IMPLEMENTATION OF THE EU THIRD INTERNAL ENERGY PACKAGE

Notification of proposed final decisions and accompanying licence modifications

MARCH 2012

CONTENTS

ACRONYMS and GLOSSARY

Authority	Utility Regulator
CCNI	Consumer Council for Northern Ireland
DETI	Department 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
SEM	Single Electricity Market
SMP	Supply Meter Point
SMPN	Supply Meter Point Number
SoLR	Supplier of Last Resort
the 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.
Third Energy Package	The Third European Package of Directives on market liberalisation in the energy sector.
UR	Utility Regulator

CHAPTER 1 INTRODUCTION

Background

1.1 During 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 forming 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 Amongst other things, the Regulations give the Utility Regulator (the "UR") the *vires* to give effect to certain requirements of the Directives. The UR has therefore sought to realise the Regulations through licence modifications and new licence conditions, as necessary.

1.4 In July 2011, the UR published a consultation paper which aimed to 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 is 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 our 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 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 according to the unique circumstances of their markets and taking into account any specific problems that are currently evident.

1.10 In light of the significant body of research considered, and the information received during the consultation process, the UR is now proposing the licence modifications necessary to deliver the requirements of the Directives for ensuring high levels of consumer protection for Northern Ireland consumers.

1.11 In preparing this final proposed set of implementing licence modifications, we have given due consideration to the responses received to the July 2011 consultation, including where they relate 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 minimum cost. [Respondents should note that any further comments on the costs or benefits of the proposals should be made in accordance with section 1.19 of this paper. Respondents should also note that comments on costs made in response to this paper may be considered as part of any relevant future price control processes, but in no way can be assumed to create any expectation of cost allowances in those normal regulatory processes. Thus decisions in relation to this paper will not prejudice the price control process.]

Directive issue coverage in this consultation

1.12 This paper is divided into sections to reflect the various areas of change proposals – Retail and Consumer Issues; and Gas Distribution. Drafts of the proposed 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.

1.13 As noted in the consultation paper, these proposals 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.

1.14 Additionally, the two licence modifications consulted on for gas transmission in the July 2011 consultation, together with the transmission unbundling modifications, will be dealt with later in the year.

Equality considerations

1.15 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.

1.16 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.

1.17 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.

1.18 Having considered the responses and completed an Equality Impact screening, 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.

How to Respond

1.19 Representations regarding the proposals in this paper should be forwarded to reach the UR on or before 5pm on 4 May 2012 to:

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

1.20 The UR will duly consider all representations received on or before 4 May 2012. Please note the UR is unable to consider any representations received after this date.

1.21 The UR previously consulted on the proposed modifications for 14 weeks last summer. Please note this is not a statutory consultation as the modifications are being made pursuant to the implementation of a European Directive and in particular, under section 90 and 91 of the Gas and Electricity (Internal Markets) Regulations (NI) 2011. This additional 5 week consultation is in keeping with the UR's policy on transparency.

1.22 Subject to representations received, we currently intend to seek the Department of Enterprise Trade and Investment (the **Department**)'s approval for the final proposed modifications during June 2012.

1.23 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. However in all cases we will wish to see clear and timely implementation plans put in place by all industry participants.

1.24 Your response to this consultation may be made public by the UR. If you do not wish your response or name made public, please state this clearly by marking the response as confidential. Any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

1.25 Information provided in response to this consultation, including personal information may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.

1.26 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.

1.27 This document is available in accessible formats. Please contact Mary Jones on 02890311575 or [mary.jones@uregni.gov.uk] to request this.

CHAPTER 2 RETAIL AND CONSUMER PROTECTION ISSUES

Introduction

2.1 This chapter of the UR's final proposals paper deals primarily with the range of customer focused Retail and Customer Protection measures that we deem as 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 distribution licences and supply licences. Where this happens we will cross reference in this chapter to the gas distribution systems chapter. This paper does not include a separate electricity distribution chapter 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 jointly with supply licences, are dealt with in this chapter.

2.1.2 As a general introduction to our proposed 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 protecting especially vulnerable customers; and the importance of ensuring customers' supply of energy is given at "*reasonable easily and clearly comparable, transparent and non-discriminatory prices*"[1]. 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:

[1] 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 proposed 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, 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 28 October 2010 and the responses received[2].

iii. Published notes on the interpretation of the Third Energy Package[3].

iv. The UR's Social Action Plan consultation paper published 5 Jan 2009 and the responses to that consultation[4].

v. The research report on "Helping customers to avoid debt and manage their way out of debt" published by the UR in June 2010[5].

vi. Ofgem's "Retail Market Review, Findings and Initial Proposals" published on 21 March 2011[6].

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[7].

[2] http://www.detini.gov.uk/consultation_on_the_implementation_of_the_eu_third_internal_energy_package_25_october_2010

[3] 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

[4] http://www.uregni.gov.uk/uploads/publications/2009-08-11_SAP_Decision_Paper_2009-2012.pdf

[5] http://www.uregni.gov.uk/publications/view/helping_customers_avoid_manage_debt/

[6] http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=1&refer=Markets/RetMkts/rmr

[7] http://www.uregni.gov.uk/news/view/consumer_research_report_on_electricity_supply_companies_published/

viii. A research report on the "Views and Experiences of Electricity and Gas Customers" published by the UR on 17 May 2011[8].

ix. The UR's six month review of the opening of the NI domestic electricity market (work programme published 21 February 2011[9]), findings published at the beginning of July 2011. As the review identifies immediate concerns for customers, it is our view that they need to be reflected in the customer protection provisions under the Third Energy Package.

x. Responses to the Utility Regulators IME3 consultation published in July 2011[10].

xi. Points made by stakeholders at IME3 workshops held by the Utility Regulator in September 2011 and January 2012.

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

[8] http://www.uregni.gov.uk/publications/views_and_experiences_of_electricity_and_gas_customers_in_northern_ireland/
[9] http:// http://www.uregni.gov.uk/uploads/publications/040711_Domestic_Mkt_Opening_6_month_Review_-_Findings_for_publication_v0_2.pdf
[10] 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 at least every household customer irrespective of their geographical location should be able, so far as is reasonably practicable in all the circumstances of the case for their premises, to be connected to the electricity network, as a last resort, to receive an electricity supply on terms that meet the universal service standard, i.e. reasonable, transparent, non-discriminatory etc.

UR Proposal in July 2011 Consultation

2.2.3 The Department consulted on this issue 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 does not propose to introduce or amend a licence condition which would have the effect of extending the universal service standard to small enterprises.

Responses

2.2.5 Of the respondents who answered this question, all were in favour of the position stated by the Utility Regulator in relation to universal service.

2.2.6 On related points, Power NI noted that they feel Condition 14 of their licence may restrict competition, for example if an energy brokering scheme was introduced.

2.2.7 Phoenix Supply Limited noted there is no Supplier of Last Resort for gas consumers.

UR Proposed Final Decision

2.2.8 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

2.2.9 The UR notes that Condition 14 operates when Power NI is in a dominant market position and is needed to protect customers; its purpose is to help promote rather than prohibit competition whilst also protecting customers from potentially dominant behaviour, and we do not propose to remove it within the scope of this consultation.

2.2.10 PSL noted that there is currently no Supplier of Last Resort arrangement in gas. The UR points out however that as per the Gas (Supplier of Last Resort) Regulations (Northern Ireland) 2009, in the event of a gas supplier failing in the market, the UR has the authority to appoint one or more of the remaining suppliers as the supplier(s) of last resort.

Cost Benefit Considerations

2.2.11 No additional costs or benefits are relevant as there are no proposed changes to Universal Service.

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 all about ease of customer switching. 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 July 2011 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 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 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

2.3.5 The majority of respondents were wholly supportive of the modifications as proposed.

2.3.6 No objections were raised to the proposal to modify contracts to have a ten day cooling off period, although CCNI suggested this period could be contained within the three week switching period. This suggestion was also raised at the stakeholder meeting held in January 2012. CCNI also noted that they believed it was appropriate for the three week switching requirement to form part of the Guaranteed Service Standards for both supply and distribution companies, resulting in financial payments being paid to consumers who have not been switched in the three week window.

2.3.7 Some suppliers noted that metering issues or other problems outside of their control could cause delays in the switching process which would result in their inability to meet the conditions as proposed.

2.3.8 One respondent questioned the practicality and reasons for the reporting requirements proposed in the supplier and distributor licences, noting that it also may not be possible to alert the UR to potential problems in the proposed timeframe. It was also suggested that reporting requirements should lie outside the licence.

2.3.9 The same respondent disagreed with the proposal that the UR should set the date for procedures to be improved. The respondent felt that this date should be set in conjunction with the DSO.

2.3.10 NIE noted that when a supplier lodges a valid objection for a switch, which must be submitted by the old supplier within two days of registration receipt by the distributor, it will result in an automatic registration cancellation. They also noted that where an objection is an erroneous transfer, the objection can be submitted up to 100 business days following completion of the change of supplier and if valid and accepted by the new supplier, will result in the reversal of the change of supplier, effective from the date of the erroneous change of supplier. This means therefore that the proposed paragraph 3 of new condition 1.23 (gas distribution) and new condition 44 (electricity distribution) is unnecessary.

UR Proposed Final Decision

2.3.11 It is now proposed to introduce the modifications but with some minor amendments from those modifications originally consulted upon. There will be a change which will allow the UR to consult with the DSO before setting the date for compliance and paragraph 3 will be removed from condition 1.23. A clause will also be added to this condition in the firmus energy licence which will mean that the condition only takes effect when the market opens to competition. (For further information on gas distribution specific changes, see chapter 3.2).

Electricity Supply – Conditions 27, Condition 43
Gas Supply – Condition 2.6, Condition 2.18
Electricity Distribution – Condition 44 (Renumbered from Condition A)
Gas Distribution – firmus Condition 1.23, PNGL Condition 1.23

Reasons and Effects

2.3.12 Each Directive is explicit in its requirement to ensure that all gas/electricity consumers can 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 proposals directly reflect the requirements of the Directives and are in the best interests of consumers.

2.3.13 As noted in the consultation paper, 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.

2.3.14 Having considered CCNI's comments, the UR considers it appropriate that the 10 day cooling off period should sit outside the three week window. Neither suppliers nor distributors alike can be certain of the customers' final decision to switch until this cooling off period has ended. The existence of a cooling off period ensures consumers have the ability to change their minds without consequence. It is important therefore that consumers are not switched before the cooling off period has lapsed. This issue was discussed during the January 2012 meeting where it was highlighted that it would be inappropriate to begin the switching process until the 10 day cooling off period has ended. In addition, under the switching processes it is felt that in the majority of cases, the switching process should be completed well within the 3 week window (sometimes in a matter of days). If the switching process commenced within the 10 day cooling off period, it is highly possible that the switch would be completed before the customer was able to change their mind. Additionally, extra costs could be incurred if the switching process was started within the ten day period and the switch then had to be reversed because the customer cancelled their switch request. The new processes adopted should ensure that all customers are able to switch supplier promptly, while also protecting the customer's right to change their mind.

2.3.15 The UR acknowledges the proposal to place the three week switching requirement in the Guaranteed Service Standards (GSS) by CCNI. This consultation however is in respect of licence modifications only, it is therefore

not appropriate to make decisions in relation to GSS in the context of this consultation. However the GSS is reviewed by the UR regularly and we will take this comment into consideration at that stage. The UR highlighted in our July 2011 consultation paper, and as reflected in a number of consultation responses, that there are a number of factors which could prevent the switch of a customer within three weeks. It is recognised that many of these factors may be outside the control of one particular actor in the process. The UR considers it appropriate to have a period of observation on switching processes and procedures before making any further proposals on whether they should or should not be included in the GSS.

2.3.16 One respondent felt that the condition to inform the UR of potential problems in meeting the three week switching timeframe would not be possible to meet. The UR carefully considered the point made by this respondent and has decided not to change our original proposal. We consider that it is reasonable to expect licensees to inform the Regulator 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 be possible but through no fault of one particular actor 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 de designed to enable three week switching. The modifications proposed ensure such ability. It is also reasonable that the licensee should notify the UR if a particular event such as a large increase in the number of switches means that the processes may no longer be able to cope. The UR could 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.

