

**EXPLANATORY MEMORANDUM TO**  
**THE GAS AND ELECTRICITY REGULATED PROVIDERS (REDRESS SCHEME)**  
**ORDER 2008**

**2008 No. 2268**

**1.** This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform (“BERR”) and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Order is made under section 47 of the Consumers, Estate Agents and Redress Act 2007 (“the 2007 Act”) and requires certain licensed suppliers of gas and electricity and licensed gas transporters and electricity distributors (“regulated providers”) to join a qualifying redress scheme. This obligation only arises in respect of regulated providers who provide such services to relevant consumers i.e. domestic consumers and micro-enterprise consumers. The complaints to be addressed in the qualifying redress scheme relate to the difficulty in registering a complaint and complaints about the provision of supply or services that have not been resolved to the satisfaction of the consumer.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This Order is one of two made at the same time that makes first use of powers under section 47(1) of the 2007 Act.

**4. Legislative Background**

4.1 The Consumers, Estate Agents and Redress Act 2007 makes provision, among other things, for the abolition of certain consumer bodies; the handling of consumer complaints by certain licensed providers and provision requiring certain licensed providers to become members of redress schemes in respect of consumer complaints.

4.2 Section 47(1) to (3) of the 2007 Act confers a power upon the Secretary of State to make an Order requiring certain licensed providers to join a redress scheme that has been approved by their relevant regulator. In doing so he must first consult the relevant regulator of such providers and other representative persons of those parties who have an interest in the Order.

4.3 Section 47(7) of the Act requires that the Secretary of State is satisfied that there is at least one qualifying redress scheme which licensed providers will be eligible to join upon the Order coming into force. This is to ensure that the licensed providers are able to reasonably comply with the terms of the Order when it comes into effect.

4.4 The Order is made on the basis that there will in fact be a qualifying redress scheme in place when the Order comes into force on 1<sup>st</sup> October 2008. The Gas and Electricity Markets Authority (“Ofgem”) (the relevant regulator in respect of the regulated providers the subject of this Order) will be granting unconditional approval to the “The Energy Ombudsman Service for Energy Suppliers and Energy Network Operators” (redress scheme) in accordance with the criteria set out under section 49 of the Act when the Order is made and before it comes into force.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The statutory redress scheme which regulated providers are required to join by virtue of this Order is one of a series of measures to strengthen and streamline consumer advocacy set out in the 2007 Act.

7.2 These measures include the creation of a more powerful and coherent consumer advocate (the new National Consumer Council) replacing energywatch, Postwatch and the National Consumer Council (a company limited by guarantee); the imposition of a duty on the regulators in the energy and postal services sectors (the Office of Gas and Electricity Markets (Ofgem) and the Postal Services Commission (Postcomm) respectively) to prescribe complaint handling standards in their sectors; and the power to require the energy and postal services industry sectors to join a redress scheme.

7.3 Alongside the measures in the Act, the telephone and online consumer advice service supported by the Office of Fair Trading – “Consumer Direct” – will be extended to provide a first point of contact for consumers in all sectors. Consumer Direct will provide help and advice about progressing a consumer’s complaint with their service provider. If the service provider is unable to resolve the complaint, the consumer may then be able to take their complaint to the redress scheme.

7.4 Redress schemes provide consumers with the means to obtain resolution and redress for complaints in cases where the scheme member has not been able to resolve the complaint to the consumer’s satisfaction. The Act specifies a minimum range of forms of redress which must be available to a complainant, comprising provision of an apology or explanation; payment of compensation; or taking such other action in the interests of the complainant as the independent person may specify.

7.5 The intention is that the schemes will consider complaints brought to them only where the scheme member has first had the opportunity to resolve the complaint themselves. The determinations made by the schemes on a complaint would be binding on the scheme member, and compensation or other forms of redress could be awarded

where appropriate. The consumer would retain the right to pursue their complaint further if they wished to do so, through action in the courts, for example.

7.6 The regulated energy providers have established a redress scheme which has been conditionally approved by Ofgem according to the criteria set out in the 2007 Act. This Order requires that licensed suppliers of gas and electricity and licensed gas transportation and electricity distributors join a qualifying scheme on the basis that at least one qualifying redress scheme will be approved when the Order comes into force.

#### *Consultation*

7.7 BERR launched a public consultation on 5 July 2007 to make proposals and to seek views of interested parties on the scope of the new statutory redress schemes by reference to:

- (a) the regulated service providers who should be required to be members of the schemes;
- (b) the description of complainants who should be covered by the schemes, and
- (c) the subject matter of the complaints which should be dealt with by the schemes.

7.8 The consultation closed on 27 September 2007, and around forty written responses were received from consumer bodies, regulatory bodies, Ombudsman organisations, industry, and other parties.

#### *Defining the regulated service providers who should be required to belong to an approved redress scheme*

7.9 Section 42 of the 2007 Act defines the range of regulated providers of services in the gas and electricity sectors who might be included within the scope of the requirement to join a redress scheme as gas suppliers and transporters and electricity suppliers and distributors licensed under the Gas Act 1986 and the Electricity Act 1989.

