

**“A FAIR DEAL FOR CONSUMERS: MODERNISING THE
FRAMEWORK FOR UTILITY REGULATION”**

**RESPONSE BY THE DIRECTOR GENERAL
OF ELECTRICITY SUPPLY**

JUNE 1998

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Introduction

The Director General of Electricity Supply (DGES) welcomes the Green Paper and its emphasis on building on experience of existing regulatory arrangements. In particular, he welcomes the Government’s proposal (proposal 4.4) to amend the Electricity Act so as to require the separate licensing of supply and distribution. Effective separation of monopoly and competitive businesses is important for the promotion of competition in supply and the protection of customers. He also welcomes the proposals to make the protection of customers’ interests the primary duty of regulators (proposal 3.1), and to increase regulators’ ability to publish information (proposals 7.5 and 7.6). These proposals reflect recommendations which the DGES made in his submission to the review.

The remainder of this document contains DGES’s response to the individual proposals in the Green Paper.

PROPOSAL 2.1: Ministers should issue statutory guidance on the social and environmental objectives, including energy efficiency objectives, relevant to regulation for each utility sector. The statutory guidance would be subject to full consultation, including consultation with Parliament, and intended to last for a set duration. Regulators should be placed under a secondary duty to have regard to such guidance in the exercise of their statutory functions.

PROPOSAL 2.2: Views are sought on whether the existing duties on regulators in respect of the elderly, disabled, energy efficiency, etc, should be retained within a framework in which Ministers issue statutory guidance on social and environmental issues. If retained, the duties would be aligned with the scope of Ministerial guidance. They would thus be amended explicitly to cover low-income consumers and the chronically sick.

PROPOSAL 2.3: Where Ministers wish to implement social or environmental measures, including energy efficiency measures which have significant financial implications for consumers or for the regulated companies, these should be decided by Government and implemented through new, specific legal provision rather than through guidance to the regulator.

It will be helpful to clarify the roles and responsibilities of Government and regulator. The DGES welcomes the Government’s intention that the proposed statutory guidance on social and environmental objectives will be the subject of wide consultation, and should last for a set duration. There would be advantages in retaining the existing duties with

respect to elderly and disabled customers and energy efficiency, so that action by the regulator in these areas does not rest solely on guidance from Government.

The DGES agrees that Government, rather than regulators, should take responsibility for social or environmental measures which have significant financial implications for customers or companies.

PROPOSAL 3.1: A new single primary duty should be inserted into the relevant utility statutes, requiring the utility regulators to exercise their functions in the manner best calculated to protect the interests of consumers, wherever possible and appropriate through promoting effective competition. The interests of consumers should be interpreted to include prices and conditions of supply, continuity and availability of supply, quality of supply, and where relevant, the range of services offered. In defining the interests of consumers, due weight should be given to their longer- and medium-term interests as well as to their immediate or short-term interests. The duty should also make explicit the need to ensure that the regulated companies are able to finance the carrying out of their functions.

The DGES welcomes this proposal, which is in line with his submission to the review. In addition to the aspects mentioned in the proposal, the interests of customers should be interpreted as covering the promotion of efficiency and economy on the part of licensees (which is one of the present secondary duties in the Electricity Act) since this is important for achieving lower prices. As the DGES argued in his submission to the review, it is not clear that it is either appropriate or practical for the duties of the regulator to include ensuring that licensees operating in a competitive market can finance their activities.

The duties of the Secretary of State should similarly be changed. It is for consideration whether utility statutes should also make it clear that the MMC, in considering licence modification proposals, is bound by the same duties.

PROPOSAL 3.2: Consumer representative bodies should be set up on an independent statutory basis. The regulators should have a specific duty to consult them in reaching key decisions. Further consideration should be given to the functions, powers and duties of the consumer councils. In particular, the Government seeks views on whether the councils, in addition to their other functions, should have responsibility for handling consumer complaints.