2.3.17 The licence condition relating to supply contracts, which ensures that a supply begins no later than 15 working days after the relevant date, already contains an exception for instances which are beyond the control of the

supplier. This should help reassure suppliers, particularly those who noted in their response that factors outside of their control may affect the three week switching process.

2.3.18 The UR has considered the comment by one respondent that reporting requirements should be removed and should sit outside the licence. The UR notes that it is a long established principle that effective implementation of EU Directives must include systems to adequately monitor and ensure compliance. Therefore the UR considers that this reporting requirement is proportionate and necessary for full implementation. One respondent was also concerned that the date specified by the UR in any direction may not necessarily be one that was achievable. Given the concern expressed we have therefore decided to amend the proposed condition so that there is an opportunity for the UR to consult with the DSO about a reasonable and achievable date prior to setting the date for compliance.

2.3.19 Having considered NIE's comments that paragraph 3 of Condition A (now Condition 44 (electricity) and 1.23 (gas)) is unnecessary, and having noted that the objection timeframe and objection withdrawal timeframe are both included in the 3 week switch period for both Gas Distributors in N.I., the Utility Regulator proposes to remove paragraph 3. We also intend to include an additional paragraph to Condition 1.23 for firmus energy. This addition will mean that the condition will only apply to firmus energy when the ten towns market opens to competition.

2.3.20 During the consultation window the UR considered the need to make some changes to the industry wide market rules, processes and procedures, for example by way of modification to the Market Registration Code (MRC) in electricity. No immediate requirements were identified by industry participants at the January meeting. However, NIE noted that it is currently undertaking a review of the Market Registration Code and is consulting with the UR and industry on the changes that may be required. (This consultation has been publicly consulted on for a four week period from 20 February 2012. It should be noted however that the current processes and procedures are satisfactory

to meet the three week switching requirement). Post our modifications, in relation to both gas and electricity sectors, the UR will continue to work with market participants as and when necessary in relation to any documents or rules which sit under the licences to ensure effective Directive detailed implementation.

Cost Benefit Considerations

2.3.21 The modifications proposed require system changes for suppliers and network operators. The UR believes however that in order to meet the requirements of these licence modifications, suppliers are only required to make minor, internal changes to their processes which will not incur significant cost and can be met under current allowances. Network operators will also have to ensure their systems can comply with these licence conditions. The current gas switching systems already facilitate a change of supplier within three weeks. The Enduring solution for electricity will be in place from May 2012, with the project delivered irrespective of these IME3 modifications and are therefore not a direct cost associated with these proposals.

2.3.22 The introduction of three week switching is a mandatory Directive requirement and not only allows customers to switch freely in a clear and understandable timeframe, it 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, and to 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 they 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 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 July 2011 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 electricity 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 so it can be provided either by traditional paper or via electronic means for example via e-mail.

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.

<u>Responses</u>

2.4.8 A number of comments were received on the proposed requirement to provide customers with consumption data on at least an annual basis. NEA and CCNI were supportive of the proposal. But some questions were raised

querying if the relevant information would be better supplied by the distribution company. Two respondents felt the need to send PAYG customers such proposed information was unnecessary as they can obtain their consumption data from their meter. Power NI noted that they supply consumption information on quarterly bills so an annual statement is unnecessary.

2.4.9 A number of respondents raised concerns about the need to maintain for at least three years records of 'reasonable endeavours' they have used to obtain actual meter readings. Clarification was sought on what the term 'reasonable endeavours' meant. This was also raised at the meeting held by the UR in January 2012.

2.4.10 PNGL noted their objection to the requirement to provide information to a gas supplier within five days following the receipt of a Customer Information request from that supplier.

2.4.11 A number of concerns were raised in relation to the provision of consumption data between suppliers on request, Power NI noted customers can request information from NIE and share this with suppliers and therefore saw no need to change this. PSL noted that NI regulations on consumption data already meet the requirements of Directive.

2.4.12 firmus noted the proposed modification to require suppliers to send a final bill to customers within six weeks of the date they stop supplying them could be reduced to 4 weeks.

2.4.13 Electric Ireland noted that bill format should be a decision of the supplier but welcome input from interested parties. CCNI noted the unit rate should be expressed in the same unit that is used by the meter as this will allow customers to compare meter reads directly with their bill. Airtricity said that it is important to ensure that bills do not turn into major publishing efforts with little space left in which to inform customers of their actual consumption.

UR Proposed Final Decision

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

2.4.15 In addition the UR recognises that in electricity, meter reading services are provided by NIE on the basis of a common services agreement for all active suppliers. Therefore in recognition of the fact that electricity suppliers will rely on the electricity distribution company to meet their obligation, we propose to introduce a back to back obligation in the electricity distribution licence for the distribution company to keep records of reasonable endeavours to read the meter.

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

2.4.16 As noted in our July 2011 consultation, each Directive is clear that all customers should be provided with relevant information, often enough to regulate and be informed of their consumption. The Directives do not differentiate between the types or payment methods of customers. It is therefore necessary that all customers receive this information, including PAYG customers, regardless of the functionality of their meters.

2.4.17 As noted in the introduction to the Retail section of this paper, the UR considered a number of sources of information in 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". The Directives' specific requirement for the availability of consumption data to all 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 to be provided at least annually and should therefore not be an onerous burden to suppliers. If suppliers choose to exceed the requirement to send the information at least annually, and send it to particular groups on a more frequent basis (for example with quarterly bills), that is a commercial choice to their own discretion. 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.

2.4.18 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 that the existing condition is being met. 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 proposes that it is also appropriate to modify NIE 's licence so that distribution and supply obligations work in tandem to ensure reasonable endeavours are being made to read meters often enough to comply with Directive requirements.

2.4.19 The UR has considered PNGL's point that it may not be possible to fulfil a Customer Information request from a supplier within five days. The UR is of the view that it should not be difficult for a network operator to fulfil this requirement. Nonetheless, the UR has amended the proposed modification to clarify that the 5 day requirement is 5 'working' days. This should remove any perceived difficulty in meeting this condition.

2.4.20 In order to allow customers to have access to their consumption data and, where they wish, to share it with other market participants, the conditions provide for the transfer of consumption data between suppliers. Some suppliers noted in their responses that this will cause data protection issues. The UR notes however that data protection is not an issue here as the customer has to give their consent for the information to be shared (Condition 44 paragraph 3 in electricity supply licences, Condition 2.28 paragraph 3 in gas supply licences).

2.4.21 It is an explicit requirement of the Directives that suppliers are to send a final bill to domestic customers within six weeks of the date that they stop supplying them. The UR has taken on board firmus' comment that this can be facilitated within four weeks. If a supplier wishes to exceed this requirement by supplying the final bill within a shorter time frame, there are no restrictions stopping them from doing so. The licence condition is clear however that it must not take them longer than the stated six weeks to send a final bill.

2.4.22 The UR notes the comments raised in relation to the format of bills and discussed this issue at length during the meetings held with stakeholders in September 2011 and January 2012. During the September 2011 meeting, sample bills were discussed by workshop participants and the feasibility of a standardised bill format was discussed. There was some support at the meeting for a standardised bill however the cost implications and feasibility of delivering this across all suppliers was brought into question. During the January 2012 meeting, the UR discussed the option to prescribe a box on, for example, the top right hand corner of each bill that details specific, mandated pieces of information. This would be mirrored on the bills of all suppliers. Again there was some support for this proposal, noting it would provide

customers with clear and comparable information. Indeed, in their written response, CCNI indicated the need for certain pieces of information to be prescribed on bills to allow for easy comparison by consumers. Questions were raised however in relation to the ability of systems to facilitate this requirement and the cost of doing so. Having carefully considered all options, and taken on board all comments made by respondents, the UR considers that it is appropriate for now that the format of bills should be decided by individual licensees in consultation with UR and CCNI. To help with the protection of and transparency for customers however, during the 2012/13 year we intend to produce guidelines on best practice in relation to billing clarity and to monitor supplier practice against the guidelines. As part of the process of producing these guidelines the UR will work with CCNI to seek to demonstrate what good practice looks like in relation to bill clarity.

Cost Benefit Considerations

2.4.23 As suppliers are already required to use reasonable endeavours to read meters at least annually, the UR considers that no significant additional costs will be incurred in relation to ensuring that this happens and that customers are supplied with the appropriate information.

2.4.24 We note that there may be limited one off system changes required in relation to the required changes in the format of bills which will incur a cost. However we do not believe these costs to be material and there will be no recurring costs once these changes have been made.

2.4.25 Some respondents noted that there will be an additional cost incurred when providing this information to pre-payment customers and reading prepayment meters. The UR notes however 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. Prepayment meters are read quarterly in electricity and checked twice annually for safety and fraud prevention purposes in gas. The consumption information can be gathered at the time of the meter read and

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

2.4.26 The provision of accurate information allows customers to manage their consumption, budget more effectively and reduce debt. The costs of providing this information are minimal and in addition may result in reducing the overall levels of debt or fraud. With more accurate billing, costs relating to debt, fraud and inaccurate bills are likely to reduce. 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, 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

UR Proposal in July 2011 Consultation

2.5.3 The UR therefore proposed to modify the conditions of electricity and gas licences to require suppliers to provide a copy of the latest Consumer Checklist to each customer (i) with the initial contract i.e. when the supplier gains the customer, (ii) on at least an annual basis i.e. by sending it with a bill/statement, and (iii) any time that a customer requests a copy.

2.5.4 It was proposed that 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 Consumer Checklist should be available, on the suppliers web-site and on request, in alternative formats (for example in Braille) or in an alternative language (where it is reasonably practicable for the supplier to do so).

Responses

2.5.6 The majority of respondents felt supplying the Checklist annually was unnecessary, costly and the environmental impact of producing such material should also be considered. While the majority of written respondents noted they were happy to supply the Checklist when they gain a customer, this issue was further discussed at the January 2012 meeting. At the meeting, attendees pointed out that the requirement for suppliers to provide new customers with a copy of the entire Checklist could mean that frequent switchers were given multiple copies. In addition, some suppliers felt that the customer would be confused by the amount of information provided at one time. The majority of respondents felt that making the Checklist available on their respective websites was sufficient to fulfil the requirements of the relevant Directive.

UR Proposed Final Decision

2.5.7 The UR intends to amend the proposed modification which previously required suppliers to physically send customers a copy of the Checklist on at least an annual basis i.e. by sending it with a bill/statement. This condition will now require suppliers to remind customers on an annual basis that the Consumer Checklist exists and provide the customer with a copy free of charge on request. Likewise, all new customers must be advised that the Checklist is available and must be given a copy free of charge on request. The UR intends to introduce the remaining modifications in this area as outlined in the July 2011 consultation.

Electricity Supply – Condition 27, Condition 38
Gas Supply – Condition 2.18, Condition 2.19

Reasons and Effects

2.5.8 The production of the Consumer Checklist and making it available to consumers is an explicit requirement of each Directive. The UR, in line with

its statutory deadline, has already published a full copy of the Consumer Checklist on its website.

2.5.9 All respondents were agreed that the Consumer Checklist was to be made available to consumers but many disagreed with the proposal to send a copy of the Checklist to consumers annually. The UR has carefully considered the consultation comments that sending paper copies of the Checklist annually would be overly onerous. Having considered the comments this condition has now been redrafted and will only require suppliers to remind customers on or with bills that the Checklist is available. Suppliers must also provide information on how a copy of the Checklist can be obtained and must supply a copy free of charge on receipt of a request from a customer or advice giving organisation.

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.

