Customer Disconnections - Review of Cost Allocation & Code of Practice

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Abstract: Following consultation the CER is issuing a decision paper setting out the allocation of costs for the disconnection and reconnection of domestic customers for non payment of account. This decision will see a review of the charges for disconnection and reconnection and a further requirement on suppliers to pass on only 50% of the charges for disconnection and reconnection. In addition the CER has decided to add a number of changes to the supplier's Guidelines for the Disconnections Code of Practice.

Target Audience:

This paper is for the attention of members of the public, the energy industry, customers and all interested parties.

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Executive Summary

The current economic climate is placing additional pressures on consumers and many people are caught between a diminished household income and increased domestic outgoings and mortgage payments. As a result many consumers are falling into arrears with their energy providers and notwithstanding the regulated customer protection measures already in place in the gas and electricity markets, the number of disconnections of domestic energy customers has risen steadily in the past year, most notably in electricity. The CER is encouraged by the positive reaction from respondents, where there is a strong consensus amongst stakeholders that customers must be protected in this difficult economic climate so that vulnerable customers, and previously good credit customers, are not left without essential services for economic reasons beyond their control. There was however, a wide range of views on how some of these objectives should be achieved. The CER has considered the issues raised by respondents, in terms of the impacts on the all relevant stakeholders, but in coming to its decisions on this issue has regarded customer protection as a primary objective. Therefore, further to a public consultation on a number of proposals, the CER has decided to implement the following;

(i)	The CER will review the level of disconnection and reconnection charges for gas and electricity	New charges, where appropriate, to be effective from 1st Jan 2011
(ii)	Where an electricity/ gas supplier initiates a network's order for disconnection/reconnection of a domestic customer for reason of non-payment of account, only 50% of the total charge is recoverable from the customer.	Effective for 12 months from 22nd December 2010. To be reviewed Dec 2011.
(iii)	The Code of Practice for Disconnections will be revised to include additional supplier measures to assist domestic customers in managing their bills and reducing disconnection rates.	New CoP effective from 1st Jan 2011

All respondents are in favour of a review of the costs of disconnection, recognising that there is a legitimate cost associated with these activities and that this must be recovered. A review of costs has already commenced and CER will engage with network companies to ensure that the rates are fully costs reflective. The CER will publish new rates in Dec 2010, to be effective from 1st January 2011.

The second proposal looked at a range of options for allocating the costs of the disconnection / reconnection. The CER's recommended option was that the costs of disconnection would be shared between the supplier and the customer. The CER proposed that this created the correct balance of incentives for customers to manage their arrears, and for suppliers, to ensure that they do not move to disconnection too rashly. While many respondents favoured socialisation of all costs, it was recognised that this would unfairly increase costs for the broader customer base, many of whom may be struggling to stay in credit as is. Some suppliers set out concerns that the shared costs option this represented an unfair, and inappropriate, burden on the supply company in what is a relatively low margin business. One supplier noted that the proposal was unwelcome but recognised that emergency measures were justified in the current context. The CER is mindful of supplier's comments, but notes that the options which divert the cost away from the customer were proposed as 'emergency measures' in the context of the extremely difficult economic circumstances currently being faced by consumers. All options pose additional direct, or indirect, costs to the industry. Therefore the CER has decided to implement the recommended option, so that that for the period 22nd December 2010 – 30th December 2011, suppliers must absorb 50% of the costs of disconnection and reconnection (as incurred from the networks company) to be levied on any domestic customer for reason of non-payment of account. This will be reviewed in December 2011. The CER would consider it a breach of this decision if suppliers were to recover this charge via alternative means such as relabeling it as something else on the bill e.g. an administrative charge.

The proposals outlined above should be viewed as a package of measures. The CER also notes the need to have the correct industry tools and mechanisms are in place to support suppliers to assist customers in arrears, so that where a disconnection does take place it is a last resort, and is implemented in a fair and transparent way, with the maximum regard to the customer impact in terms of cost and inconvenience.

The CER also consulted on a number of additional measures to be immediately incorporated into a supplier's Code of Practice on disconnections. Most respondents were supportive of additional measures in the Code of Practice to give customers added protection to help them avoid disconnection. Suppliers raised a number of practical issues with respect to implementation of some of the measures where internal systems changes may be required. The CER will engage further with suppliers on the detailed implementation of specific measures including the format of reporting. The CER had considered respondents' comments and has decided to revise the Code of Practice on Disconnections to incorporate the following new provisions, where some of these measures have been amended from the original consultation and one has been removed.

- suppliers should confirm a customer's payment plan in writing and refer customers to MABS where circumstances warrant it.

- The CER is proposing that a minimum of 4 successful contacts, at least two of which should be in writing, should be included as the minimum requirement for suppliers, before a disconnection occurs. Each attempt to contact the customer should be a discrete event, no less than 3 working days apart.

- increase the mandatory notice of supplier disconnection from a minimum of 7 days to 10 business days notice.

- suppliers must set out, in disconnection notifications and on the bill, any administrative costs separate to the published network cost of disconnection/ reconnection costs and to highlight any cancellation fee that may apply.

- suppliers to maintain a record of all steps taken and considerations made when reaching the decision to disconnect a customer and to report to the CER on a monthly basis (format to be decided)

- suppliers are required to use 'plain English' in all correspondence, terms and conditions, codes of practice and notices issued to customers.