PROPOSAL 3.3: The Northern Ireland Electricity Consumers' Committee should be merged with the General Consumer Council for Northern Ireland and a single energy committee established within the Council.

PROPOSAL 3.4: There should be scope for utility markets which reach effective competition to move smoothly to alternative arrangements (for example, an industry-funded ombudsman scheme). In particular, a move to alternative arrangements may be appropriate for telecommunications services at some point. The Government

invites views on when that point might be reached and on what alternative arrangements might be put in place.

The present arrangements for customer representation in electricity have worked well. Any change in these arrangements should avoid confusing customers or introducing uncertainty as to responsibilities. It would be appropriate for the role of the new consumer bodies to be to represent the interests of customers to the regulator and to companies, including keeping under review issues of interest to customers, and responding to requests for advice from the regulator. They should focus on domestic and small business customers. Giving the new bodies special responsibilities for disadvantaged customers risks too narrow a focus, and confusion with the role of the National Consumers Council.

It is already the practice in electricity to consult ECCs on key decisions. The proposal in paragraph 3.13 would be a retrograde step from the present practice of the DGES to publish draft decisions for comment by all interested parties.

There are considerable advantages in the present arrangement in electricity whereby OFFER, through a network of regional offices, deals with customer complaints. It ensures that the DGES is directly in contact with the problems and concerns of individual customers. This assists him in taking decisions about, for example, changes to Standards of Performance, or amendments to licences to enhance customer protection. At the same time, it is possible for the Electricity Consumers' Committees to draw on the experience of complaints handling, and to consider some complaints themselves, where the customer asks for this.

There is a risk of confusion in changing these arrangements. At present, if a complaint reveals a breach of licence conditions or statutory requirements, then OFFER can take appropriate action to remedy the matter. If complaints are handled by the consumer body, however, such complaints would need to be specially identified and then passed to the regulator for action, with dangers of delay, duplication of enquiries and confusion. It seems likely that, wherever formal responsibility for complaints may lie, many customers will continue to approach the regulator if they have difficulties or concerns, or even simple enquiries. Keeping complaints as the responsibility of the DGES enables the regulator to offer a "one stop shop" service to customers, covering complaints, advice and action to remedy problems. Customers appear to rate the present electricity arrangements for complaint handling highly; customer surveys show that over three-quarters of those bringing complaints to OFFER were satisfied with OFFER's service, and that over 90 per cent say that they would recommend OFFER to others.

Removing responsibility for complaints from the regulator may sit oddly with making the protection of customers' interests the regulator's primary duty.

The DGES agrees that there should be a single customer body for gas and electricity (assuming OFFER and Ofgas are merged). The present regional structure of customer representation in electricity is valuable, for example, in relation to issues about reliability of local electricity networks. There would be advantages in ensuring, perhaps through the

proposed legislation, that the new consumer body for gas and electricity has an appropriate regional structure also.

The possibility of an industry-funded ombudsman scheme to handle complaints about electricity suppliers should be considered as competition in electricity supply becomes better established. At present it is uncertain when that point may be reached.

PROPOSAL 3.5: The principles which underpin the Government's approach to price regulation are as follows. The Government believes that regulators should distinguish between the income that companies earn through their own efforts and that which results from other factors. Regulated companies should be able to keep the profits that they have earned during price control, thereby providing the right incentives for them to make efficiency savings. However, where a practical mechanism can be developed, benefits should flow to consumers within the price cap period when companies benefit from specific factors outside their control, or when companies have deliberately misled the regulator by providing incomplete or inaccurate information to the regulator when the price cap was set. The Government invites views on whether these principles are the right ones, on how these principles should apply to the different regulated sectors in developing best practice in price regulation, and on how they might be made operational. Together with the new primary duty to protect consumers, one approach would be to rely exclusively on RPI-X, provided regulators judged that this provides the best deal for consumers. An alternative would be to make greater use of Error Correction Mechanisms as a supplement to RPI-X, thereby providing a clear and in-built means of sharing promptly the benefits between consumers and shareholders when these differ from that envisaged when the price cap was set. In any event, regulators should explain their approach to future price reviews against the three principles set out above.