2.5.11 It was noted in CCNI's consultation response and also discussed at the stakeholder meetings held in September 2011 and January 2012 that the Consumer Checklist, as designed by the Commission, is not consumer friendly and could be vastly improved. Although the UR requires suppliers to ensure that customers have a copy of the full Consumer Checklist available to them, suppliers, consumer groups and advice giving agencies alike, are free to produce edited versions of the Checklist for consumers should they feel it is necessary. It is not considered appropriate for the UR to provide the document in an edited form as the needs of consumers vary depending on whether they are dealing with their supplier, the distribution company, consumer organisation or advice giving agency. It is therefore important that if edited documents are to be produced, the relevant organisations have the freedom to tailor the Checklist to meet the needs of their audience. Industry, consumer groups and other organisations are also free to brand the document

according to their house style and to ensure the presentation best meets the needs of the audience. It must be reiterated however that the full Checklist must also be available to all consumers.

Cost Benefit Considerations

2.5.12 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. The UR has subsequently changed these proposals and no longer requires copies to be sent to customers annually or when switching supplier. The new proposal is 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, which should significantly mitigate concerns around the cost of the original proposal. There will be limited costs associated with printing and supplying copies of the Checklist when requested and with providing it in alternative formats eg Braille.

2.5.13 The provision of a Consumer Checklist is an explicit requirement of the Directives which note that *"suppliers in cooperation with the regulatory authority, take the necessary steps to provide their consumes with a copy of the energy consumer checklist and ensure that it is made publicly available".* The provision this information will help to ensure all customers, particularly vulnerable customers are provided with detailed information about the NI energy market, are informed and can 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 July 2011 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 the Consumer Council 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 the Consumer Council.

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

2.6.5 PSL objected to the proposals to include details of consumers' dispute settlement rights on promotional materials. Electric Ireland also stated that it is unnecessary to include this information on other materials and this decision should be left to the supplier.

2.6.6 CCNI were supportive of the proposals but wanted to see the following also included:

- " *All suppliers must have an accessible Complaints Handling Process, ensuring that that the consumer can make a complaint in format that best suits their needs;*
- *Any consumer making a complaint should be given a copy of the company's complaints procedure;*
- *A template complaints procedure that states minimum standard that are required from energy companies;*
- *The company's complaints handling procedure must clearly define the roles and responsibilities of different parties and timescales involved;*
- *It must be made clear to consumers that they have the option to contact the Consumer Council at any point during the investigation of their complaint by the company;*
- *All complaints should be logged, regardless of how they are submitted".*

2.6.7 CCNI also noted that they feel that a final dispute resolution option outside of the legal system is required. They note that having this facility would help focus all parties resolve the dispute and would help the consumer avoid incurring legal costs. CCNI further suggested final adjudication should occur through a panel comprised of a representative from CCNI, UR and an independent individual/organisation. They noted that no individual on the panel should have previously been directly involved in the efforts to resolve original dispute.

<u>UR Proposed Final Decision</u>

2.6.8 The UR intends to introduce the modifications as proposed.

Electricity Supply – Condition 38, Gas Supply – Condition 2.19

Reasons and Effects

2.6.9 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, the UR considers 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.

2.6.10 In respect of the additional conditions proposed by the CCNI , the UR has analysed these suggestions and where appropriate will consider how they can be progressed at a later date – for example when we review and update "complaints handling" codes of Practice for all energy suppliers. The UR also notes that the Department has already dealt with the issue of the dispute settlement process as part of the Regulations.

Cost Benefit Considerations

2.6.11 Suppliers will incur minimal additional costs to inform customers of their right to avail of existing dispute settlement procedures. This information is merely to be provided on information that is already sent to customers.

2.6.12 This will have a positive impact on customers, particularly vulnerable customers who may have been unaware of the protection available.

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 customer understanding and protection in modern energy supply markets. In addition, the main objective for customers being able to access objective and transparent consumption data is so they can invite other suppliers to make offers based on such data. Transparency of information thereby facilitates the change of supplier process.

2.7.2 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 July 2011 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 2.14).

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.

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

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 by the customer of the contract.

Responses

2.7.7 A number of questions were raised by respondents about the value and cost of providing this information on bills, however there was a general agreement on the need for transparency on bills. PSL noted that they felt providing customers with information on switching on a bill is inappropriate and Power NI questioned the way in which consumption data is collected and presented.

2.7.8 PSL also specifically objected to the modification that requires suppliers to make customers aware of the principal terms of the contract as defined by the UR. PSL note that all terms and conditions are important so this condition should be removed. This view was countered by CCNI who feel the proposals will help consumers make informed choices in the energy market. CCNI noted they would like a requirement that the principal terms of the contract are clearly stated ahead of the small print (eg price, length of contract, how contract can be ended).

UR Proposed Final Decision

2.7.9 The UR intends to introduce the modifications as outlined but with the addition of a statement to the effect that the Licensee has a Code of Practice which

sets out the services and advice and assistance it provides to customers who may be having difficulty in paying their bills.

Electricity Supply – Condition 27, Condition 38 Gas Supply – Condition 2.18, Condition 2.19

Reasons and Effects

2.7.10 Some respondents raised questions about the collection of consumption data as described in the proposed modification. The UR notes however that technical aspects of data collection can be dealt with following the licence modification process. There were no clear objections to the principles behind the provision of this information. The UR will proactively work with suppliers to ensure the licence condition is appropriately and proportionately applied.

2.7.11 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 Utility Regulator 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.

2.7.12 The UR agrees with CCNI that when terms and conditions are long and complicated, it is wholly appropriate that the items listed are specifically drawn to the customer's attention. As noted by CCNI this will help consumers make more informed choices in the energy market. This is essential to ensure high levels of transparency regarding contractual terms as is required by the Directives. Licensed suppliers in GB have a similar obligation under Condition 23 of the supply licence with regard to domestic customers. Condition 23.1 reads as follows - "Before it enters into a Domestic Supply Contract with a Domestic Customer, the licensee must take all reasonable

steps to bring the Principal Terms of that contract to the attention of that customer."

2.7.13 In response to the enhanced consumer protection section of the July 2011 consultation, some respondents noted that, in the best interest of the supplier and customer, it is desirable to prevent a customer getting into debt in the first place. Early intervention is important in order to ensure suppliers and consumers alike are able to work together to ensure any level of debt is minimised. We have therefore decided to introduce a statement on all bills that draws the customer's attention to the Code of Practice on the Payment of Bills. This will ensure that customers are aware of the help that is available to them in respect of paying their energy bills.

2.7.14 The UR considers that the provision of the information noted above 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 each Directive (e.g. information on dispute settlement) or should normally be provided as a matter of good practice.

2.7.15 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.

2.7.16 In any event the UR considers that the above information is necessary to ensure that customers can actively participate in the market and can help customers to manage their energy consumption.

Cost Benefit Considerations

2.7.17 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, however the provision of this information will ensure that customers are fully aware of key pieces of information to help them understand both their rights and their charges and 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.

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 July 2011 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 July 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.

ii) Extending the requirement on suppliers not disconnecting during the winter months 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 at least 3 months.

vii) Requiring suppliers to comply with an industry Marketing Code of Practice.

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 codes of practice to be updated, reviewed and modified following consultation with the licensee and the 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.

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, that compliance with codes was enforceable under the licence, and that codes were regularly reviewed and reported against.

Responses

2.8.8 Seven respondents commented on the proposed licence condition that limits the amount that can be recovered from each "top up" a prepayment customer pays towards debt to 40% of the total payment purchased. Three respondents had no objection to the 40% limit, only one felt that there should be no restriction, and three felt that the new limit should be lower or should be preceded by a means test which could apply a lower amount. Comments were provided on how debt should be recovered with a means tested approach or specific weekly monetary value suggested. Two respondents wished to ensure that where a customer cannot afford to pay 40% their individual circumstances and needs would be taken into consideration and a lower amount set. In particular CCNI outlined additional conditions that should be placed in the Code of Practice on the Payment of Bills and ways of recovering debt.

2.8.9 PSL noted that it's not always possible for a supplier to confirm the occupancy of a house so believes condition 4(d) condition 31 should be removed. firmus however were in agreement with this condition. PSL also noted the provision to allow a gas supply to be cut off in emergency should be retained.

2.8.10 There were no objections to the modification that requires 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 and to publicise the existence of the register. CCNI did note however that the register needs to be promoted more effectively.

2.8.11 firmus were supportive of the condition to extend 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. PSL noted however that they want the removal of the condition requiring a telephone service as this will increase costs and this service is already provided by EST.

2.8.12 PSL noted that they would like the words 'preferably within three months' used in paragraph 3(a) in Condition 33 which deals with the duration in which complaints are to be resolved.

2.8.13 All respondents agree with the proposed introduction of a new marketing code, with a number of respondents keen to be involved in the development of the code. CCNI noted there should be penalties for non-compliance and stated the UR should ensure it has the power to force the implementation of the code. At the January 2012 workshop respondents discussed the suggestion that the marketing code should also apply to non domestic customers, with the majority of those who spoke in favour of a marketing code which covers both domestic and non domestic customers.

2.8.14 Two of the three respondents who addressed the proposed licence condition which requires suppliers to take steps to help customers using prepayment meters to avoid self-disconnection sought clarification of the steps suppliers would be expected to take. A third respondent noted that it was important to ensure this clause does not provide the opportunity for customers to build up debt then switch to credit to avoid paying back that debt.

2.8.15 PSL noted they did not feel it would be possible for them to record different types of service for customers on the Phoenix Energy Care scheme. They also noted that it was important to change paragraph 2(e)(ii) of Condition 36 to read 'resolved by the licensee' and remove the phrase ‘to the satisfaction of the complainant’ as this term is subjective and not always known to the supplier.

2.8.16 NEA were fully supportive of the proposal to ensure that suppliers, should they exit the market (planned or otherwise), have in place arrangements

which will enable prepayment meter customers to continue for at least an interim period to purchase credit. They also recommended that customers are made aware of the safeguards in place of having a supplier of last resort.

2.8.17 CCNI strongly supported the condition which will enable the UR, following consultation with relevant parties, to modify licence conditions for the purpose of ensuring adequate consumer protection measures. PSL however feel this condition is beyond the requirements of the Directives and should be removed. The remainder of the respondents did not comment on this proposed modification.

UR Proposed Final Decision

2.8.18 The UR intends to introduce all the modifications as outlined with a number of small amendments:

i) The Marketing Code of Practice will be extended to all customers, both domestic and non domestic.
ii) Condition 36 (2)(e)(ii) (electricity) and its equivalent in gas (in Condition 2.23) will read “resolved by the Licensee” with the term “to the satisfaction of the complainant” removed.
iii) Additional line in Condition 30(3)(h) (condition 2.12 in gas) that allows for a customer to request in writing a higher debt recovery percentage rate to apply; but the supplier will not be able to force a customer to go above 40% per transaction.
iv) The drafting of paragraph 2(b)(ii) of licence condition 35A (2.22A in gas) has been tidied up.

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

2.8.19 The UR believes 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 PAYG meter. There is evidence that this has caused hardship. UR's research found that 61% of electricity customers and 57% of gas customers in arrears found it difficult to repay them. The UR therefore feels it is necessary to impose the 40% upper limit, but wishes to clarify 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). However even with an individual circumstances based approach such as is undertaken in GB, there is also the need for an upper safety net. GB research (conducted by Consumer Focus) [11]has shown that 14% of customers had a repayment rate imposed upon them that was higher than they were comfortable with. It is therefore vital an upper limit is put in place here in NI. In addition to providing that, when setting repayment rates, suppliers must take account of a customer's ability to comply with the repayments. It is also important to recognise that this condition will now allow the customer to specifically request, in writing, a higher debt recovery limit to pay the debt off quicker, if they wish to and can afford to do so. Only one of the respondents expressed clearly that no limit should be applied, while three felt that 40% was potentially too high. One respondent pointed out that in ROI a 30% limit was used. Condition 30 paragraph 3(c) addresses the concerns of the respondents who feel individual circumstances should be taken into account first and ensures that repayment rates can be set below the 40% upper limit. The UR has confirmed that all PAYG meters are technically able to facilitate this requirement. In GB while there is no upper limit expressed, 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. The UR's research found that while vulnerability does not cause debt as such, each characteristic of vulnerability

[11] http://www.consumerfocus.org.uk/assets/1/files/2010/02/Cutting-back-cutting-down-cutting-off.pdf

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. In addition Ofgem has stated that levels of debt recovery which are too high are counter-productive. It is felt that if debt repayment rates via the prepayment meter are unmanageable, customers may be forced to use alternative less efficient fuels e.g. they may use electric fires if they feel they can't afford to top up their gas meter. This topic was discussed at the January 2012 workshop and one supplier noted again their written response that they felt a supplier should be free to set a weekly monetary amount of debt recovery, as opposed to a fixed maximum percentage. The UR wishes to note that it does not object to a supplier using this 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.