Some respondents raised concerns that the proposed measures were not appropriate to business customers. While not explicit in the consultation paper, the CER notes that some of these proposed measures would apply to domestic customers only. Therefore, where provisions apply to domestic customers only, it will be highlighted in the Code of Practice. The revised Code of Practice on Disconnections will be effective from 1st January 2011.

The decisions in this paper are designed to address some of the problems of domestic customers who are increasingly falling into arrears with a range of creditors, including utility companies, by ensuring that disconnection is always the last resort measure. The CER notes that these decisions should be considered as a package of measures to assist customers in arrears and those facing disconnection. Many respondents advocated prepayment meters as the ultimate solution to customer debt management. Pre-payment metering is already available to gas customers and the CER recently consulted on the use of prepayment equipment, known as budget controllers, to reduce the number of disconnections in the electricity market. The decision paper on pre-payment metering has been published in parallel with this document. Noting the limitations of the budget controllers currently in place, in terms of technology and availability, the CER is working with industry to deliver a more technically robust and widely available prepayment solution for electricity customers as an interim solution, in advance of the roll out of smart meters.

The decisions in this paper will give customers further rights and protections in terms of dealing with energy suppliers, reduce the burden of disconnection and reconnection fees on any customers who are disconnected and, hopefully, reduce the total number of disconnections in the electricity and gas markets. The CER will continue to work with industry to promote consumer welfare through facilitating effective competition but also through ensuring that all customers can benefit from such competition through socially inclusive retail policies that recognise the particular needs of the most vulnerable in society with respect to energy supply.

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1.0 Introduction

1.1 The CER for Energy Regulation

The Commission for Energy Regulation ('the CER') is the independent body responsible for overseeing the regulation of Ireland's electricity and gas sector's. The CER was initially established and granted regulatory powers over the electricity market under the Electricity Regulation Act, 1999. The enactment of the Gas (Interim) (Regulation) Act, 2002 expanded the CER's jurisdiction to include regulation of the natural gas market, while the Energy (Miscellaneous Provisions) Act 2006 granted the CER additional powers in relation to gas and electricity safety. The Electricity Regulation Amendment (SEM) Act 2007 outlined the CER's functions in relation to the Single Electricity Market (SEM) for the island of Ireland. This market is regulated by the CER and the Utility Regulator for Northern Ireland (UR). The CER is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

1.2 Purpose of this paper

The Irish economy has contracted significantly in the past two years. As a consequence domestic customers are increasingly falling into arrears with a range of creditors, including utility companies, which can result in disconnection from service. When a customer falls into arrears, and at the end of the suppliers credit process is ultimately disconnected, their debt position is further compounded by the additional costs of disconnection and reconnection. In response to this trend, the CER has consulted on the regulated policy on disconnections (for non payment of account) in the context of improved customer protection. This review examined the costs of disconnection and reconnection, how they are allocated across the industry, and to the customer, and also proposed a number of changes to the supplier Code of Practice on Disconnections.

The purpose of this paper is to inform the public and the CER's stakeholders with regard to the decisions on changes to the disconnections policy and changes to the supplier's Guidelines for the Disconnections Code of Practice set out in this paper.

1.3 Consultation Responses

The CER received twelve responses to the consultation paper (CER10189). Submissions were received from the following organisations:

- Airtricity
- Bord Gáis Energy
- ESB Customer Supply
- ESB Networks
- Flogas Natural Gas
- Gaslink and Bord Gáis Networks
- IBEC
- Labour Party

- Leo Varadkar TD – Fine Gael spokesperson for Communications, Energy and Natural Resources
- Liam O'Gradaigh
- Money Advice and Budgeting Service (MABS)
- Viridian Group

The CER has published each of the responses received alongside this decision paper. The issues raised in these responses are addressed in Sections 2 and 3.

1.4 Structure of this paper

- **Section 2.0** Review of Options for Cost Allocation

- **Section 3.0** Proposed Changes to the Guidelines for the Code of Practice on Disconnection

- **Section 4.0** Conclusions

2.0 Review of Options for Cost Allocation

2.1 Introduction

In reviewing the options to reduce the number of disconnections taking place and limit the cost burden on consumers that do fall into arrears, the CER reviewed the actual levels of the disconnection (and reconnection) charges in place the cost allocation. A number of alternative options for consideration were set out in the consultation, along with the CER's recommended option the supplier should bear half of the cost of the disconnection, or reconnection.

In the original consultation paper the CER set out five consultation questions. This section provides a summary of respondent's comments and suggestions in relation to each of the five questions.

2.2 Option 1 - Customer Pays

In the first option the CER proposed to maintain the status quo in terms of the model of payment but to review the level of the charge. The current practice is based on the rationale that the site visit by the technician is a chargeable event. Respondents were asked to comment on this proposal in question one.

Q1. Respondents are invited to comment on the proposal to review the current cost for disconnections. Are you in favour of the proposal? Are there alternative options which could reduce the costs of disconnection? Outline reasons for agreement or disagreement.

2.2.1 Respondents' Comments

A number of respondents were in favour of the proposal to review the current cost for disconnection and reconnection. While any downward review of disconnection charges was viewed as welcome, one respondent stated that as a standalone initiative, the proposal does not address the problem of indebted customers being asked to pay additional monies when they are unable to pay for commodity consumed in the first instance. It was also stated that the cost of disconnection and reconnection should not exceed the real market cost is in terms of man-hours and other costs for the company.