The DGES welcomes the endorsement of price controls which give companies incentives to improve efficiency and reduce costs.

Although there are advantages in seeking to distinguish between income which companies earn through their own efforts, and that which results from other factors, in practice this is not straightforward. Few costs are completely inside or outside companies' control. Also, in relation to, for example, capital expenditure programmes, it may not be sensible to view this question by taking each year at a time, as against a four or five year view each time the price control is reviewed.

In practice, mechanisms intended to permit customers to share the benefits of unexpectedly lower costs may also require them to share risks of higher costs (either directly through the operation of the adjustment mechanism, or indirectly through the level of the overall price control). It is important to give companies incentives to manage risks and uncertainties, including in connection with costs. In many cases, they are better placed to do this than customers are.

The DGES agrees that companies should not benefit at the expense of customers by deliberately misleading the regulator. It may not be easy in practice to determine clearly that companies have done this. Companies will naturally want to put to the regulator the best case from their point of view. The regulator's job is to subject this to rigorous scrutiny, and to develop alternative approaches which serve the interests of customers. It is important that regulators continue to develop procedures (for example, for scrutiny of company accounts) which minimise scope for companies to mislead.

Regulators have adopted a wide variety of forms of price control to meet particular circumstances. In electricity, these have included risk and benefit sharing in appropriate cases (for example, transmission services). Circumstances in individual industries are likely to change further in the future; and experience about different approaches will continue to accumulate. It is important for customers that the regulators' freedom as to the appropriate form of price control should not be unduly constrained.

PROPOSAL 3.6: All utility companies should adopt best corporate practice in setting arrangements for determining boardroom pay. In addition, the Government is attracted, in principle, to ensuring a closer link between directors' remuneration and the achievement of rigorous customer service standards, particularly for companies operating in monopoly and pre-competitive markets. The Government seeks views on how this might be achieved.

The DGES agrees that achievement of high levels of customer service is an important measure of the performance of the senior management of the companies. Whether and how to reflect this in pay arrangements is a matter for the companies themselves.

PROPOSAL 3.7: Present powers should be used to impose service standards on companies operating in monopoly markets, or in markets which have not reached effective competition, to ensure that the consumer is provided with a high quality, value for money service.

PROPOSAL 3.8: All the regulators should have powers of the type held by the gas regulator, to impose monetary penalties for breach of overall and individual service standards. This power would be in addition to the regulators' existing powers to require companies to pay compensation to individual customers.

PROPOSAL 3.9: In sectors where effective competition has developed, a lighter approach should be taken, possibly based on the publication by companies of comparable quality of service performance indicators and price information within a framework agreed with the regulator. This is the approach developing for the provision of telecommunications services.

PROPOSAL 3.10: Details of the performance of monopoly or near monopoly utilities against the service standards specified by the regulator should continue to be published to facilitate benchmark comparisons. Comparable information on standards of performance of companies where competition is emerging should also be

published to allow customers to make better informed choices of supplier. This information may vary between sectors but it should be for the regulator to determine what is published, and who is responsible for publishing it.

The DGES agrees with the Green Paper (paragraph 3.34) that in the long run, as competition develops, the market will protect customers efficiently as regards service standards, but that (paragraph 3.35) regulators should set service standards in monopoly markets and, if appropriate, where competition has not yet developed. DGES has set both overall and individual (“guaranteed”) standards for PESs, has monitored performance against them, and reviewed and tightened them several times since Vesting. They have proved to be effective in raising service standards in the electricity industry. It is not clear that a power to impose penalties for failure would add significantly to incentives on PESs to achieve overall performance standards, and could increase incentives on companies to avoid reporting of failures.