2.8.20 The Utility Regulator supports the position that it is always better to attempt to help the customer avoid getting into debt in the first place. This is why we have amended the customer information requirement so that suppliers must inform customers on bills that that they have a code of practice which sets out the services and advice they offer to customers who may be having difficulty paying their bills.

2.8.21 Suppliers are already required through their existing licence conditions to keep a register of those who are chronically sick or disabled. Suppliers are being asked to take 'reasonable steps' to ensure they do not disconnect during the winter months those who are chronically sick or disabled, or if the household of that customer includes a person who is chronically sick or disabled. This is not an onerous condition as suppliers are already required to ensure they do not disconnect during winter months domestic customers of a pensionable age. The UR however will continue to be practical and appropriate in the application of this modification. Suppliers are required to take ‘reasonable steps’ to ascertain the occupancy of a household. In GB, the Energy Retail Association has established the ERA Safety Net which includes a commitment to never knowingly disconnect vulnerable customers. Where a customer has been disconnected and then is identified as vulnerable, the supplier will reconnect their customer as a priority. Compliance with the Safety Net is independently audited. However if further clarification is required,

the UR may conduct further work in the future to help define or prescript 'reasonable steps'.

2.8.22 The UR notes the concerns raised by PSL that it is important to retain in the licence conditions the ability for suppliers to cut off the gas supply in the event of an emergency. It is important to note however that gas supply companies are not responsible for disconnecting a customer in the event of an emergency; this role falls to the distributor. The UR therefore concludes that no such exception is required in this instance.

2.8.23 Taking on board NEA's comments that it is important that consumers are made aware of the safeguards that are in place by way of a Supplier of Last Resort, the UR notes that this information is contained in the Consumer Checklist. The Checklist also contains details of how consumers can be included on special care registers and this will continue to help to promote the awareness of such services to consumers.

2.8.24 The UR considers that where appropriate, electricity and gas customers should be treated equally and consistently in relation to the level of protection and information that is given to them following implementation of the Directives. The UR considers 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. Currently, most gas companies use third parties to help provide information on energy efficiency. These third parties may include such organisations as the Energy Saving Trust, or the Carbon Trust. 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. This is merely an extension of the existing requirement to extend the provision of this advice beyond domestic customers who already make up the vast majority of the market.

2.8.25 PSL noted that they felt the requirement to have a complaints handling procedure which provides for customer complaints to be processed and dealt with by the supplier within three months should be changed to ‘preferably within three months’. It is important to note however that this modification already allows flexibility should it not be possible to resolve the complaint within three months with the use of the phrase 'within which it is intended that complaints will be processed and resolved'. The UR does not therefore propose to change this wording. The UR notes however PSL’s comment that it is not always possible for a supplier to determine if a complaint is resolved to the satisfaction of the complainant. The UR has therefore decided to remove this wording from condition 36 paragraph 2(e)(ii) (condition 2.23 in gas).

2.8.26 As noted in the July 2011 consultation, the UR proposes to work with industry to develop a Marketing Code which will set out the practices and procedures to be followed by suppliers when undertaking their marketing activities. The introduction of this Code was widely welcomed by respondents. This Code is necessary to ensure customers are protected from a number of the issues that arise through the marketing activities of suppliers in a competitive market, as seen in GB for example in relation to doorstep selling. By way of example, within the Marketing Code of Practice we propose to include and mandate that a supplier must inform their customers before signup that their payment options may change. One respondent felt it would be appropriate to apply a penalty for non-compliance of the code. The UR confirms that a breach of this code will be a breach of licence and licensees would therefore be subject to financial penalties for non-compliance in accordance with the current provisions and the UR’s existing Financial Penalties policy.

2.8.27 During the consultation period, the Utility Regulator gave further consideration to the remit of the Marketing Code and notes Article 11A(9)(l) of the Electricity (NI) Order 1992 provides for supply licence conditions to make provision for customers to be protected from unfair or misleading selling methods. It is not limited such that it is only applicable in respect of household/domestic customers; nor does the UR believe that only domestic customers should be protected from unfair and/or misleading sales practices. The UR has subsequently decided that it is appropriate

that the Marketing Code shall also apply to business customers. The UR discussed this extension of the Marketing Code to business customers at the January 2012 meeting and no objections to this proposal were raised.

2.8.28 A number of respondents sought clarification of the steps they would be required to take to help customers using prepayment meters avoid self-disconnection. Such steps were outlined in the consultation. For clarity they could include: provide advice, information, services and facilities, include the availability of emergency credit, information on energy efficiency or the availability of grants, referral to debt advice agencies. These steps are not onerous, will not incur further cost and formalise many of the steps suppliers already take to assist prepayment customers.

2.8.29 The UR notes PSL's concerns that they are not able to record the services offered to domestic customers on the Phoenix Energy Care Scheme. This would be required as part of the UR's reporting requirements as detailed in condition 36. The UR notes however that gas and electricity licences already contain provisions for keeping a list of household customers who are chronically sick, disabled etc (see 2.11.2 of PSL's licence) and for that list to contain information which effectively identifies the customer's particular requirements. It would therefore be entirely appropriate for suppliers to also keep a record of the services offered to the customer in order to meet his particular requirements.

2.8.30 The UR notes CCNI's support for changes to current condition 35 and the proposed new condition 35A (Customer Protection: Modification of Conditions) and PSL's argument that condition 35A goes beyond the requirements of the Directives and should be removed. For clarity, the UR considers that the proposed licence modifications (35 and new 35A) in relation to Codes of Practice 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 of Practice 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 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 of Practice 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. It is the case that licence conditions can set out a process for their modification – see Article 10(5(b) of the Gas Order and Article 11(5)(b) of the Electricity Order. The Directives are clear in that one of their aims is for there to be a high level of consumer protection. The UR believes that updating provisions relating to consumer protection codes are a fundamental part of that. This type of clause is used in other jurisdictions and acknowledged as a useful regulatory tool for the purposes of meeting changing circumstances. It is, for example, used in GB in Condition 9 of a [GB] Gas Transporters' Licence (see paragraph 1B and 1C of that condition); Condition 16 of a [GB] Gas Transporters' Licence. Having considered all comments received during the consultation process, the UR intends to introduce these conditions.

Cost Benefit Considerations

2.8.31 Only two of the proposed modifications in this section have been identified by respondents as having a potential cost impact. It is not believed any of the other conditions outlined will incur a material cost.

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 licenses 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 such as EST/Carbon Trust or another appropriate organisation. It is not believed that this cost will be significant.

2.8.34 These modifications will significantly help those customers in debt and will help supply companies avoid the costs associated with customers in debt.

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, see 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 Six Month Review of 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 July 2011 Consultation

2.10.2 The UR proposed to modify the relevant condition such that it also:

i) Requires that any compensation arrangements relating to inaccurate and delayed billing should also be set out within the terms and conditions of the contract.

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

electricity 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

2.10.4 Electric Ireland did not agree that all suppliers should have a standard tariff. They noted it should be left to suppliers to determine if they would offer evergreen contracts in the first place.

2.10.5 CCNI noted at coming to an end of a fixed term contract, the customer should automatically roll over onto the best available evergreen tariff unless they have explicitly agreed otherwise. PSL feel the current three week requirement to inform customers of a change in their terms and conditions meets the needs of Directive and this should be removed.

2.10.6 Power NI state they implemented a deemed contract in August 2008. PSL noted that the same deemed contract provisions should apply in gas supply licences as for electricity supply licences. They did not feel however these are a requirement of the Gas Directive and are also facilitated by virtue of the provision of the Energy Act (NI) 2011. CCNI noted the requirement to make and issue a deemed contract scheme should have a deadline. They noted this is an issue that suppliers have repeatedly failed to address and many customers are left with the uncertainty in their legal relationship with their supplier.

2.10.7 Power NI expressed their concerns for the need to have compensation arrangements in relation to inaccurate or delayed billing.

UR Proposed Final Decision

2.10.8 The UR intends to introduce the modifications as outlined. As noted earlier the new deemed contract condition for gas licences is being included by virtue

of the provisions of the 2011 Act, but it's being included at the same time as the Directive modifications for ease and to ensure consistency between electricity and gas. Condition 27 paragraph 7(i) has been updated to reflect that details of compensation and refund arrangements are set out in the terms and conditions only if they exist.

Electricity Supply – Condition 27, Condition 28 Gas Supply – Condition 2.18, Condition 2.1

Reasons and Effects

2.10.9 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. This will therefore serve the purpose of enabling customers to know the terms and conditions in advance if they wish to do so.

2.10.10 Having a standard evergreen tariff, 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. 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 CCNI noted that there should be a requirement on supply companies to place a time limit on deemed contracts. The UR notes however that the supplier is effectively not in a position to control the deemed contract term. Ultimately the onus is on the customer to enter into a 'non-deemed' contract, the supplier cannot compel the customer to do so. If deemed contracts were automatically to end, say after 6 months, i.e. without the customer having entered into a [proper] contract, there would be no mechanism for suppliers being able to recover the costs of the energy that was still being supplied to and taken by the customer. It is precisely this scenario that deemed contracts avoid. The only real alternative available to the supplier would be to cut off the premises - but that is not a viable or consumer protective measure.

2.10.13 Taking on board respondents' comments, a minor modification was made to Condition 27 paragraph 7(i) to clarify that compensation arrangements must be set out as described in terms and conditions only if they exist, as per Annex 1 of both the Gas and Electricity Directives.

<u>Cost Benefit Considerations</u>

2.10.14 The UR does not believe the modifications outlined as points i) to iv) of this section will incur any additional material costs. Modification 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. Most supply companies already fulfil this requirement and any additional costs will be minimal and of no significant material value.

2.10.15 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 contracts and are fully aware of when any offers may be finishing so that they may 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 28 days in advance (extended from the current 21 days).

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

Responses

2.11.3 PSL noted that providing 28 days advance notification of any variation to the terms of a contract is not necessary and not a requirement of the Directives. They note that a tariff can change in year and therefore meeting this condition would be costly. Many respondents were in agreement that written notice would be costly with Energia stating that this requirement does not align with the requirements of the Directives. firmus noted that it was important that

competing suppliers need to be aware of the incumbent's tariff 4 weeks in advance of a change in order for them to meet this condition. Power NI felt notice through the press is sufficient with individual letters just adding cost.

UR Proposed Final Decision

2.11.4 The UR intends to revert to the existing licence condition which requires suppliers to inform customers at least 21 days in advance of any variation of the contract. The UR will however harmonise all licences to ensure the same wording is reflected in each licence.

Electricity Supply – Condition 27 Gas Supply – Condition 2.18

Reasons and Effects

2.11.5 In our July 2011 consultation, the UR proposed to require all supply companies to provide consumers 28 days advance notice of any change in the terms of the contract, including price. A number of respondents objected to this proposal on the grounds it was outside the scope of the Directives. Current licence conditions already require all suppliers to give 21 days advance notice of a change in price, however some variations do exist in the wording of this condition across all licences. Taking on board respondents comments, the UR has decided to revert to the existing 21 day advance notification provision, which will remain. However, to ensure licence conditions across electricity and gas are harmonised and for better customer transparency/confusion avoidance, all suppliers are required to give 21 day notice of a change in their terms and conditions including, for the avoidance of doubt, tariffs. This notice must be given directly to the customer (as required explicitly by the Directives); media coverage and advertisements in the press will not be considered sufficient. The wording in all licences will be duplicated to ensure consistency. The licences as they currently stand are actually more prescriptive than the Directives and hence gives a higher level of customer

protection, which has been in place for many years (this modification is only to harmonise the condition across electricity and gas). The Directives are clear in that they require transparency on pricing and this modification ensures that customers are informed and can explicitly and knowingly agree to the price variations of their contracts. This modification clears up any existing confusion in customer notification providing enhanced consumer protection.

