- 3.4.9 The following modifications were proposed to the existing conditions in PNGL'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. Placing an obligation on the company to ensure that any brand used by it, or any communications which refers to its brand and are issued to customers do not create confusion with regard to the separate identities of the network and related supply businesses.
  - iii. Providing for the business separation compliance plan to set out how the licensee will meet the obligation.
  - iv. Extending the circumstances in which the UR can require the licensee to amend its compliance plan.
  - v. Requiring the appointed compliance officer to be an independent person.
- 3.4.10 The consultation also proposed to include the conditions, modified as above, in firmus energy's licence. However, the conditions in firmus energy's licence

would not apply until there are at least 100,000 customers connected to the distribution system.

3.4.11 The above provisions were set out in Annex 4 of the March 2012 consultation. See PNGL Amended Conditions 1.16 and 1.17, and firmus New Conditions 1.16 and 1.17.

3.4.12 In addition, the UR considered that the related supply businesses of any vertically integrated distribution business would be required to act in a manner that is consistent with the branding separation obligation of their respective network business. Full details of the conditions proposed to be included in supply licences are set out in section 2.14 of this paper.

#### Responses to March 2012 Consultation

3.4.13 In their response, PNGL stated that they appreciated the amendment to condition 1.16.5(d)(v) which provided clarification on access to the services of persons in the distribution company. PNGL consider that this amendment may provide some comfort for DSOs. However PNGL continue to believe that paragraph 1.16.5(d)(v) is wider than the requirements of the directive and refer to their response to the July 2011 consultation.

3.4.14 firmus energy welcomed clarification that conditions 1.16 and 1.17 will not apply to firmus until 100,000 connections is reached.

#### UR Final Decision

3.4.15 The UR intends to implement condition 1.16 and 1.17 as outlined in the March 2012 consultation.

<p>PNGL Amended Conditions 1.16 and 1.17</p> <p>firmus energy New Conditions 1.16 and 1.17</p>
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#### Reasons and Effects

3.4.16 PNGL stated that they believe that Condition 1.16, Paragraph 5(d)(v) is wider than the requirements of the Directive and refer to their response to the July



2011 consultation. As outlined in the March 2012 consultation paper, the UR considers that the proposed condition is within the scope of the Directive. Article 26(2) of the Directive specifies that as a minimum, persons responsible for the management of the DSO cannot participate in company structures of integrated undertakings, and appropriate measures must be taken to ensure that the professional interests of persons responsible for management of the DSO are taken into account and ensure they are capable of acting independently. The Directive also requires that a vertically integrated DSO must be independent in terms of its organisation and decision making from the other activities not related to distribution. The Directive provides for the minimum criteria that needs to apply but by its very nature by referring to minimum criteria the Directive recognises that member states may include additional provisions which provide for the independence of the distribution system operator. The provisions proposed in Condition 1.16.5(d)(v) are therefore not beyond the scope of the Directive.

#### Cost Benefit Considerations

3.4.17 The UR does not believe compliance with the proposed modifications will incur significant additional costs and can therefore be met within the current allowances. Relevant DSOs will already have a business separation compliance plan and the proposed requirements are simply an extension of that plan. They also already have a compliance manager in place but the amended condition will now require this manager to be independent. This should not incur significant additional cost.

3.4.18 The proposed conditions are required under the Directive and will should result in a positive impact for consumers and for competition in the gas industry through minimising customer confusion.

### **3.5 CONSUMER PROTECTION: MARKETING ACTIVITIES OF GAS DISTRIBUTORS**

*(Article 3, Annex 1)*

#### Policy Background

- 3.5.1 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 Gas Directive provides that customers shall be protected against unfair or misleading selling methods.
- 3.5.2 The UR acknowledges that because gas suppliers are at the forefront of consumer contact, in the main measures to achieve high levels of consumer protection will need to apply to gas suppliers.
- 3.5.3 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 contact will be with the gas distributor.
- 3.5.4 The UR therefore considers it appropriate and necessary to regulate the marketing activities of gas distribution companies.

#### UR Proposal in March 2012 Consultation

- 3.5.5 The UR proposed to introduce a new licence condition which places certain obligations on distributors with regard to marketing activities.
- 3.5.6 The proposed licence condition included:
- (i) A requirement for gas distributors to jointly prepare a code of practice (Distribution Marketing Code (DMC)) for approval by UR.
  - (ii) A requirement for gas distributors to comply with the DMC.

- (iii) Setting 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) Specifying 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) Providing for the DMC to be reviewed and revised upon the request of the UR.

3.5.7 The proposed condition was set out in Annex 4 of the March 2012 consultation (see Condition 2.7A).

#### Responses to March 2012 Consultation

3.5.8 firmus energy noted in their response that they welcomed the introduction of proposed licence Condition 2.7A.