OFFER has experience of a significant number of breaches of statutory or licence obligations by PESs which are minor, and where enforcement action is inappropriate, but which nonetheless cause disadvantage or inconvenience to customers. Examples are where a company has failed to give the customer notice about terms of supply specified in the Electricity Act, or to inform him about his right to have disputes determined by the DGES. In his submission to the review, the DGES suggested that he should be able to fine companies, or require them to make payments to affected customers, for such breaches.

The DGES agrees that, as competition develops, emphasis should shift to the publication of comparable information relating to service standards, to help customers make informed choices. This is the approach which he has used for second tier suppliers competing to supply smaller electricity customers. Price information is likely to be readily available to smaller electricity customers as the market develops, both from companies themselves, and from organisations such as the Consumers Association. The DGES is considering how best to collect comparable price information and make it available to customers in the initial stages of the competitive market.

PROPOSAL 3.11: Regulators should adopt best practice measures on investment regulation, consistent with the development of competition. Options to improve the consistency of regulation in proposal 7.8 could assist in this. Measures adopted by each regulator would apply only to price-regulated operators.

Regulators already have work in hand to review jointly experience in investment regulation. The relationship between investment and quality of supply, how best to monitor investment, and how to treat “underspends” against investment levels assumed in setting price controls, will all be important aspects of the forthcoming distribution price control review.

PROPOSAL 3.12: Consideration should be given to making statutory provision for the appointment of an administrator for the energy network businesses to prevent interruption of supply in the event of insolvency or licence revocation.

The DGES agrees with this proposal. Further detailed consideration needs to be given to questions such as who may apply to the Court for an order appointing an administrator and in what circumstances, and what powers and access to necessary finance the administrator would have.

PROPOSAL 3.13: In line with the principles of data protection legislation, the Government is committed to ensuring that customer data is safeguarded, and that customers' reasonable expectations about how their data is used are met. At the same time, the utility companies need clarity about the uses to which customer data can be put. Properly regulated use of customer data can be an aid to the development of effective competition in utilities services. The Government will be prepared to consider whether any clarification of the use of customer data by the utilities is required when the outcome of the current appeal to the Data Protection Tribunal is known.

Although data protection issues are not a matter for the DGES, he has been concerned that PESs should not, in effect, cross-subsidise other businesses such as appliance retailing by giving them access to PES customer databases on terms not available to competitors.

PROPOSAL 4.1: The electricity and gas regulators should be replaced as soon as possible with a single energy regulator and OFFER and Ofgas should be merged to create a single regulatory office. As an interim measure, steps should be taken to ensure collaboration on the regulatory issues raised by integrated energy markets. Strategic planning for the creation of a single regulatory office and the streamlining of administrative arrangements will be set in hand.

PROPOSAL 4.2: The duties of the new energy regulator will need to acknowledge the convergence of the gas and electricity markets. The new energy regulator must be able to take account of the effect on both the gas and electricity markets when making decisions. It will be necessary to ensure that the creation of a joint energy regulator is underpinned by the proper integration of the supporting regulator regimes. This will need to include alignment of regulatory procedures and functions where appropriate.

PROPOSAL 4.3: The Government would welcome views on whether the head office of the single GB energy regulator should be located in Birmingham or London. However, the GB energy regulator should consider maintaining an office in Scotland, as the electricity regulator presently does. Consideration should also be given to the best way of ensuring effective liaison between the National Assembly for Wales and the new energy regulator.

The DGES sees the case for bringing together the legal frameworks for gas and electricity regulation, and creating a single regulatory body for the two industries, though he notes the significant responsibilities that would be entailed.

OFFER and Ofgas already work together on regulatory issues raised by integrated energy markets. For example, supply licence conditions for the competitive gas and electricity markets, including the marketing code, are substantially aligned. The DGES looks forward to working with DTI and Ofgas (and also with the Electricity Consumers' Committees and the Gas Consumers Council) to plan arrangements for the new regulatory office and the new consumer body. It is important that the merger should be planned with the interests of staff in mind, and so as to avoid disrupting important ongoing work, for example supply competition, reform of electricity trading arrangements and price control reviews.