However one respondent felt that instead of reviewing the charge the CER should implement a zero disconnection policy through the use of pre-payment meters and to develop an acceptable policy in relation to disconnection fees. The respondent proposed that new payment plans and pre-payment meters should be offered to all those customers who are struggling to pay their bills. All utility companies and the CER should have an active role in ensuring that customers are facilitated in paying methods that they can manage. Pre-payment meters should be free to those customers already struggling to pay.

2.2.2 CER Response

Respondents were in favour of a review of the costs of disconnection, recognising that there is a legitimate cost associated with these activities and that this must be recovered. A review of costs has already commenced and CER will engage with network companies to ensure that the rates are fully costs reflective. The CER will publish new rates, where appropriate, in December 2010, to effective from 1st January 2011.

Decision 1

The CER will review the level of disconnection and reconnection charges for gas and electricity. New rates, where appropriate, to be effective from 1st January 2011.

2.3 Option 2 - Supplier Pays

Option 2 in the consultation proposed a move away from the current practice where the disconnection charge is a legitimate pass through charge to the consumer. The CER examined the incentives on suppliers where a customer has defaulted. The Networks business charges the supplier for this activity who in turn passes the charge on to the customer, effectively charging them for the withdrawal of service. Option 2 proposed that the disconnection costs are borne by the supplier, where the intended outcome is to provide an incentive to the supplier keep the number of disconnection orders to a minimum. The supplier must take its decision to disconnect a customer, reviewing the costs of the disconnection in the context of the value of the arrears (already incurred and likely to occur in the future), and the probability of recouping the debt from the customer at some point in the future. A further consequence is that the supplier is incentivised to put more effort into customer engagement around an appropriate payment plan. The CER noted however that where these costs do rest with the supplier, then this may result in increased tariffs for the balance of that supplier’s customers. Respondents were asked to comment on this proposal in question two.

Q2. Respondents are invited to comment on the proposal that suppliers should bear the cost of customer disconnections. Are you in favour of the proposal? Outline reasons for agreement or disagreement.

2.3.1 Respondents’ Comments

Some respondents were of the view that suppliers already go to considerable efforts to communicate with customers and find a solution to indebtedness with disconnection only being used as a last resort. They stated that there are already significant incentives in place for suppliers not to disconnect a customer and shifting of the cost disconnection to the supplier is unlikely to bring any added incentive. Instead it would be an unfair measure that penalises suppliers.

Another respondent highlighted the low margins that suppliers earn in and stated that such a measure would effectively reduce a supplier’s margin and thus force suppliers to perhaps increase their overall tariff to recoup the cost and thus place more financial pressure on the customers. In addition they highlighted a further issue with this proposal where a supplier that is currently only disconnecting (locking in gas) a as a means of last resort hesitates further in making the decision to disconnect, the supplier could merely be pro-longing the process and thus forcing the customer into further debt.

2.3.2 CER Response

In proposing a range of options for costs allocation, the CER was seeking to identify a solution which was fair to all stakeholders but also created a fair balance or incentives for both parties to the energy contract, the supplier and the customer. The CER mindful of supplier's comments, and agrees that forcing the entire costs of the disconnection / reconnection activity to supplier does not provide an incentive to the customer, and isolates them from the full consequences of the decision. As such, the CER has decided not to implement the proposal to pass the full cost of the disconnection / reconnection activity to the supplier.

2.4 Option 3 – Socialisation

Option 3 proposed that the costs of the disconnection (and reconnection) should be spread across the entire customer base through the network charges. This model of 'socialising' the costs means that all customers contribute the costs of customer disconnections and reconnections. The consultation highlighted a number of variants for how this might be implemented, and consequently different incentives and/or consequences for the parties involved. The consultation addressed two versions of the socialisation model.

The first model for socialisation would see the entire cost of disconnections and reconnections (for reason of non payment) absorbed into the overall network charges. This would mean that there is no direct customer or supplier liability with respect to the disconnection of an individual customer. An alternative to the first model for socialisation would see the entire cost of disconnections and reconnections (for reason of non payment) absorbed into the overall network charges, for customers that have been identified as being in financial hardship only. This would mean that customer that genuinely can't pay are protected there is limited no direct customer, or supplier, liability with respect to disconnection for an individual. However, the CER identified the following issues with both of these approaches;

- Reduced incentive on customer to manage personal debt
- Reduced incentive on supplier to manage credit risks
- Reduced incentive on supplier to not disconnect
- Broader customer base pays for 'can't' and 'won't' pays (Option 3a)

Respondents were asked to comment on this proposal in question three.

Q3. Respondents are invited to comment on the proposal that costs of disconnections should be socialised across all customers. Are you in favour of either of the socialisation models? Outline reasons for agreement or disagreement.

2.4.1 Respondents' Comments

A number of respondents stated that it would be unfair to socialise the cost of disconnections across all customers, as this would impose an unfair burden to some customers. One respondent noted that the cost of disconnections should not fall on compliant consumers who pay their bills and that such an approach would reduce the disincentive effect for people who can pay their bill but chose not to. In addition it was stated that an increase in cost for each customer would be unfair in that a lot of customers currently in financial difficulties are just managing to pay this utility bill. Further increase which may be un-necessary could be too much to bear and push such customers into indebtedness.

A number of suppliers favoured this approach as it removed the cost to the supply company and the customer.