2.11.6 The UR has carefully considered the point raised by firmus in relation to the need for competing suppliers to be informed of the incumbent's tariff four weeks in advance. It should however be noted that those suppliers who track their tariffs to the incumbent, or any other supplier, have made a commercial decision to do so and will need to ensure that their contracts reflect the provisions relating to timing accurately and sufficiently. It is important that all conditions apply to all suppliers equally – where a supplier is proposing to track another supplier's pricing it will still need to give advance notification to the customer of any revised price. This ensures equal and clear transparency for all domestic customers so that they all will receive at least 21 days advance notice in writing to them of any variation to the terms, including terms as to price, that the supplier wishes to make to the contract. On receipt of this notice the customer can make an informed choice and therefore decide to terminate the contract if they wish.

2.11.7 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.

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. One supplier noted in their response that the wide media coverage witnessed at a tariff change is sufficient to notify the majority of customers. There will therefore be some additional costs associated with this modification which requires all suppliers to write to customers 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. 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 to customers 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.

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 July 2011 Consultation

2.12.3 It was proposed that the existing provisions will 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

2.12.4 Power NI agreed with the proposals outlined. CCNI also expressed support of the proposed modifications but noted they would like to see suppliers providing evidence on an annual basis to the UR to demonstrate cost reflectivity. Airtricity noted that they feel existing licence conditions are perfectly adequate in this area. Although they agree with the principle of non-discrimination, it is important that licence conditions are not narrowly drawn e.g. preventing the inclusion of real costs arising from very different credit and debit risk balance inherent in different payment methodologies.

UR Proposed 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 UR notes CCNI's comments that suppliers must be able to demonstrate cost reflectivity via a reporting mechanism to the UR. To ensure compliance with this modification the UR notes it has the following options (i) to either request from suppliers e.g. on an annual basis a factual summary of tariffs and the differences between the tariffs (and investigate any that do not seem reasonable) or (ii) an annual statement of compliance or annual return from suppliers stating that they are complying with this licence condition. The UR will determine which of the two above methods of reporting is most appropriate and will ensure compliance with the licence condition is monitored.

2.12.7 Addressing the concerns raised by Airtricity, the UR notes that the modifications proposed do not prevent a supplier recovering the costs for different payment options. It does however require each supplier to be open and transparent in relation to these costs, to ensure that the charges are indeed cost reflective and the consumer is able to fully understand these differences. This requirement for increased transparency is a key intent of the Directives.

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 – the costs must 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. Coming out of the new Directives' drafting, there is a new requirement that all consumers shall have a right to good standard of service and complaint handling by their energy service provider.

UR Proposal in July 2011 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 the supplier's complaint handling procedures and of the role of the CCNI and of the UR with regard to billing disputes.

iii) Any promotional materials issued by suppliers are also to include information about the supplier's complaint handling procedures and consumers' rights (as relating to the raising of complaints), of the role of the 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

2.13.3 There was a general agreement with the proposals in this area however PSL noted that they felt there was no need to put the information on promotional materials. Airtricity also noted that the UR needed to think of cumulative effect of list of requirements which will increase size of contractual documentation.

UR Proposed 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

2.13.5 There were no objections raised to the creation of a complaints handling procedure. As noted in section 2.6.9 of this paper, the Electricity Directive explicitly states that information on suppliers complaints handling procedure must appear on promotional materials. For consistency of approach and to ensure all customers are treated equally, the UR feels it is important that the same condition also applies for Gas.

Cost Benefit Considerations

2.14.6 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 – 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 July 2011 Consultation

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

2.14.6 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 to be granted to NIE in accordance with the implementing regulations.

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

2.14.8 In addition, the UR considered that it would be prudent to ensure that the respective related supply businesses of NIE, PNGL and firmus, ensure that they act in a manner that is consistent with the branding separation obligation of their respective 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

2.14.9 PNGL stated that the purpose of Article 26(3) is to ensure that PNGL does not take advantage of vertical integration to distort competition – therefore Conditions 1.16.3 and 1.16.6b should be amended to reflect that PNGL shall use its best endeavours to ensure that it's branding and communications do not create confusion as to the separate identities of PNGL and PSL in order to distort competition.

2.14.10 PNGL noted that licence condition 1.17.5 (brand separation) is a bigger concern as *"it does not give PNG an opportunity to rectify any possible confusion and does not specify on what grounds on which the UR may determine that there is confusion being caused".*

2.14.11 PNGL state that Conditions 1.16.6(a) and 1.16.6 (b) duplicate the requirements of 2.7.4 (Market Statements) and Condition B respectively and should be removed

2.14.12 Electric Ireland & Power NI were both supportive of brand separation between a DSO and their vertically integrated supply business. Although there is no requirement to show that confusion (where it exists) is distorting or hindering competition we note that CCNI said that they have evidence that the current branding of certain supply and distribution companies does indeed distort and hinder competition in NI. They note there should be the distinct rebranding of previously united businesses and that strict, enforceable governance must be in place.

2.14.13 PSL noted they did not understand the condition to ensure their activities do not hinder PNGLs ability to meet its compliance plan. They note the onus is on the distribution company and not the supply company. PSL noted that they do not have input into the compliance plans of PNGL and this is specific between the UR and PNGL and that they are not privy to it. Therefore, they feel it is wrong to place an obligation on PSL to act in a manner that is consistent with the arrangement. Electric Ireland agrees with this proposed new condition.

2.14.14 PNGL have asked for clarification on what constitutes an 'independent person' in terms of compliance manager. They note the current licence ensures that a senior member of its personnel engaged in the management and operation of PNGL is appointed its Compliance Manager.

2.14.15 ESB Electric Ireland noted that it is no longer applicable to have the 'switch on' ability of the unbundling communications and branding requirement in electricity distribution licence and Energia noted support for the direction.

UR proposed decision

2.14.16 The UR intends to make some changes to the gas distribution modifications proposed in July, for full details see section 3.4 of this paper. For electricity distribution we propose to switch on the existing paragraph 3E of Condition 12 of the NIE licence by way of issuing a direction to NIE under paragraph 3F. For supply we propose no changes to the conditions consulted on in July.

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

2.14.17 Reasons and effects in relation to gas distribution licences are covered in sections 3.4.25 to 3.4.36 of this paper.

2.14.18 We have carefully considered PSL's point that they do not feel they should have a condition that requires them not to hinder the distributor's ability to comply with their compliance plan, as they do not have sight of the plan. The proposed licence obligation on PSL is (i) to not act in a manner which is inconsistent with PNGL's licence obligations, and (ii) not to take any action that may impede or frustrate PNGL from fulfilling its licence obligations. PSL

are fully aware of PNGL's licence obligations (they are set out in the applicable licence condition) and it should be in a position to know whether anything it does is likely to impede or frustrate PNGL from fulfilling the licence obligations. In any event, it is inevitable that in order to fulfill some of its licence obligations, PNGL will need to let PSL know, in appropriate circumstances/cases, what it is going to do and what PSL might need to do in order for PNGL to fulfill its obligations. By way of an example, PNGL has a licence condition to ensure that PSL does not have access to premises or parts of premises occupied by those persons involved in the management or operation of PNGL. To comply with this obligation PNGL may, where say premises are shared, need to put in place restrictions with regard to who can access certain areas of the shared premises and thereby require PSL to issue its staff with access cards/keys which will implement such controls. The proposed licence obligation for PSL means that it could not, without good justifiable reasons, refuse to implement such restrictions.

2.14.19 The UR notes Electric Ireland's comment that it is no longer applicable to have the 'switch on' ability of the unbundling communications and branding requirement in electricity distribution licence. The UR notes however that it is important that this provision is retained as the market cannot predict future acquisitions or changes in business ownership.

Cost Benefit Considerations

2.14.20 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 DSO compliance plan. This is not expected to incur any significant cost.

2.14.21 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[12] (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 July 2011 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

2.15.4 There was a general agreement of the proposals among respondents, with some concerns raised in relation to the benefit to consumers raised by Power NI. Electric Ireland noted there needs to be an alignment with the recent SEM consultation.

[12] Directive 2003/54/EC

UR Proposed Final Decision

2.15.5 The UR proposes to introduce the licence modifications as proposed with an additional condition that requires suppliers to provide details on where customers can obtain the contribution expressed as a percentage of each Energy Source to the overall fuel mix of the total amount of electricity supplied in Great Britain.

Electricity Supply – Condition 41

Reasons and Effects

2.15.6 During the consultation period the UR decided it was appropriate, to ensure transparency, that a requirement needed to be added for NI licence holders to provide information of where the GB fuel mix information can be found. For clarity it should be noted that a web address in respect of the GB information will be sufficient. Some suppliers appeared confused about the requirement that the fuel mix information should be "calculated, verified and provided to the Licensee by the Authority (or a body appointed by the Authority) in accordance with the Fuel Mix Methodology notified to the Licensee" and pointed out that the SEM committee has published a final decision on fuel mix calculation methodology. We confirm that as the SEM committee is an extension of the Authority which governs all SEM matters. The fuel mix decision published by the SEM committee is the method to be used under this condition and that the body appointed shall be that as already notified in the SEM decision paper SEM–11–095**.**

Cost Benefit Considerations

2.15.7 The UR does not believe the modifications outlined in this section will incur additional costs. 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.

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

UR Proposal in July 2011 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 Commission.

Responses

2.16.4 Three of the five respondents to this question were supportive of the recommendation, with one requesting to be involved in determining commercially sensitive information. One other respondent was unsure of how it protects customers and if it is applicable to non-regulated suppliers. Airtricity raised confidentiality concerns and in relation to the practicalities of gathering the information.

UR Proposed Final Decision

2.16.5 The UR intends to introduce the modification as outlined.

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.

2.16.7 In response to the confidentiality concerns raised, if and when the UR intends to access and analyse this information, it will be bound under the normal confidentiality arrangements.

Cost Benefit considerations

2.16.8 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**

2.17.1 The issue of customer security deposits was not explicitly outlined in the July 2011 consultation. However, in their response to the IME3 implementation consultation, CCNI noted:

"The Consumer Council believe that all customers must benefit from competition. As competition enters Northern Ireland we have seen suppliers requiring security deposits of up to £300 from certain customer groups. The outcome means that households that cannot afford the security deposit are unable to avail of the lower prices that switching supplier could bring. With such high levels of fuel poverty in Northern Ireland this is unacceptable. The Consumer Council propose that there should be a licence condition that prohibits suppliers from requiring security deposits. We understand that suppliers require security, but this can be obtained by using more prepayment meters and promoting direct debit payment options. If the Regulator is not prepared to prohibit security deposits be prohibited, we believe that they must be restricted to £50, which currently represents an average bill for one month. The length of billing period that the security deposit amount represents, needs to reflect the average time it will take to switch suppliers. The licence should also include a requirement that if the bills have been paid promptly for three months the deposit should be returned immediately to the customer".

2.17.2 Although this issue was not contained in the July consultation, the UR thinks it necessary to consider these comments and address the issue of security deposits as part of the customer protection intent of the Directives.

2.17.3 Current licence conditions use the word 'reasonable' when discussing the level of security deposits that are permitted to be charged by suppliers to domestic customers (Condition 26 paragraph 4(c) in electricity licences) and also notes that the terms and conditions the licensee determines for domestic customers shall be fair (Condition 27 paragraph 5 in electricity licences). 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. 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.

2.17.4 The overall aim of the Directives is to improve the level of protection afforded to consumers. In light of this aim and taking into consideration the work that Ofgem have brought forward on a framework for security deposits[13] in addition to the comments raised by CCNI, the UR decided it appropriate to further clarify the terms 'reasonable' and 'fair' in relation to security deposits by way of introducing an additional licence condition dealing specifically with security deposits.