The Government's approach to the location of Government departments has been based on achieving greater cost-effectiveness, and operational efficiency and managerial effectiveness, while taking into account the wider employment and economic development effects of relocating Civil Service jobs. OFFER works effectively from its Birmingham base, which is readily accessible from all parts of GB. There would be substantial costs in transferring staff from Birmingham to London, and some of these costs (for example, compensation for higher housing costs in London) would continue for many years. Office rent and other support costs are also likely to be higher in London than in Birmingham. It is not clear that other factors such as efficiency or effectiveness of the combined office require a London location. The wider effects of a decision on location, for example, with respect to employment and economic development, are matters for Government to consider.

In the interests of operational efficiency and management effectiveness, OFFER has recognised that many aspects of regulation of the Scottish electricity industry are best discharged from an office based in Scotland. This appears unlikely to change under a single regulatory body, and the office in Scotland would be well suited to facilitate links with the Scottish Parliament.

PROPOSAL 4.4: The Electricity Act 1989 should be amended to require the distribution businesses of the PESs to be licensed separately from their supply businesses.

The DGES strongly supports this proposal. He has recently issued a detailed consultation paper on separation of PES activities (including those of the vertically integrated companies in Scotland), and will advise the Government further on the possible content of legislation.

PROPOSAL 4.5: The scale monopoly provisions of the Fair Trading Act should be retained for the regulated utility sectors. Because of the special circumstances of the utility sectors, and the difficulty of establishing competition, use of the scale

monopoly provisions should be possible whether or not there has been a prior finding of abuse of a dominant position under the Competition Bill when this becomes law.

The DGES welcomes this proposal. Scale monopoly is a significant feature of most regulated utilities. Competition is growing, but will take time to become established, and in some areas may not be feasible. It is important that regulators' present ability to make FTA references is not diminished.

PROPOSAL 4.6: In principle, and subject to the outcome of the review of electricity wholesale trading arrangements, the electricity regulator should be given greater powers to effect change in respect of these arrangements where this is appropriate.

The DGES agrees that it would be sensible to consider whether greater powers are appropriate with respect to electricity trading, once he has completed his review of electricity trading arrangements. He aims to publish draft proposals in June, and final proposals in July.

PROPOSAL 4.7: The energy regulator should have the power to deem contracts for electricity between customers and another supplier in the event of a supplier falling into default.

The DGES agrees with this proposal which might be considered further in the context of bringing together the regulatory regimes for electricity and gas.

PROPOSAL 4.8: In principle, the Northern Ireland energy regulator should have further powers to introduce competition in generation in Northern Ireland. The form and extent of such powers will require further work.

This is not a matter for the DGES.

PROPOSAL 4.9: DTI and the gas regulator will keep under review the rules on customers switching suppliers, especially in the large industrial and commercial market, with a view to addressing any remaining barriers to effective competition. In due course these rules would need to apply to both gas and electricity industries.

The DGES agrees that it would be sensible to keep this matter under review.

PROPOSAL 5.1: The gas and electricity regulators, in partnership with the utility companies, should prepare a detailed action plan, in keeping with the objectives and action points outlined above (that is, in paragraphs 5.34 to 5.36 of the Green Paper). In drawing up the action plan, the regulators should consult the gas and electricity consumer representative bodies, who could also assist in monitoring progress by the utility companies. In addition to the action points identified in the plan, the Government is considering the case for legislation to require the gas and electricity distribution networks to make differential charges to supply companies to assist PPM

customers. As a part of this plan, therefore, the regulators should advise on how such a proposal might operate and the appropriate level for such charges. The action plan should enable progress in assisting disadvantaged customers to be judged against measurable targets. Accordingly, the plan should establish timescales, and identify milestones to be achieved over the next five years. The plan should be submitted by the end of May 1998. It will inform the Government's thinking on future legislation.