2.4.2 CER Response

While many respondents favoured socialisation of all costs, it was recognised that this would unfairly increase costs for the broader customer base, many of whom may be struggling to stay in credit as is. The CER considers that this could be potentially harmful to those customers and does not address the issue of incentive for with the suppliers of the customer in debt to take proactive measures to deal with the arrears. The CER has decided not to implement the proposal to socialise the costs of disconnection through networks charges.

2.5 Option 4 – No Customer Switching

An alternative option for put forward for consideration was a policy where customers in debt are prevented from switching supplier but the serving supplier cannot disconnect them for non payment of account. This proposal removes the cost drivers for disconnection and therefore avoids the question of socialisation, and increased costs to the broader customer base. However, the CER noted in the consultation that in the context of a competitive, de-regulated, market restricting customer choice seems counter intuitive. The CER identified that this option could;

- Reduce the incentive on customer to manage personal debt
- Reduced incentive on supplier to manage credit risks

Respondents were asked to comment on this proposal in question four.

Q4. Respondents are invited to comment on the option of implementing a policy where customers cannot switch supplier while in debt, and suppliers cannot disconnect customers for reasons of non payment. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

2.5.1 Respondents' Comments

A number of respondents were in favour of the proposal to stop customers switching while in debt. It was stated that debt hoping is a serious issue and that it allows some customers to ignore the signals of indebtedness and continue to amass larger debts with multiple suppliers. One respondent wished to highlight the fact that the advertising practices of utility suppliers, particularly those who are new to the market, has encouraged some consumers to leave their current supplier, and level of debt, behind and strongly urges the CER to regulate the advertising and sales practices of these suppliers.

One response questioned the logic of suppliers not being able to disconnect a customer in exchange for the introduction of debt blocking. The customer continues to consume, even though he cannot pay the initial debt outstanding. This compounds the problem by increasing the overall level of indebtedness.

One respondent stated that they are in favour of sharing of information among companies about ‘debt-hopping’. They stated that this practice is commonplace across many businesses and that ultimately, the cost of debt-hopping is borne by customers who pay their bills which is unfair. Sharing information on debts should only apply to customers with arrears of more than €200 to allow for customers to switch as a result of a reasonable dispute on service or charges rather than persistent non-payment.

Finally, another respondent did not believe a customer should be prevented from switching supplier because of debt. They questioned how the industry would activate this process? What would be the overall cost to the industry for the IT system changes to allow for same?

2.5.2 CER Response

The CER notes the comments of respondents, and the issue of debt hopping which was raised. The CER is of the view that preventing the customer from switching does nothing to improve their debt situation, and doesn’t provide the right incentives to suppliers to engage constructively with the customer to deal with the arrears.

In relation to the marketing practices of suppliers, the CER has mandated that all suppliers adhere to the Code of Practice on Marketing which requires them to be fair, honest and transparent in the presentation of offers to customers. Since competition took off in the domestic sector in 2009, over 750,000 customers have switched supplier benefitting from competitive offerings. The CER is championing the ongoing development of competition to support customers to switch and get the best value deal for them, and over the coming months will publish further details on providing improved information to empower customers in the competitive market.

2.6 CER Recommended Option - Shared Costs

The consultation presented a number of options which provide different incentives to the various actors and different levels of protection to the customer in immediate financial hardship, and the broader customer base. The CER’s recommended option was a hybrid model where the costs of disconnection and reconnection are shared between the customer and the energy supplier. The CER proposed that by placing a proportion of the costs on the supplier it would provide a greater incentive for the supplier to actively engage with the customer to agree an appropriate payment plan, and tackle their debt issue. Therefore in cases of genuine cases of financial hardship the incremental impact on their bill is reduced.

The CER proposed that the costs of each transaction, disconnection and reconnection, are split between the supplier and the customer. This would mean that the supplier can only pass on 50% of the costs of the charge that is incurred where the networks company completes a disconnection, or reconnection, for reason of non payment. The CER stated that its intention was to adopt an approach that provides the correct incentives to supplier reduce disconnections and in doing so protect customers who do fall into difficulty from facing the full charge for disconnection and reconnection. The CER noted that this proposal was being made in the context of the current difficult economic circumstances being faced by consumers, and noted that all options identified pose significant additional direct or indirect costs to the industry. As such it was proposed to be implemented for a period of 12 months in the first instance, with scope for review and extension at that time.

Respondents were asked to comment on this proposal in question five.

Q5. Respondents are invited to comment on the proposal that suppliers should share the cost of disconnections and reconnections with the customer. Are you in favour of the proposal to allow suppliers to pass on 50% of the costs of a disconnection, or reconnection, to the customer? Are there alternative shared cost options which could reduce the costs of disconnection to the customer? Outline reasons for agreement or disagreement.

2.6.1 Respondents' Comments

One respondent did favour splitting the cost of disconnection between the supply company and the consumer. However a number of other respondents, namely supply companies, opposed this proposal. These respondents stated that it was always in the supplier's best interest not to disconnect customers and suppliers already go to great lengths to avoid disconnections. It was stated that the there are significant incentives on suppliers to avoid disconnections, but that this was not recognised in the consultation paper. It was stated the requiring suppliers to pay 50% of the cost is unfair, unsustainable, and would only serve to increase cost for those customers who pay their bills in this current difficult economic climate. In one respondents view the only fair solution would be to reduce Networks charges for disconnections and reconnections.