#### UR Final Decision

3.5.9 The UR intends to introduce the modification as originally proposed.

New Condition 2.7A for PNGL and firmus energy
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#### Reasons and Effects

3.5.13 Only one response was received in relation to proposed Condition 2.7A and it was in favour of the introduction of this condition. The UR therefore intends to now introduce this condition as previously proposed.

#### Cost Benefit Considerations

3.5.14 The UR considers that the costs involved in ensuring compliance with the proposed condition will be insignificant. The DSOs will need to allocate some management time to draw up the code of practice and to work with the UR and other DSO when doing so. However, implementing the licence condition proposed will ensure that customers are protected against unfair or

misleading marketing practices. This is especially important for new customers connecting to the natural gas network who will be dealing directly with the DSO throughout the sales and connection process.

## **3.6 COMPLAINT HANDLING PROCEDURES**

*(Article 3(3), Annex 1)*

### Policy Background

- 3.6.1 Under paragraph 1(f) of Annex 1, the Gas Directive provides that consumers should benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Article 3(3) also refers to high levels of consumer protection with respect to dispute settlement mechanisms.
- 3.6.2 Formal dispute settlement mechanisms for consumers are provided for within the statutory and regulatory framework. Gas suppliers are also required under licence conditions to establish and operate effective complaints handling procedures.
- 3.6.3 However, as noted previously, 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.

### UR Proposal in March 2012 Consultation

- 3.6.4 The UR proposed a new condition for gas distribution licences which would require the distributor to prepare a Code of Practice setting out its arrangements for establishing and operating a complaints handling procedure.
- 3.6.5 The proposed condition was set out in Annex 4 of the March 2012 consultation (see Condition 2.8A).

### Responses to March 2012 Consultation

- 3.6.6 In their response, CCNI welcomed the proposals under Condition 2.8A to require DSOs to produce a Code of Practice for complaints handling procedures. CCNI offer their assistance and expertise in drafting the required documents.

3.6.7 firmus energy noted in their response that DSOs will need to consider the Guaranteed Service Standards when composing or reviewing the complaints handling procedures.

#### UR Final Decision

3.6.8 The UR intends to introduce the modification as originally proposed.

New Condition 2.8A for PNGL and firmus energy
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#### Reasons and Effects

3.6.9 The only responses received in relation to proposed Condition 2.8A were positive and therefore the UR now intends to introduce this condition as originally proposed.

#### Cost Benefit Considerations

3.6.10 The DSOs already have complaint processes in place, therefore the cost of producing a Code of Practice on complaints handling will be minimal. There will be some time required to work with the UR to produce and finalise the Code of Practice but the cost implications of this time would be immaterial and would be covered under the existing cost allowances. However ensuring these provisions are underpinned by licence conditions will give customers added protection.

### **3.7 CUSTOMER INFORMATION: TRANSPARENCY OF INFORMATION**

***(Article 3(3), Annex 1)***

#### Policy Background

3.7.1 One of the key aims of the Gas Directive is to provide greater transparency relating to information that is given to consumers. Article 3(3) refers in particular to transparency regarding general information, and Annex 1(c) refers to customers' rights to receive transparent information in respect of access to and use of gas services.

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

#### UR Proposal in March 2012 Consultation

3.7.3 The UR proposed a new licence condition for gas distribution licensees which would require them to prepare a Customer Information Code (CIC), for the CIC to be approved by the UR and for licensees to comply with the CIC. In the first consultation dated July 2011, it was proposed that the DSOs would need to prepare a joint CIC, however in the March 2012 consultation we amended our proposals so that each DSO would produce their own CIC, but they would have to ensure the content and format of their CIC would be comparable to that of other gas distributors.

3.7.4 The proposed condition also included:

- i. Setting out the relevant objectives of the CIC.
- ii. Specifying certain matters which need to be catered for by the CIC.
- iii. Providing for the review and revision of the CIC in specified circumstances.

3.7.5 The proposed condition was set out in Annex 4 of the March 2012 consultation (see Condition 2.7A).

## Responses to March 2012 Consultation

3.7.6 Both PNGL and firmus energy welcomed the amendment to remove the requirement for a joint CIC.

## UR Final Decision

3.7.7 The UR intends to introduce Condition 2.9A as proposed in the March 2012 consultation.

New Condition 2.9A for PNGL and firmus energy
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## Reasons and Effects

3.7.8 As both PNGL and firmus energy welcomed the amendments to this licence condition which we proposed in the March 2012 consultation and did not make any further comment, we now propose to introduce the licence condition.

## Cost Benefit Considerations

3.7.9 The cost implications for DSOs to comply with the proposed condition will be minimal and can be absorbed in the existing allowances. By their own admission in the consultation responses, the distribution system operators already make most of the required information available to customers; therefore minimal effort should be required to produce the CIC. Having these provisions as licence conditions will give customers added protection by ensuring information is easily accessible.

**Annex 1-4 Attached Separately**