The Action Plans are being published as a separate paper. OFFER's has been prepared in consultation with the electricity companies, and the Electricity Consumers' Committees. Ofgas' plan takes account of comments from gas shippers and suppliers, and BG plc, consultation with the Gas Consumers Council and the work of Ofgas' Prepayment Steering Group.

Competition will bring important benefits to all customer groups, particularly by driving down costs and prices. But it will take time to develop. Meanwhile customers may need additional protection, particularly those customers for whom competition is likely to develop most slowly.

The DGES will be monitoring the impact of competition on different customer groups, especially disadvantaged customers, and will publish the results. He will discuss with ECCs the practicality of the proposal (paragraph 5.37) for publication of league tables or other information to help disadvantaged customers to choose an appropriate supplier.

The DGES already takes significant action to assist disadvantaged customers. The supply price restraints which he has put in place from 1 April have brought down prices for all groups of domestic customers, and have ensured the same minimum reduction for prepayment customers as for credit customers.

The PESs are obliged to have Codes of Practice dealing with, among other things, payment of bills and guidance for dealing with customers in difficulties, and services to customers who are elderly, disabled or chronically sick. The DGES reviewed the Codes in 1995 and required the companies to make substantial improvements to them. Among other things, the Code on payment methods was extended to cover services to prepayment customers. The new second tier supply licences for the competitive market require second tier suppliers to prepare similar Codes.

The Green Paper rightly draws attention to the fact that there is no simple correspondence between social and economic disadvantage, and payment method. Measures to cross-subsidise, for example, prepayment customers will place higher costs on other customers, including poor customers who do not pay by prepayment meter. As the Green Paper recognises, prepayment meters are at present more expensive to provide and service than other meters and payment methods. It is important to give companies incentives to bring down these costs (including by effective competition, and by price restraints until competition is effective), and to develop and offer other choices of payment methods to

customers presently on PPMs. The forthcoming distribution and supply price control reviews will examine the costs of PPM systems, and the scope for reducing them.

The Action Plan addresses the suggestion (paragraph 5.38 of the Green Paper) that the Government might legislate to require the gas and electricity distribution networks to make differential charges to energy supply companies to assist PPM customers. Such a mechanism would be technically complex. Present estimates from the companies of the additional costs of prepayment meters differ widely. This will make it difficult to decide the level at which the subsidy should be set. Ensuring that the cross-subsidy is passed through by suppliers to their prepayment customers is likely to require continued price controls on prepayment tariffs, which may have adverse implications for the development of competition for prepayment meter customers.

PROPOSAL 7.1: Views are invited on whether individual regulators should be supported by a statutory advisory group, and/or replaced by a small executive board or commission. These are broad propositions. The Government would be interested to have views on alternatives or variants to the broad propositions.

The DGES agrees that it is important to bring a wide range of expertise and experience into regulatory decision-making. Particularly in recent years, regulators have drawn extensively on advisory groups and panels, as well as consultancy and other specialist advice. The DGES has appointed senior advisers for specified tasks (such as price control reviews), which has been particularly helpful. He is unable to comment on the feasibility of standing panels of advisers which advise on regulatory issues generally. It would be sensible to build on present practice. It is important that the regulator has full confidence in those advising him, which implies that he should appoint them himself. The DGES would not seek to prevent advisers publishing their views, if they considered that helpful.

There would be significant risks and uncertainties in proposals (b) (paragraph 7.9) and (c) (paragraph 7.10). Option (b) - a small executive board - would be likely to bring a narrower range of experience and expertise to bear than option (a), unless the executive board were itself supported by an advisory panel (as the Green Paper recognises). The Green Paper suggests that an executive board might be a way of managing a large regulatory workload, for example, following a merger of regulatory offices. It would not necessarily be helpful in this context, unless substantial decision-making powers are delegated to individual board members without a need for collective discussion, which would have disadvantages. The question of how best to manage the regulator's workload is in any case different from the question of how best to ensure access to an appropriate range of advice.