One respondent proposed an alternative to this proposal, highlighting the difference between customers who won't pay and those that can't pay. It was suggested that supplier pays 50% and the remaining 50% be paid by an additional charge on "won't pay" debtors. They felt that it is inequitable that the "can't pay" customer is penalised in the same fashion as the "won't pay" customer. They proposed that a submission would necessitate a cost analysis by the CER in respect of implementation, administration and the respective levels of "can't pay" / "won't pay" utility debtors.

One respondent stated that they found it regrettable that the CER should seek to partially transfer what is a societal problem to commercial enterprises operating in a competitive market. They stated that there is no precedent for the passing-on of regulated charges in the absence of recovery to any competitive sector of the economy. In their view the CER should examine its statutory remit in this regard.

One respondent highlighted the difference between the electricity and gas markets stating that the majority of the current issues relating to the difficulties and increase in locks/unlocks reflects directly on the electricity market and not the gas market, therefore their view is that a single solution policy will not fit both energy markets.

Finally, one supplier noted that the proposal was unwelcome but recognised that emergency measures were justified in the current context

Other Issues / Suggestions

One issue that was highlighted by several respondents was the inadequacy of the CER proposed number of pre-payment meters from ESBN as set out in the CER/10/174. Also, it was stated that the technology proposed is out-dated.

2.6.2 CER Response

In the consultation, the CER's recommended option was that the costs of disconnection would be shared equally between the supplier and the customer. The CER proposed that this created the correct balance of incentives for customers to manage their arrears, and for suppliers, to ensure that they do not move to disconnection too rashly. The CER is mindful of supplier's comments, but reiterates that the options which divert the cost away from the customer were proposed as 'emergency measures' in the context of the extremely difficult economic circumstances currently being faced by consumers. With the current metering infrastructure, disconnection and reconnection requires a technical site visit, with real associated costs. Therefore all options which pose additional direct, or indirect, costs to the industry. The CER welcomes the response of one supplier, recognising that while these measures were unwelcome for suppliers, they were necessary in the in the current difficult economic climate.

The decisions in this paper are designed to address some of the problems of domestic customers who are increasingly falling into arrears with a range of creditors, including utility companies, by ensuring that disconnection is always the last resort measure. The CER notes that these decisions should be considered as a package of measures to assist customers in arrears and those facing disconnection. The CER notes that respondents advocated prepayment meters as the ultimate solution to customer debt management. Pre-payment metering is already available to gas customers and the CER recently consulted on the use of prepayment equipment, known as budget controllers, to reduce the number of disconnections in the electricity market. The decision paper has been published in parallel with this document. Noting the limitations of the budget controllers currently in place, in terms of technology and availability, the CER is working with industry to deliver a more technically robust prepayment and widely available solution for electricity customers as an interim solution, in advance of the roll out of smart meters.

Therefore the CER has decided to implement the recommended option, so that that for the period 22nd December 2010 – 30th December 2011, suppliers must absorb 50% of the costs of disconnection and reconnection (as incurred from the networks company) to be levied on any customer for reason of non-payment of account. This will be reviewed in December 2011.

Decision 2
Where an electricity/ gas supplier initiates a networks order for disconnection/reconnection of a domestic customer for reason of non-payment of account, only 50% of the total charge is recoverable from the customer. Effective for 12 months from 22nd December 2010, to be reviewed Dec 2011.

The CER would consider it a breach of this decision if suppliers were to recover this charge via alternative means such as relabeling it as something else on the bill e.g. an administrative charge.

2.7 Conclusions

Having considered the responses to the consultation and the specific issues raised by respondents as outlined above, the CER has decided to implement the hybrid model, where the costs of disconnection and reconnection are shared equally between the customer and the energy supplier. This option limits the impact on the customer and provides incentives to both the customer and supplier to actively engage to agree an appropriate payment plan, and tackle the debt issue. The CER has decided that this rule will apply from 22nd December 2010, for a period of 12 months, to be reviewed in December 2011.

3.0 Proposed Changes to the Guidelines for the Code of Practice on Disconnection

3.1 Introduction

In the original consultation paper the CER set out a number of proposed changes to the Guidelines for the Code of Practice on Disconnection in order to provide additional assistance to customers to avoid disconnection. The revised guidelines on the Disconnection Codes of Practice were published as an appendix with the consultation paper. This section outlines the respondent's comments and suggestions for each of the proposed changes.

3.2 Proposal 1 - Payment Plans

Suppliers are required to offer customers alternative payment plans in advance of disconnection. The CER is now proposing a requirement for suppliers to confirm a customer's payment plan in writing within one week of making the plan and the requirement for suppliers to refer customers to MABS/St. Vincent de Paul where circumstances warrant it.

These requirements are similar to those imposed in the Financial Regulator's Code of Practice on Mortgage Arrears. This provision, previously part of the guidelines on Billing Codes of Practice, has also been included in the guidelines on Disconnection Codes of Practice. The proposed text includes a reference to the provision of prepayment meters and budget controllers in line with the proposed decision to roll these out on a more widespread basis, as per the current CER consultation[1].

<u>Proposal 1</u> The CER is proposed that suppliers confirm a customer's payment plan in writing within one week of making a plan and that suppliers refer customers to MABS where circumstances warrant it.

3.2.1 Respondents' Comments

One respondent was of the view that the requirement for Suppliers to send out the details of each payment plan in writing is not logistically possible given available resources Vs the number of payment plans entered into.