2.17.5 During the stakeholder meeting in January 2012, the UR discussed the issue of security deposits with attendees. Views were sought on the following initial proposals:

i) Security deposits must not be greater than 1.5 times the value of the average consumer quarterly consumption
ii) A limit of one year is placed on the amount of time the deposit must be held for
iii) Interest must be paid on the security deposit when it is returned to the customer.

2.17.6 Attendees noted that, in practice, security deposits do not tend to be as large as 1.5 times the value of the average consumer quarterly consumption. They expressed great concern however about the proposed condition that interest must be paid on the security deposit when it is returned to the customer. One supplier also expressed this concern in writing following the meeting.

[13] http://www.ofgem.gov.uk/Markets/RetMkts/Compl/SLR/SteerngGrp/Documents1/14317-Duty%20to%20Suppy.pdf

UR Proposed Final Decision

2.17.7 Having carefully considered the views expressed by attendees at the industry meeting, the UR now proposes to introduce a new licence condition by way of stipulating that:

i) Security deposits are not to be required where the customer is prepared to take a supply through a PPM or where it is unreasonable in all circumstances to demand a security deposit.

ii) Security deposit must not exceed the Charges of the Supply of Electricity likely to be applicable for an average three month period of supply, as calculated by reference to the consumption of electricity 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 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 demanded from him

2.17.8 The UR proposal no longer requires supply companies to pay interest on security deposits.

2.17.9 These conditions will be mirrored in gas licences to ensure these conditions apply equally to all energy consumers.

Electricity Supply – Condition 27A Gas Supply – Condition 2.22

Cost Benefit Considerations

2.17.10 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.

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

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 PNGL and firmus energy are respectively part of a vertically integrated undertaking which carries out, through its subsidiaries, both gas network and supply activities in Northern Ireland.

3.1.5 The Gas Directive contains a number of provisions which are applicable to the roles and responsibilities being undertaken by gas distribution licensees in Northern Ireland. These include provisions relating to consumer protection issues as well as those which place certain specific requirements on distribution system operators.

3.1.6 Given the relative infancy of competition in the gas supply sector, the vertically integrated undertaking structures within which PNGL and firmus energy operate, the role of each of PNGL and firmus energy in the development of the gas market and the incumbent position of their respective affiliated gas supply businesses, the UR considers that some of the measures required to ensure high levels of consumer protection (as required by the Gas Directive) should be implemented or facilitated through licence obligations on each of PNGL and firmus energy.

3.1.7 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 contained in July 2011 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 its

related supply business in a more favourable manner (Condition E, now renumbered to 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 (Condition1.6).

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 (Condition A, now renumbered to 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 (Condition F, now renumbered to Condition 1.25).

3.2.6 The above provisions were set out in Annex 3 of the July 2011 consultation. We would point out that in Annex 4 to this decision paper Condition A has been renumbered to 1.23, Condition E has been renumbered to 1.24 and Condition F has been renumbered to 1.25.

3.2.7 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.

3.2.8 In the July 2011 consultation, in addition to proposing obligations on the DSO to facilitate supplier transfers within 15 working days as summarised in 3.2.5(v) above, the UR also proposed obligations on suppliers to require a mandatory 10 day cooling off period for customers and also to require that suppliers ensure that their systems, processes and procedures are able to facilitate a change of supplier within a three week period. Details of the proposed licence conditions on suppliers, the consultation responses and the UR's decision in relation to the supply conditions are set out in Sections 2.3 of this paper.

3.2.9 In order for customers to be provided with consumption information in line with the requirements of the Gas Directive, in the July 2011 consultation, the UR

proposed that conditions should be placed on DSOs and supply companies. The distribution condition is summarised in 3.2.5(vi) above. The relating conditions which were proposed for supply companies are set out in Section 2.4 of this paper, along with the consultation responses and the UR's decision in relation to the supply conditions.

Consultation Responses

3.2.10 We received a number of responses in relation to the proposed modifications listed above.

3.2.11 PNGL objected to the addition of the requirement *'to facilitate effective competition'* to Condition 2.7. They consider that this is outside of the scope of the Gas Directive and they are unclear how DSOs would discharge this obligation. PNGL also consider that this is already covered by licence conditions which prevent discrimination.

3.2.12 In their response, Energia noted that they agree with the proposals to strengthen obligations which will enhance non-discrimination provisions, however they requested that the UR outlines a process for how 'promotion/facilitation of effective competition' can be consulted on and definitive measures identified.

3.2.13 PNGL also objected to paragraph 4 in condition 2.7 as they do not consider it to be a requirement of the Gas Directive. PNGL argue that, as distribution operator, they are best placed to comment on competition, or the activities, position or status of any supplier competing or proposing to compete in the gas supply market.

3.2.14 firmus energy agreed with the introduction of a licence condition which requires DSOs to seek the Utility Regulator's approval before giving any statements about the state of play in the competitive gas supply market or about the activities of competing suppliers.

3.2.15 PNGL objected to the introduction of new Condition E (which has now been renumbered to Condition 1.24) which requires the licensee to provide services

on a non-discriminatory basis. PNGL argue this is already covered by current licence condition 2.7.1 and that the new condition is therefore not required. Electric Ireland welcomed the Utility Regulator's proposals that would lead to a reduction in discrimination.

3.2.16 PNGL accepted the amendment to the existing provisions in relation to the disclosure of information within condition 1.6; however they note that the other minor amendments to this condition are not required.

3.2.17 PNGL accepted that the 15 day timeframe for supplier transfers must be enshrined in the licence and that the DSO must inform the Utility Regulator should it become apparent that the volumes of supplier transfers may jeopardise compliance (proposed in Condition A which has now been renumbered to Condition 1.23). PNGL however argue that the reporting requirements proposed in the condition are beyond the scope of the Gas Directive and should be removed. PNGL consider that it would be more appropriate for reporting requirements to sit outside the licence requirements. Finally PNGL objected to paragraphs 5 and 6 in the condition as they stated that it may not be practicable to comply with a direction by the date specified by the Utility Regulator. PNGL suggested that this should be amended so that the date for compliance must be agreed between the DSO and the Utility Regulator.

3.2.18 firmus energy welcomed the inclusion of Condition A (now renumbered to Condition 1.23) in the licence and highlighted that it is important for DSOs to develop systems that facilitate the requirements of the Gas Directive.

3.2.19 In their response, the CCNI stated that 3 weeks should be the absolute maximum timeframe for a switch to be completed, and they believe that the 10 day cooling off period should be incorporated within the 3 weeks. Power NI stated however that the 10 day cooling off period is assumed to be before the 15 day switching timeframe starts and they suggested that the Utility Regulator should publish the results of their monitoring on the 15 day switching. Energia suggested that the Utility Regulator could consider

imposing penalties/incentives on DSOs to ensure the 15 day switching timeframe is achievable.

3.2.20 In their response, PNGL state that they consider the 5 day timeframe for the provision of customer consumption information to suppliers under Condition F (now renumbered to Condition 1.25) is arbitrary and unworkable. PNGL request that the timeframe should be removed as they do not see any basis for it under the Gas Directive. PNGL also noted in their response that they already provide information to gas suppliers under the provisions within the network code. They add that under the network code PNGL publish a SMP Response Statement which stipulates the timeframes for provision of information to suppliers.

<u>UR Proposed Final Decision</u>

3.2.21 The UR intends to introduce Conditions 2.6 and 2.7 for firmus energy and PNGL respectively as originally proposed in the consultation dated July 2011.

3.2.22 We also intend to implement Condition E (now renumbered to Condition 1.24) and Condition 1.6 as originally proposed in the July 2011 consultation.

3.2.23 The UR proposes to introduce Condition A (now renumbered to Condition 1.23) with some amendments. There will be a change which will allow the Utility Regulator to consult with the DSO before setting the date for compliance and paragraph 3 will be removed from the condition. A clause will also be added to this condition in the firmus energy licence which will mean that the condition only takes effect when the market opens to competition.

3.2.24 We propose to introduce Condition F (now renumbered to Condition 1.25) as outlined in the July 2011 consultation with a minor amendment to change the timeframe for information provision from 5 days to 5 working days.

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

3.2.25 The UR considers that condition 2.6/2.7 is within the scope of the Gas Directive. Article 3(1) states that member states must ensure that *'natural gas undertakings are operated in accordance with principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market in natural gas, and shall not discriminate between those undertakings as regards their rights or obligations'.* To ensure the DSO is operating with a view to achieving a competitive market, the licence condition proposed contains a requirement for the DSO to *'facilitate effective competition'*. Under this condition, the DSO must ensure that its systems, processes and procedures are capable of facilitating effective competition. PNGL stated that they were unclear how a DSO would discharge this obligation. To clarify, the obligation on the DSOs is to be capable of 'facilitating' effective competition. It is not the responsibility of the DSO to 'ensure' that effective competition actually exists in the market.

3.2.26 The UR will continue to monitor competition in the Greater Belfast gas market and will also actively monitor the 10 Towns market as it opens to competition. This will be ongoing to ensure that the DSO is facilitating effective competition in line with the Gas Directive and licence requirement.

3.2.27 PNGL raised an objection to the proposed restrictions on DSOs giving market statements within paragraph 4 of condition 2.7 as they do not consider it to be a requirement of the Gas Directive. The UR considers that this provision is covered within Article 3 of the Gas Directive which requires that consumers must be protected in respect to information. By introducing the proposed condition, we are not prohibiting the DSO from giving market statements; the condition merely requires the DSO to gain approval from the UR before making any statements which relate to competition or the activities of companies competing in the market. We consider that this type of information may be of particular interest to customers and therefore it is important that customers are protected in respect to this information through the introduction of the licence condition.

3.2.28 PNGL objected to the introduction of new Condition E (now renumbered to Condition1.24) which requires the DSO to provide services on a non-discriminatory basis as they argue this is already covered by current licence condition 2.7. The UR rejects this argument and we would point out that while the purpose of Condition E is to ensure distributors treat all suppliers equally; Condition 2.7 essentially refers to the licensee undertaking business activities in relation to the conveyance of gas in a manner best calculated to secure that neither it nor other market participants (including suppliers) obtain an unfair commercial advantage from a preferential or discriminatory arrangement. We therefore propose to introduce Condition 2.6/2.7 and Condition E (now renumbered to Condition 1.24) as outlined in the July 2011 consultation.

3.2.29 In their response, PNGL stated that the minor amendments to Condition 1.6 were not required; however they did not provide any reasoning for this. As explained in the original consultation paper the minor amendments proposed to Condition 1.6 are required to align the condition in the PNGL licence with that in the firmus energy licence. The UR therefore proposed to proceed with the minor amendments to this licence condition as proposed in the July consultation.

3.2.30 PNGL argue that the reporting requirements in relation to switching numbers proposed in Condition A (now renumbered to Condition 1.23) are beyond the scope of the Gas Directive and should be removed from the licence condition. Article 3(6)(a) of the Gas Directive states that Member States must ensure customer switches take place within 3 weeks. The reporting obligation under Paragraph 2 of Condition A is therefore required to allow the Utility Regulator to monitor switching timeframes in order to ensure compliance. We do not consider that the reporting obligations proposed are a difficult or demanding requirement and we therefore propose to maintain this requirement.

3.2.31 In their response, PNGL also objected to paragraphs 5 and 6 in Condition A as they stated that it may not be practicable to comply with a direction by the date specified by the Utility Regulator. We understand PNGL's concerns and have therefore decided to amend the condition so that there is an opportunity

for the Utility Regulator to consult with the DSO about a reasonable and achievable date prior to the UR setting the date for compliance.

3.2.32 There were no objections or comments received on paragraph 3 of Condition A (now renumbered to Condition 1.23) for gas distribution licences; however NIE did comment on this section of the proposed condition for electricity distribution licence (see section 2.3.10 of this paper for full details). The UR has considered paragraph 3 in relation to gas switching in more detail and understands that, in gas, the objection process (and associated timescales for raising and withdrawing objections) will not have an impact on customers being able to switch in the 3 week timescale. We therefore propose to remove this paragraph from the licence condition.