The DGES's submission to the review sets out possible difficulties associated with option (c) - regulatory commissions. These include potential adverse effects on speed of decision-making, on clarity of responsibility for decisions, and difficulties in establishing and sustaining continuity of relations with industry, customers and other interested parties. The possible advantages of replacing individual regulators with Commissions do not seem clear enough to outweigh the risks and uncertainties.

PROPOSAL 7.2: The Government recognises the importance of ensuring that the level of resources available to the regulators, along with the flexibility that they have over how to deploy those resources is sufficient to enable them to regulate their sectors effectively, taking account of final decisions on reforms to the regulatory process.

The DGES welcomes this recognition of the importance of adequate resourcing of regulatory offices. Public expectations of regulation, for example, as regards consultation and transparency, and the complexity of many regulatory tasks, such as the promotion of competition and the regulation of multi-utilities, have both increased. It is important that this is reflected in the resourcing of regulators' offices.

PROPOSAL 7.3: Each utility regulator should be placed under a statutory duty to consult on and then to publish and follow a code of practice governing their consultation and decision-making processes.

PROPOSAL 7.4: Regulators should be encouraged to consult on and to publish their forward programmes as a consultation to openness and predictability of regulation. The programmes would need to explain how they align with and support the statutory guidance issued by Government on social and environmental objectives.

PROPOSAL 7.5: Regulators should be given a statutory duty to publish reasons for their key decisions.

There have been significant developments in the decision-making processes of all regulators, including more frequent and detailed consultation papers, public hearings and seminars, and the publication of forward work plans in main work areas for comment by interested parties. It is important that the proposed Codes of Practice on consultation and decision-making should not inhibit further development of practice, or build unnecessary delay into decision-making.

The Secretary of State and the DGES have the same duties under the Electricity Act. Some functions overlap (for example, issuing licences) and others are closely inter-related. The Government should therefore consider placing a duty to publish reasons on the Secretary of State also in relation to key decisions under utility statutes. It would be inconsistent if the regulator were to be obliged to publish reasons, for example, for a decision to make an MMC reference while the Secretary of State was not under a corresponding duty to explain reasons for vetoing such a reference.

PROPOSAL 7.6: Records and information on the utilities held by regulators should be disclosable, in line with the FOI White Paper, unless the company can demonstrate that disclosure will cause "substantial harm". The circumstances in which a claim of substantial harm is likely to be accepted will need to be developed as part of wider thinking on the FOI Act. However, it is proposed that information provided by monopoly businesses to the regulator will generally be disclosable. For

markets emerging into competition, the extent of disclosure required might be related to the degree to which a company has market power.

In his submission to the review, the DGES argued for greater freedom to publish information. He has welcomed the proposals in the White Paper “Your Right to Know”. It is appropriate that information held by regulatory offices should be subject, under the proposed Freedom of Information Act, to the same rules as regards disclosure as those applying to Government generally.

PROPOSAL 7.7: Regulators should require monopoly businesses in their utility sectors to publish regulatory accounts and other financial information in a more standardised format which will facilitate customer understanding, and facilitate comparisons within sectors. Views are sought on the most helpful means of presenting this information.

PROPOSAL 7.10: The Government seeks views on the extent to which it is practical and helpful to apply a common format for the presentation of regulatory accounts and other financial information across all (or some) of the utility sectors.

The DGES agrees that regulatory accounts should be informative, and allow both regulators and other interested parties to make useful comparisons between companies and, where appropriate, across sectors. He will shortly be publishing a consultation paper on regulatory accounting for electricity licensees.

PROPOSAL 7.8: The Government wishes to ensure a full and, where possible, transparent debate on matters of common interest between the utility regulators with a view to encouraging more consistency of approach in regulatory methodology and the spread of best practice. The Government seeks views on how this can be achieved, and in particular on the respective merits of creating a statutory technical advisory committee, or placing regulators under a duty to consult on matters of common interest.