3.2.2 CER Response

The CER has reviewed respondents' comments particularly around the need to confirm the plan in writing within one week of making the plan. The CER notes that this may require significant systems changes and that the suppliers already the details of new arrangements on the bill. Therefore the CER has decided that the

[1] cer10174 - Guidelines for Electricity Budget Controllers

details of the plan; arrears, payments etc. should be provided to the customer in writing but hat this may be via the suppliers standard processes.

<u>Decision on Proposal 1</u>
The CER is proposed that suppliers should confirm a customer's payment plan in writing and refer customers to MABS where circumstances warrant it.

3.3 Proposal 2 - Notice of Disconnection

The CER requires that all energy suppliers initiate a customer disconnection as a last resort measure and that the customers should be afforded ample opportunity to reconcile their account and/or engage with them on an alternative payment plan. This currently requires a minimum level of correspondence by the supplier, with one contact in advance of the disconnection notice being issued. However many suppliers go beyond that minimum, with multiple attempts to contact the customer through written and telephone correspondence. One supplier confirmed a minimum of 1 warning bill, 1 phone call and 1 disconnection notice prior to a customer being disconnected. Another supplier has stated that it sends at least 4 letters (possibly more depending on the size of bills), and also make an attempt to contact the customer by telephone twice to organise a payment plan.

The CER is proposing that 2 attempts to contact a customer by phone and a minimum of 2 attempts to contact a customer in writing (separate to bills but inclusive of the disconnection notice) be included as the minimum requirement for suppliers. The requirement for a telephone call is intended to address some of the concerns expressed by MABS and St. Vincent de Paul; they consider that a conversation with the supplier may be a more constructive form of engagement, as many customers in real financial difficulty may not even open the written correspondence. For the avoidance of doubt, it is proposed that a reasonable period of time (minimum 3 working days) must elapse between each attempt to contact the customer.

<u>Proposal 2</u>

The CER is proposing that a minimum of 2 attempts to contact a customer by phone and a minimum of 2 attempts to contact a customer in writing (separate to bills but inclusive of the disconnection notice) be included as the minimum requirement for suppliers, before a disconnection occurs. Each attempt to contact the customer should be a discrete event, no less than 3 working days apart.

3.3.1 Respondents' Comments

A number of respondents addressed the proposal that where circumstances warrant it, the supplier must refer the customer for guidance to his/her local MABS office or an appropriate alternative. While recognizing the excellent work currently carried out by MABS the general consensus was that it would be unnecessary to enshrine a requirement to have customers deal with MABS & SVDP within the regulatory framework. There were also questions raised about the resources available to these organisations and their ability to deal with a substantial additional work load. It was suggested that no customer can be referred to such an agency outside of their own free will, but that instead customers should be advised of the option of third party assistance should they wish to avail of it as customer agreement is important to the process.

A couple of respondents questioned the granularity of this minimum contact requirement proposed by the CER in dealing with customers who are in arrears. It was stated that suppliers often have to tailor their approach to customers depending on their circumstance. This may involve going above and beyond the process set out above or by focusing solely on one method of contact only. There is no “one best fit” in this sphere. Attempts at micro management of a suppliers business will almost always prove counterproductive. We note Codes of Practice in other jurisdictions avoid this approach. Also, one respondent felt that the additional level of detail proposed was significant and will require IT system changes to current Dunning and reporting processes which will not be implementable quickly or easily and would impose significant up-front and ongoing costs.

Also, while one respondent supported the proposed increase in personal contact by the supplier to the customer, they suggested that a maximum number of contacts per day also be included to avoid undue pressure being put on vulnerable customers.

3.3.2 CER Response

The CER has reviewed respondents’ comments particularly around the requirement for 4 contacts, 2 in writing and two by phone. The CER notes that this may require significant systems changes and that the suppliers may already make 4 contacts via alternative means e.g. SMS. Therefore the CER has decided that the requirement should be for 4 successful contacts, at least two of which should be in writing.

<u>Decision on Proposal 2</u>

The CER is proposing that a minimum of 4 successful contacts, at least two of which should be in writing, should be included as the minimum requirement for suppliers, before a disconnection occurs. Each attempt to contact the customer should be a discrete event, no less than 3 working days apart.

3.4 Proposal 3 - Period of Notice of Disconnection

The guidelines on the disconnection CoP requires that the suppliers contact the customer in writing a minimum of 7 days in advance of the actual disconnection taking place. From discussion with suppliers, they all state that they operate a longer process with additional customer contact prior to requesting a disconnection. The CER is proposing that a longer period of notice of disconnection should apply, but notes that the extension of this period prior to disconnection creates additional bad debt risk for the supplier. However this extra time would allow customers time to organise themselves and make contact with support agencies if necessary, which is the preferred outcome for all parties.

Proposal 3 The CER is proposing to increase the mandatory notice of supplier disconnection (for reason of non payment) from a minimum of 7 business days notice to 14 business days notice. Suppliers must wait until the 14 days has elapsed before submitting the disconnection instruction to the networks company. The disconnection notice should also include the appropriate contact information for the relevant 3rd party agencies; St. Vincent de Paul and/or MABS

3.4.1 Respondents' CommentsRespondents' comments

The proposal to increase the disconnection period from 7 days to 14 days received mixed responses. One respondent stated that the increase in the disconnection period should be accompanied by an attempt at personal contact to the customer, either a telephone call or, ideally, a call out to the customer's home.