3.2.33 We intend to include an additional paragraph to Condition A (now renumbered to Condition 1.23) for firmus energy. This addition will mean that the condition will only apply to firmus energy when the market opens to competition.

3.2.34 In their response to proposed Condition F (now renumbered Condition 1.25), PNGL state that they consider the 5 day timeframe for the provision of customer consumption information to suppliers is arbitrary and unworkable and should be removed as they do not see any basis for it under the Gas Directive. The Utility Regulator considers that a timeframe for provision of information is required to comply with Article 3(6)(b) where it states that customers are entitled to receive consumption data in a non-discriminatory manner as regards to time. We propose to amend the timeframe from 5 days to 5 working days and we consider that this is an appropriate and realistic timeframe for provision of this information given the basic level of information being requested.

3.2.35 PNGL also mention in their response that they already provide information to gas suppliers under the provisions within the network code and that they publish a SMP Response Statement which stipulates the timeframes for provision of information to suppliers. We understand that what PNGL are referring to here is the SMP Request process. This process allows a supplier to request customer information which would commonly be used to assist

switching. The information which the DSO must provide under a SMP Request includes SMP Address, Meter Serial Number, AQ, Capacity, EUC and details of Daily Read Equipment where applicable. The proposed licence condition however is to provide information only relating to customer consumption. We therefore do not consider that the timings in the PNGL SMP Response Statement are relevant here and suggest that the proposed new condition may become a new process for each DSO.

3.2.36 Annex 4 to this decision paper sets out the amended 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

3.2.37 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. The costs for this should be immaterial and would be covered by the existing allowance. Gas systems currently facilitate supplier transfers within 15 days; therefore there will be no cost implications to comply with this proposed licence condition.

3.2.38 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 contained in July 2011 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.

Consultation Responses

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

UR Proposed 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 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 As noted previously, both PNGL and firmus energy are distribution system operators that are 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. The vertically integrated undertaking of which PNGL is a part undertakes gas supply activities through Phoenix Supply Limited.

UR Proposal contained in July 2011 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 licence of firmus energy 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 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 Utility Regulator 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, it was clear from an additional provision in the business separation condition in firmus energy's licence that the

condition would not apply until either there are at least 100,000 customers connected to the distribution system or until the Authority gives a direction that the condition applies. This direction could be given where the number of connected customers is fewer than 100,000.

3.4.11 The above provisions were set out in Annex 3 of the July 2011 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 the respective 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 condition proposed for supply licences, along with details of the consultation responses received and the UR's decision are set out in section 2.14 of this paper.

Consultation Responses

3.4.13 PNGL accept that maintaining the independence of the DSO is a fundamental and critical part of the Gas Directive and that their licence will be amended to reflect this.

3.4.14 PNGL argue that Conditions 1.16.3, 1.16.6(b) and 1.17.5 must be amended to reflect the Gas Directive in that vertically integrated businesses such as PNGL do not create confusion '*in order to distort competition'*.

3.4.15 In their response, Power NI stated that *'does not create confusion'* needs to be made more clear. Power NI consider that this means that distribution and supply businesses should not share a common name (or element of a name) or other brand mark. Energia's response also notes that brand separation should be taken to mean separate brand identity, in both name and symbols. CCNI highlighted in their response that they have obtained evidence that the current branding of supply and distribution companies does distort and hinder competition in Northern Ireland and that they are therefore pleased that action is being taken to amend licences.

3.4.16 PNGL consider that Condition 1.16.5(d)(v) has been extended outside the scope of the Gas Directive. The proposed condition prohibits persons engaged in the management of the distribution business from providing services to other businesses. PNGL argue the Gas Directive only prohibits persons responsible for the management of the distribution business from participating in the company structures of other businesses, not from providing services to an associated business. In their response, PNGL quote Article 26(2)(b), *'appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the DSO are taken into account in a manner which ensures that they are capable of acting independently*.' PNGL therefore request that Condition 1.16.5(d)(v) be amended to reflect that associated businesses may not use or have access to the services of persons who are engaged in the management or operation of PNGL *'unless they are capable of acting independently'*. PNGL added that under this principle, if members of the DSO's management can act independently, they should not be restricted from providing services to an associated business.

3.4.17 PNGL pointed out in their response that they consider conditions 1.16.6(a) and 1.16.6(b) duplicate the requirements of Condition 2.7.4 and Condition B respectively and should be removed.

3.4.18 In their response, PNGL agreed with proposed Condition 1.16.6(c) that confidential information relating to a licence holder is not disclosed or accessible to any associated business without consent. PNGL considers that the proposed condition is consistent with Article 27(1) of the Gas Directive.

3.4.19 PNGL highlighted concerns about Condition 1.17.5 as it does not give PNGL an opportunity to rectify any possible brand confusion and it does not specify the grounds on which the UR may determine that there is confusion being caused. PNGL make comparisons in their response to standard special condition 33A of the GB transporter licence.

3.4.20 PNGL noted in their response that Condition 1.17.10 reflects the provisions of Article 26(2)(d) of the Gas Directive which requires PNGL's compliance officer

to be fully independent. PNGL requested clarification from the UR on its interpretation of *'an independent person'*. PNGL consider that their current structure ensures that the Compliance Manager of PNGL is fully independent from the management and operation of any of its associated businesses and no further changes are required under Article 26(2) of the Gas Directive.

3.4.21 PNGL noted that the other minor adjustments to Conditions 1.16 and 1.17 are not required.

3.4.22 In relation to imposing conditions 1.16 and 1.17 on firmus energy, Electric Ireland highlighted in their response that the cost of imposing these licence conditions on a distribution company with less than 100,000 connections may outweigh the benefits in the short or long term. Both Energia and Power NI stated in their responses that they support the proposals on brand separation, however they both consider the threshold of 100,000 connections is too high. Power NI feel that there should be no lower limit while Energia stated that the threshold should be reviewed as it would act as a barrier to competition in the 10 Towns market. In their response, firmus energy stated that they understand that conditions 1.16 and 1.17 automatically apply to any DSO with greater than 100,000 connections. However they clearly stated that they would not be in a position to accept the proposal that conditions 1.16 and 1.17 could apply to firmus energy if the UR makes such a direction before they reach 100,000 connections.

<u>UR Proposed Final Decision</u>

3.4.23 The UR intends to make some amendments to Condition 1.16 in both PNGL's and firmus energy's licence. We propose to remove section 1.16.6(a) and to amend section 1.16.5(d)(v) to provide clarification on access to the services of persons in PNGL. We also intend to remove section 1.16.1(b)(ii) from firmus energy's licence condition.

3.4.24 The UR intends to implement Condition 1.17 as originally proposed in the July 2011 consultation.

PNGL Amended Conditions 1.16 and 1.17 firmus energy New Conditions 1.16 and 1.17

Reasons and Effects

3.4.25 PNGL requested in their response that Conditions 1.16.3, 1.16.6(b) and 1.17.5 be amended to reflect the Gas Directive in that vertically integrated businesses such as PNGL do not create confusion '*in order to distort competition'*. The Gas Directive is explicit in its requirement that *'vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking'*. Article 26(3) of the Gas Directive creates the presumption that if confusion exists, this will lead to the distortion of competition. We have therefore determined that *'distortion of competition'* does not have to be proven. If we find that confusion as a result of branding and communication does exist, the Directive assumes that such confusion will automatically result in some distortion of competition. It is however a requirement of the Gas Directive that we ensure there is no confusion and for this reason, we do not intend to amend conditions 1.16.3, 1.16.6(b) or 1.17.5.

3.4.26 Power NI's response requested that *'does not create confusion'* is made more clear and stated that they consider that it means that distribution and supply businesses should not share a common name (or element of a name) or other brand mark. Energia's response also noted that brand separation should be taken to mean separate brand identity in both name and symbols. The UR considers that no further clarification of *'does not create confusion'* is required. Article 26(3) of the Gas Directive states that *'vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking'*. The proposed condition places the onus on the DSO to ensure that no confusion exists as to the separate identities of the licensed business and the associated supply business.

3.4.27 PNGL highlighted concerns about Condition 1.17.5 as it does not give PNGL an opportunity to rectify any possible brand confusion and it does not specify the grounds on which the Utility Regulator may determine that there is confusion being caused.

3.4.28 During 2011, the UR conducted consumer research that identified confusion amongst consumers exists between the vertically integrated distribution system operators and their affiliated suppliers in the gas and electricity markets. Although the Gas Directive does not require the UR to show that where confusion exists it has distorted competition we note that CCNI have highlighted in their response that they have obtained evidence that the current branding of supply and distribution companies does distort and hinder competition in Northern Ireland. Under Article 26(3) of the Gas Directive, the Utility Regulator could therefore enforce the separation of branding of vertically integrated distribution and supply companies immediately; however instead we have decided to give the companies an opportunity to rectify the existence of confusion as a result of branding. The DSO will need to ensure that adequate measures are taken to comply and prevent confusion resulting from branding and communication; and they will also need to detail these measures in their compliance plan.

3.4.29 In accordance with the licence condition, the UR will monitor the DSO's Compliance Plan and we will carry out more consumer research to identify if confusion resulting from branding and communication continues to exist in relation to vertically integrated distribution businesses and their respective suppliers. We will then be able to determine if the DSO has been successful in implementing measures to remove and prevent confusion from the market in line with the requirements of the Gas Directive. If the compliance plan does not work then it is likely rebranding would be deemed the only alternative.

3.4.30 PNGL noted in their response that they consider that Condition 1.16.5(d)(v) has been extended outside the scope of the Gas Directive and requested that the condition be amended to reflect that associated businesses may not use or have access to the services of persons who are engaged in the management or operation of PNGL *'unless they are capable of acting*

independently'. The UR considers that the proposed condition is within the scope of the Gas Directive and considers that PNGL may have misinterpreted Article 26(2). In their response PNGL quote Article 26(2)(b), however the section 26(2)(b) cannot be read on its own. Article 26(2) 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 that ensure they are capable of acting independently. The Gas 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 Gas Directive provides for the minimum criteria that needs to apply but by its very nature by referring to minimum criteria the Gas 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 Gas Directive.

3.4.31 The UR considers that if the DSO wishes to share the services of individuals between the distribution and supply company, it will be up to the DSO to seek approval from the Utility Regulator. The DSO will therefore need to demonstrate and prove to us that any individual, who they intend will provide services to an associated business, is not involved in the management, operation or decision making of the DSO. The DSO would then also have to set out in their compliance plan how they will ensure that any employees providing services to an associated business are not involved in the management, operation or decision making of the DSO and how the DSO will monitor and maintain this. We intend to amend condition 1.16.5(d)(v) to clarify this by adding *'(save to the extent the Authority consents to such use or access)'*. This amendment will also align the provision to the corresponding condition in the NIE licence.

3.4.32 The UR agrees with PNGL that Condition 1.16.6(a) is a duplication of Condition 2.7.4 and therefore intends to remove this provision. However, we

do not agree with PNGL that Condition 1.16.6(b) is a duplication of Condition B. The restrictions on the provision of information in Condition1.16 are in relation to any communications made in the course of the licensee's marketing activities; whereas the restrictions in Condition B relate to information being provided to consumers about the licensee's business, and in particular about connections between the network and the consumer's premises. We therefore intend to proceed with the implementation of Condition 1.16.6(b).

3.4.33 In their response, PNGL requested clarification on the UR's interpretation of *'an independent person'*. Article 26(2)(d) of the Gas Directive requires that the Compliance Manager must be independent. An *'independent person'* in relation to the Compliance Manager means someone who is not directly employed by the distribution company or directly employed by an associated business. The UR can confirm that PNGL are not correct in their assumption that their current structure ensures that the Compliance Manager of PNGL is fully independent from the management and operation of any of its associated businesses. PNGL will need to ensure their Compliance Manager is not directly employed by either PNGL or any of its associated businesses.