The DGES agrees that it is desirable to promote consistency and best practice between regulators. It is also important not to restrict the scope for new approaches, and to enable individual regulators to develop solutions best suited to the particular circumstances of their industries. Useful progress on, for example, regulatory process and transparency has been made through innovation by one regulator, subsequently taken up and adapted or developed by others. The MMC has played an important role in the evolution of a more consistent approach in a number of key areas, such as price controls.

Present informal liaison between regulatory offices has worked well, and is capable of being developed further. This would avoid setting up further new institutional arrangements. Regulators already have joint work in hand or planned in many of the specific areas identified in paragraph 7.32.

Setting up a Technical Advisory Committee (TAC) might make it difficult for a regulator to take timely decisions in areas where the TAC was working, or was planning to work. The Green Paper suggests that the committee's views are intended to be advisory rather than binding. Nonetheless, it is presumably the intention that the TAC should be authoritative, and this implies that it may remove responsibility from regulators, and make them less accountable. There is a danger of confusion of responsibilities for ensuring consistency between the TAC and the MMC (which would not be solved by having the MMC Secretary on the TAC). Because TAC will not be responsible for practical implementation in specific cases, it may become overly theoretical in its approach or so general as not to be helpful. There may also be conflicts for external members between their role on TAC and their other interests.

PROPOSAL 7.9: The Government invites the utility regulators to carry out and publish a joint study of the regulatory issues associated with multi-utilities, looking to likely developments over the next decade. Before undertaking the work, the regulators should consult interested parties on the scope of the study and particular issues it should address.

Regulators have done this. Their report to Ministers on multi-utilities has been published separately.

PROPOSAL 7.11: The appointment of Select Committees is a matter for Parliament. However, the Government's view is that the current Parliamentary arrangements have allowed for effective scrutiny of utility regulation. Parliament might take further steps to ensure effective co-ordination between the existing committees when they address utilities issues.

This is not a matter for the DGES.

PROPOSAL 7.12: Annual reports must provide comprehensive coverage of the regulators' activities, processes and decisions, and in a format which is useful for Parliament, consumers and other interests. The Government invites suggestions for improving the content, structure and presentation of regulators' annual reports.

The DGES has aimed in his Annual Reports to give a full account of significant regulatory developments during the year and an overview of important future issues, as well as information about such matters as prices, the development of competition and standards of service to customers. He agrees that it would be helpful to receive suggestions for improving the content, structure and presentation of Annual Reports, to ensure that they continue to meet the needs of Parliament and wider public.

PROPOSAL 7.13: The Government considers that there is a strong case for improving the transparency of the MMC's procedures on licence modification references to align with the increased transparency being proposed for the regulators' own procedures. The Government seeks views on the options for achieving this.

PROPOSAL 7.14: The Government seeks views on the respective merits of the options for redefining the regulators' discretion in determining licence modifications following references to the MMC.

PROPOSAL 7.15: The Government seeks views on the options for reforming or replacing the MMC's sector-specific panels.

The DGES acknowledges the strengths of the present MMC procedures. He agrees that there is a case for bringing the MMC's procedures into line with the procedures proposed for regulators.

Publication of draft conclusions could be helpful in dealing with the problem that some have perceived about the extent of regulators' discretion in remedying adverse effects identified by the MMC. It would give the regulator (and others) an opportunity to comment in detail on the proposed remedies, and also to deal with any technical deficiencies. This approach would take extra time, but may be more satisfactory than trying to deal with these issues after the MMC have finalised their report (as in the Green Paper's first option) or limiting the regulators' discretion. It may also reduce substantially the scope for divergent views between the MMC and the regulator, and may enable the MMC to define their conclusions more tightly.

The present arrangements for sector-specific panels seem unduly restrictive, particularly the prohibition on appointing members of sector panels as members of general MMC panels. It is not clear that utility references require different knowledge and experience on the part of the MMC members dealing with them. The DGES would not object to abolishing sector-specific panels and relying on the Chairman of the MMC to appoint appropriate general MMC members to particular licence modification references.

**OFFICE OF ELECTRICITY REGULATION
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