Another respondent, while welcoming the proposal to lengthen the notice period provided, cautioned that these increased timelines will also increase the potential for debt hopping and as such they believe it is essential that the CER act to introduce a market solution to this problem.

Other respondents questioned the rational for extending the notice period to 14 days. It was highlighted that customers would have already received a number of notices prior to this and plenty of time to rectify the situation. In addition, such a change will involve unnecessarily costly system and process changes, debt hopping may increase which would unfairly increase supplier's exposure.

3.4.2 CER Response

The CER has reviewed respondents' comments around the requirement to increase the notice period for disconnection to domestic customers. The CER is of the view that an extended notice period would benefit customers and allow them time to make necessary arrangements. However the intention was to allow for two weeks, but the consultation incorrectly indicated that the recommended a period of 14 business days. This has been corrected to 10 business days.

Decision on Proposal 3

The CER is proposing to increase the mandatory notice of supplier disconnection (for reason of non payment) from a minimum of 7 days notice to 10 business days notice. Suppliers must wait until the 10 days has elapsed before submitting the disconnection instruction to the networks company. The disconnection notice should also include the appropriate contact information for the relevant 3rd party agencies; St. Vincent de Paul and/or MABS

3.5 Proposal 4 - Transparent Charging for Disconnection

The supply licence already requires that customer bills should be clear and transparent[2]. The CER is proposing that suppliers should set out, in disconnection notifications and on the bill, any supplier administrative costs separate to the published network cost of disconnection/ reconnection costs and to highlight any cancellation fee that may apply. It is important that suppliers are transparent in the way they present information on charges to customers.

Proposal 4

The CER is proposing to require that suppliers should set out, in disconnection notifications and on the bill, any supplier administrative costs separate to the published network cost of disconnection/ reconnection and to highlight any cancellation fee that may apply.

3.5.1 Respondents' Comments

A response from one supplier stated that they have investigated the impact of such a requirement and in principal could accept this proposal; however implementation time would be an issue. It was proposed that system changes required to facilitate this which are costly and may take some time.

3.5.2 CER Response

The CER maintains that bill transparency is of key importance to good customer survive and supports the competitive markets. Therefore it is important that suppliers are transparent in the way they present information on charges to customers.

Decision on Proposal 4

The CER is proposing to require that suppliers should set out, in disconnection notifications and on the bill, any supplier administrative costs separate to the published network cost of disconnection/ reconnection and to highlight any cancellation fee that may apply.

[2] Electricity Supply Licence issued under Section 14(1)(c) of the Electricity Regulation Act 1999: AIP-SEM-07-467

3.6 Proposal 5 - Records Management

The CER is proposing that it should be mandatory for suppliers to maintain a record of all steps taken and considerations made when reaching the decision to disconnect a customer. This is similar to the requirement in the Financial Regulator's Code of Practice on Mortgage Arrears. Records are currently held by some suppliers, but including the requirement in the CoP ensures that these contacts are auditable if required. Furthermore, the CER is proposing to increase the reporting frequency required of suppliers on disconnections from annually to monthly.

<u>Proposal 5</u> The CER is proposing that it should be mandatory for suppliers to maintain a record of all steps taken and considerations made when reaching the decision to disconnect a customer. The CER is proposing to increase the reporting frequency required of suppliers on disconnections from annually to monthly.

3.6.1 Respondents' Comments

Some of the suppliers who replied to the consultation were concerned about the proposal for increased record keeping. It was stated that it is important that an excessive regulatory burden is not placed on suppliers in correspondence with CER. Concerns were raised that the CER proposals are overly prescriptive, particularly in terms of reporting requirements. The proposed reporting requirements for detailed individual customer data will require significant system modifications and data management and also raise serious data protection issues around the management and reporting of personal data.

Some suppliers stated that they would be happy to provide CER with more frequent updates on disconnections (i.e. monthly) at an aggregate level however, case-by-case information on steps taken and considerations made, should be retained by the company for a sufficient period of time and shared with the CER in specific instances where the regulator has reason to question the actions of the supplier.

3.6.2 CER Response

The CER has reviewed respondents' comments around the requirement for monitoring and increased frequency of reporting to CER. The intention is not to place undue regulatory burden on suppliers, however it is essential that the regulator has an up to date industry view the levels of disconnections in the market, and while much of this information is already provided centrally through the networks companies, further information is also required from suppliers to give the full picture and ensure customers are being protected. Where a customer is disconnected a supplier should hold sufficient records to be able to demonstrate that the customers was dealt with in line with the Code of Practice and that disconnection was indeed the last resort action. The CER understand that suppliers already monitor contacts with customers.

Where suppliers have raised number of practical issues with respect to implementation of the reporting requirements, where internal systems changes may be required, the CER will engage further with suppliers on the detailed implementation of specific measures including the format of reporting.

Decision on Proposal 5

The CER is proposing that it should be mandatory for suppliers to maintain a record of all steps taken and considerations made when reaching the decision to disconnect a customer. The CER is proposing to increase the reporting frequency required of suppliers on disconnections from annually to monthly.

3.7 Proposal 6 - Plain English

The CER is proposing that all suppliers should be required to use ‘plain English’ in all correspondence, terms & conditions, codes of practice and notices that are to be issued to customers. The CER supports the consumer’s right to have access to clear and concise information, in their engagements with suppliers. This has been requested by a number of consumer representative groups and is also a requirement in the Financial Regulator’s Code of Practice on Mortgage Arrears.