3.4.34 PNGL noted that the other minor adjustments to Conditions 1.16 and 1.17 are not required. The Utility Regulator considers that these minor adjustments are appropriate and reflect the requirements of the Gas Directive so that the condition applies where the licensee (or any affiliate or related undertaking of the licensee) is carrying on the activities of an associated business. We therefore intend to introduce these minor adjustments as proposed in the July 2011 consultation.

3.4.35 We have considered the clause within condition 1.16 for firmus energy which allows the UR to give direction for conditions 1.16 and 1.17 to take effect, even before firmus energy reaches 100,000 connections. Both Power NI and Energia stated that they considered the threshold of 100,000 connections was too high, whereas Electric Ireland highlighted that the cost of imposing these licence conditions on a DSO with less than 100,000 connections may outweigh the benefits. Article 26(4) of the Gas Directive contains a derogation

for DSO's with less than 100,000 connected customers. The UR has therefore decided to remove section 1.16.1(b)(ii) which will mean that for firmus energy, condition 1.16 and 1.17 will only apply when firmus energy reach 100,000 connections. We do intend to introduce conditions 1.16 and 1.17 (with the exception of 1.16.1(b)(ii)) into the firmus energy licence as we consider it appropriate to include the conditions at this stage for the purposes of ensuring uniformity between the PNGL and firmus energy licences, and to future proof the firmus energy licence such that the business separation obligations apply once the number of connected customers go above 100,000 without the need for further licence modification.

3.4.36 The revised conditions are set out in Annex 4 to this decision paper (see firmus energy New Conditions 1.16 and 1.17; and PNGL Amended Conditions 1.16 and 1.17).

Cost Benefit Considerations

3.4.37 Please see section 2.4.20 and 2.4.21.

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 the 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 contacts will be with the gas distributor.

3.5.4 The UR therefore considers it appropriate and necessary to regulate the marketing activities of distribution companies.

UR Proposal contained in July 2011 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) 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 3 of the July 2011 consultation (see Condition B). We would point out that in Annex 4 to this decision paper; Condition B has been renumbered to 2.7A.

Consultation Responses

3.5.8 We received several consultation responses in relation to the proposed Condition.

3.5.9 PNGL stated that they were unclear why there is a need for this condition and they believe the obligations in the Gas Directive relate to suppliers, not DSOs. They add that they are unclear as to what the condition aims to achieve and whether the condition is required as they consider that it covers the same areas as proposed licence conditions E (now renumbered to Condition 1.24) and 2.7.1(a). PNGL also consider that the restrictions in paragraph 3(b) are excessive.

3.5.10 In their response, PNGL also suggested that it would be more transparent for consumers and less confusing if the Consumer Council's Marketing Code of Conduct was extended to include DSO's, rather than having separate marketing codes for suppliers and DSO's. PNGL also consider that the relevant objectives of the Code are already provided for within Conditions 1.16, 1.17 and 2.7 of PNGL's licence.

3.5.11 The Consumer Council, firmus energy, Energia and Electric Ireland welcomed the proposed condition. Electric Ireland added that information provided by the distribution company should be related to technical matters alone

regarding safety and connection issues, and the supply company should deal with general marketing. They also suggested that the Distribution Marketing Code should in general require DSO's to inform customers that there are a number of suppliers and encourage customers to shop around.

UR Proposed Final Decision

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

New Condition 2.7A for PNGL and firmus energy

Reasons and Effects

3.5.13 In their response, PNGL were unclear what the aim of this condition was. Under Annex 1(d) of the Gas Directive, customers must be protected against unfair or misleading selling methods. The UR considers that there is a specific need to introduce this condition into the licences of DSO's as both gas networks in NI are still in a developing stage. This means that the DSO has significant direct contact with customers during the process of connecting the customer to the network. Due to the developing stage of the market, the DSO may also be advertising to customers to encourage new connections. The UR therefore considers that customer protection in relation to marketing activities is applicable to DSO's as well as supply companies and that there is a necessity for a Distribution Marketing Code.

3.5.14 PNGL questioned whether this condition was required as they believe that it covers the same areas a proposed licence conditions E (now renumbered to Condition 1.24) and 2.7.1(a). The UR disagrees with PNGL's opinion on this. This condition specifically refers to the objectives of the Distribution Marketing Code and is designed to ensure that the DSO's marketing activities are conducted in a fair, transparent, professional and non-discriminatory manner. Condition 2.7.1 however, deals with ensuring the DSO conducts its business activities in such a way so that no unfair commercial advantage is obtained by any business, and Condition E (now renumbered to Condition 1.24) is

concerned with ensuring that the DSO does not discriminate in the provision of services. Similarly we do not consider that the relevant objectives of the Code are provided for within Conditions 1.16 and 1.17 of PNGL's licence. Again this condition deals specifically with the marketing activities of the DSO, whereas conditions 1.16 and 1.17 are related to the independence of the DSO and the business separation compliance plan.

3.5.15 PNGL consider that the restrictions in paragraph 3(b) of this condition are excessive. Paragraph 3(b) requires that when the DSO provides information to consumers in relation to their business, including information about connections between a consumers premises and the network, the information must:

i. Be complete and accurate.
ii. Be capable of being easily understood by consumers.
iii. Not name or otherwise show preference to or discriminate against any gas supplier.
iv. Mislead consumers to whom it is directed and must be fair and accurate both in terms of its content and presentation.

3.5.16 The UR considers that these restrictions are appropriate to protect customers against unfair or misleading selling methods as required by the Gas Directive. The UR therefore does not consider these restrictions to be excessive and intends to introduce the condition as proposed in the original consultation.

3.5.17 PNGL suggested that extending the Consumer Council's Marketing Code of Conduct would be more transparent for consumers and less confusing. The UR considers that the most effective way to comply with Annex 1(d) of the Gas Directive to protect customers against unfair or misleading selling methods is to introduce the requirement for the Distribution Marketing Code. We would point out that the Consumer Council's Marketing Code of Conduct is voluntarily signed up to by Suppliers; however a licence obligation is required to comply with the requirements of the Gas Directive.

3.5.18 The UR does not agree with PNGL's suggestion that having separate Marketing Codes for DSO's and suppliers will cause confusion or limit

transparency for customers. The marketing activities of distribution businesses differs from that of supply companies and therefore we would argue that separate Marketing Codes for DSOs and supply companies is more appropriate.

3.5.19 Electric Ireland suggested that information provided by the distribution company should be related solely to technical matters regarding safety and connection issues. Due to the developing stage of the network, the UR does not consider that this would be possible as gas distributors play a significant role in developing, promoting and publicising the gas market and in liaising with existing and potential customers. The UR therefore is not considering the addition of a clause to limit the information which can be provided to technical, safety or connection issues.

3.5.20 The proposed condition is set out in Annex 4 to this decision paper (see Condition 2.7A).

Cost Benefit Considerations

3.5.21 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 conditions will ensure that customers are protected against unfair or misleading marketing practices.

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 condition 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 contained in July 2011 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 3 of the July 2011 consultation (see Condition C). We would point out that in Annex 4 to this decision paper; Condition C has been renumbered to 2.8A.

Consultation Responses

3.6.6 Electric Ireland and Energia both responded by stating that they agree with the proposed licence condition. The Consumer Council also stated that they support this proposed condition and added that they would be willing to assist in developing the complaints code of practice.

3.6.7 PNGL responded by stating that their Service Charter already ensures that they are meeting the requirements of the Gas Directive. They also note that consideration needs to be given to the proposed Guaranteed Service Standards in Gas[14] regulations to ensure consistency with any complaints handling code. PNGL also requested that the wording in paragraph 3(a) be revised to reflect that complaints should be resolved *'preferably within three months'* as there may be events outside of PNGL's control which prevent resolution of every complaint within three months.

UR Proposed Final Decision

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

New Condition 2.8A for PNGL and firmus energy

Reasons and Effects

3.6.9 The UR considers that even though some DSO's may already be compliant with the requirements of the Gas Directive, the licence modification is required to ensure that all DSO's have a mandatory obligation in line with the Gas Directive. This will ensure that customers can utilise and benefit from clear and fair complaints handling procedures.

3.6.10 The UR agrees with PNGL's point that the proposed Guaranteed Service Standards in Gas regulations need to be considered and the UR will expect DSO's to consider the Guaranteed Service Standards when composing or reviewing complaints handling procedures.

3.6.11 The Utility Regulator understands that it is not always possible to resolve a complaint within 3 months; however the DSO must make all reasonable endeavours to attempt to resolve it within 3 months. The UR considers that the wording in paragraph 3(a) is sufficient to reflect this due to the inclusion of the word *'intended'* where it states: *'within which it is intended that complaints*

[14] http://www.uregni.gov.uk/uploads/publications/GGuaranteed_Service_Standards_-_Consultation_Proposals_Paper.pdf

will be processed and resolved'. The UR therefore does not intend to amend the wording as requested by PNGL.

3.6.12 The proposed condition is set out in Annex 4 to this decision paper (see Condition 2.8A).

Cost Benefit Considerations

3.6.13 The DSOs already have complaints 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 customer's 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, including in particular in providing information to consumers about the operation of the market.

UR Proposal contained in July 2011 consultation

3.7.3 The UR proposed a new licence condition for gas distribution licensees which would require them to jointly prepare a Customer Information Code (CIC), for the CIC to be approved by the UR and for licensees to comply with the CIC.

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 3 of the July 2011 consultation (see Condition D). We would point out that in Annex 4 to this decision paper, Condition D has been renumbered to 2.9A.

Consultation Responses

3.7.6 Several responses were received in relation to the proposed Condition D. In their response, PNGL stated that they understand the purpose of the CIC is to ensure that customers can readily access information about the processes

and procedures required to get a connection to the network and they consider that it is good practice to do so. PNGL added that they already publish most of the information proposed to be contained within the CIC on their website, and therefore they consider that the only elements that need to be addressed by the CIC are the procedures and processes for obtaining a connection and the emergency contact details.

3.7.7 In their responses, both PNGL and firmus energy questioned how it would be possible to jointly prepare a common Customer Information Code, given that each company's processes are different. PNGL therefore suggested that references to 'together with all other licensed gas distributors' should be removed from the condition to allow licensees to develop individual Codes.

3.7.8 Electric Ireland, Energia and the Consumer Council all support the introduction of this condition and the Consumer Council added that they would like to be involved in preparing the CIC.

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3.7.9 The Utility Regulator intends to introduce Condition D (now renumbered to Condition 2.9A) with paragraph 1 amended to remove the reference to 'together with all other licensed gas distributors'.

3.7.10 A new paragraph will be added which will require gas distributors to ensure the content and format of their CIC is comparable to that of other gas distributors.

New Condition 2.9A for PNGL and firmus energy

Reasons and Effects

3.7.11 The Utility Regulator considers that putting the Customer Information Code in place is required to ensure that licensed gas distributors comply with the Gas Directive. Article 3(3) and Annex 1(c) require that customers have access to transparent information.

3.7.12 The UR accepts that some of the information proposed to be contained in the CIC may already be publicly available to customers. However the purpose of the licence condition is to ensure that it is a mandatory requirement for all DSO's to make the specified information transparent and readily available to customers. The CIC will address this by ensuring that customers have access to a one-stop document containing relevant information which is set out in a style and language that can be easily understood.

3.7.13 Having considered the responses received, the Utility Regulator accepts that due to the differences in the operational environments of firmus energy and PNGL, it could be problematic to require the distribution system operators to produce a joint CIC as previously proposed. We understand that DSOs may have different processes for connections and that their terms and conditions may differ. We therefore now propose to amend this condition to remove the requirement for the joint CIC between distribution system operators. The condition will however contain a new clause which will require all distribution system operators to work together to ensure the content and format of each of their Customer Information Codes is consistent and comparable. This will ensure that every customer will have access to the same type and level of information, regardless as to which licensed area they are in.

3.7.14 The revised condition is set out in Annex 4 to this decision paper (see Condition 2.9A).

<u>Cost Benefit Considerations</u>

3.7.15 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 little effort will be required to produce the CIC. Having these provisions as licence conditions will give customers added protection.