Proposal 6

The CER is proposing that all suppliers should be required to use ‘plain English’ in all correspondence, terms & conditions, codes of practice and notices issued to customers.

3.7.1 Respondents’ Comments

With regard to the CER proposal that all information on terms and conditions, codes of practice and notices issued to customers in relation to the disconnection of their account should be in plain English there was general support from respondents. There was a caveat included in a couple of responses that although the commitment to use plain English was a positive step suppliers should not be held liable in the case of customers inability to understand the text used.

3.7.2 CER Response

The CER has reviewed respondents’ comments around the requirement to use plain English increase in all correspondence, terms & conditions, codes of practice and notices issued to customers. The CER would not accept that suppliers can effectively communicate their message to customers in a manner that supports the consumer’s right to have access to clear and concise information, in their engagements with suppliers.

Decision on Proposal 6

The CER is proposing that all suppliers should be required to use 'plain English' in all correspondence, terms & conditions, codes of practice and notices issued to customers.

3.8 Proposal 7 - Disconnection at Vacant Properties

In response to an increasing number of complaints from landlords after their properties have been disconnected when a tenant moves out, the CER is proposing new requirements on suppliers pertaining to the closure of a customer account. This will require suppliers to give a minimum of 10 days notice in advance of requesting disconnection at premises when there is no account holder registered. It is also proposed that any costs associated with the disconnection should be included in the notice.

Proposal 7

The CER is proposing that all suppliers should give a minimum of 10 business days notice in advance of requesting disconnection at premises when there is no account holder registered. Any costs associated with the disconnection should be included in the notice.

3.8.1 Respondents' Comments

One respondent felt that the requirement for suppliers to issue a notice, in writing by letter, to the property at least 10 days in advance of a request to disconnect the property due to no new account holder being registered is unreasonable and unnecessary for business customers. It will lengthen the change of tenancy process for customers and will unreasonably increase suppliers' exposure.

Another respondent wanted there to be some mechanism where landlords are made aware of the threat to disconnect the supply. They requested that a landlord agreement, where suppliers inform the landlord before a disconnection but they do not advertise such an agreement, should be mandatory. This is because landlords are being left with rent arrears and reconnection fees which are outside their control and not caused by them.

Finally, one respondent said that the requirement for suppliers not to request a disconnection at a property until after 10 days notice has expired due to no new account holder being registered is flawed in many respects. In their view the proposal is unnecessarily exposing a supplier for no apparent reason (need).

3.8.2 CER Response

The CER had considered respondents' comments on the proposed revisions to the Code of Practice on Disconnections. The proposed changes were specifically to address issues of domestic customer hardship therefore accepts that proposal around vacant premises should not be considered in this contact.

3.9 Other Comments

A number of other comments were made regarding the proposed changes to the Guidelines for the Code of Practice on Disconnection. These included the following:

One response from a supplier stated that it is clear that further work is required in terms of tailoring the proposed codes of practice to business customers. While recognising a pressing need to finalise codes of practice for domestic customers ahead of the winter period, they suggested that codes of practice on disconnection for business customers be deferred to a separate consultation which specifically considers the unique characteristics of the business sector.

Several respondents reiterated the need to distinguish between domestic and business customers with regards to the code of practice on disconnections and the reasons behind disconnections. It was stated that there are fundamental differences between domestic and business customers relevant to disconnection policy and therefore a clear distinction needs to be made between them.

3.9.1 CER Response

The CER had considered respondents' comments on the proposed revisions to the Code of Practice on Disconnections regarding differences with business customers. While not explicit in the consultation paper, the CER notes that some of these proposed measures would apply to domestic customers only. Therefore, where provisions apply to domestic customers only, it will be highlighted in the Code of Practice.

The revised Code of Practice on Disconnections will be effective from 1st January 2011.

4.0 Conclusions

4.1 Introduction

The CER has considered the issues raised by respondents, in terms of the impacts on the all relevant stakeholders, but in coming to its decisions on this issue has regarded customer protection as a primary objective. Therefore, further to a public consultation on a number of proposals, the CER has decided to implement the following;

(i)	The CER will review the level of disconnection and reconnection charges for gas and electricity	New charges, where appropriate, to be effective from 1st Jan 2011
(ii)	Where an electricity/ gas supplier initiates a networks order for disconnection/reconnection of a domestic customer for reason of non-payment of account, only 50% of the total charge is recoverable from the customer.	Effective for 12 months from 22nd December 2010. To be reviewed Dec 2011.
(iii)	The Code of Practice for Disconnections will be revised to include additional supplier measures to assist domestic customers in managing their bills and reducing disconnection rates.	New CoP effective from 1st Jan 2011

The decisions in this paper will give customers further rights and protections in terms of dealing with energy suppliers, reduce the burden of disconnection and reconnection fees on any customers who are disconnected and, hopefully, reduce the total number of disconnections in the electricity and gas markets.

4.2 Next Steps

The CER will continue to work with industry to promote consumer welfare through facilitating effective competition but also through ensuring that all customers can benefit from such competition through socially inclusive retail policies that recognise the particular needs of the most vulnerable in society with respect to energy supply.

The CER will engage further with suppliers on the detailed implementation of specific measures in the Code of Practice on Disconnection including the format of reporting.