7.10 On the basis of broad agreement among respondents that this range of regulated providers should be required to be members of a redress scheme, the Department decided to impose a duty on such regulated providers who provide gas and electricity supply to relevant consumers to join a redress scheme.

#### *Description of complainants*

7.11 The July 5 2007 consultation proposed that the description of relevant consumers who should be eligible to seek redress from a redress scheme to which regulated providers would be required to belong should be domestic and micro-enterprise consumers (small businesses). A micro-enterprise consumer was defined as an enterprise with a headcount of less than 10, and whose annual turnover and/or annual balance sheet total did not exceed €2 million.

7.12 Respondents agreed that the definition should cover domestic consumers, and small businesses. There were, however, some concerns over the definition of micro-

enterprises proposed in the consultation because of lack of certainty. Industry respondents in the energy sector pointed out that they would be unable to easily assess whether a small company customer had fewer than 10 employees or a turnover of less than €2 million per year and therefore find it hard to provide appropriate sign-posting to the scheme. They suggested that usage thresholds would be more meaningful in the gas and electricity sectors.

7.13 The Department's response to the consultation indicated the intention to maintain the original proposal for small businesses as far as possible, by re-casting the criteria for the threshold. The upper threshold for action in a small claims court in England and Wales was £5,000, as was the threshold for claims from the Telecommunications Ombudsman Scheme. The Department proposed to enter into further discussions with energy businesses, Ofgem, and Energywatch with a view to establishing whether there were consumption thresholds which provided a practical proxy for consumers whose annual bill is £5,000.

7.14 Further consultation with stakeholders revealed that adopting this revised definition could potentially exclude some very small businesses that should clearly benefit from the redress scheme. These included owners of small convenience stores and pub landlords who had relatively few full-time staff and small turnovers, but tended to have energy bills which were significantly larger than the proposed threshold. After further discussion it was decided to adopt the description of micro-enterprise consumer set out in Article 2 of the Order as one category of relevant consumer.

7.15 Energy companies will sign-post small business customers to the redress scheme on the basis of their annual consumption levels while the scheme itself will consider complaints from businesses qualifying under any of the criteria.

#### *Complaints to be specified in the Order*

7.16 The consultation proposed that the complaints to be specified in the Order should be those:

- (a) which have been considered by the service provider, and not resolved to the satisfaction of the consumer;
- (b) relate to the regulated products and services of the service provider, as provided to the complainant, unless there is an established alternative route for resolution of the particular class of complaint;
- (c) which relate to the way in which the regulated provider handled the initial complaint;
- (d) where there was no evidence to support the complaint, but which were not handled by the regulated provider in accordance with any established standard or code of practice.

7.17 There were a number of very helpful responses, which were instrumental in assisting in refining this definition.

7.18 Respondents pointed out that complaints may also arise because consumers are unable to contact their service provider in order to register a complaint. Where consumers

are experiencing sustained difficulty in contacting their service provider, they should be able to seek redress from the relevant redress scheme.

7.19 In light of consultation it was decided that consumer complaints to be covered by the redress schemes should be those which relate to the licensed products and services of the regulated provider and:

- (a) have been considered by the service provider and not resolved to the satisfaction of the consumer, or
- (b) relate to sustained difficulty by the consumer in registering a complaint with a service provider.

7.20 It was agreed that the scheme operator would pass on to a relevant party for resolution any complaints which might be substantively covered by other, established, forms of redress.

### *Guidance*

7.21 Guidance on the requirements and effect of this Order will be prepared and published on the BERR website. Information about the redress scheme has been included in a regulated provider's complaints handling procedure. Domestic and micro-enterprise consumers will be made aware of the scheme by their supplier/network company if they are unable to resolve the complaint at the end of the next working day following receipt. Consumers will be proactively sign-posted to the scheme when reaching deadlock or when the time limit for referral has been reached. The details of the scheme will also be printed on the back of domestic bills on a voluntary basis. Consumer bodies, such as Age Concern and Citizens Advice, have been briefed to further raise awareness.

## **8. Impact**

8.1 An Impact Assessment is attached to this memorandum.

8.2 The terms of this Order will be enforced by the regulator (Ofgem) within current operational budgets.

## **9. Contact**

Paul Bland at the Department of Business, Enterprise and Regulatory Reform Tel: 020 7215 5745 or e-mail: [paul.bland@berr.gsi.gov.uk](mailto:paul.bland@berr.gsi.gov.uk) can answer any queries regarding the instrument.

## Summary: Intervention & Options

<b>Department:</b> Business Enterprise and Regulatory Reform (BERR)	<b>Title:</b> Impact assessment for extension of redress schemes to the gas, electricity and postal services sectors	
<b>Stage:</b> Final	<b>Version:</b> 1	<b>Date:</b> 15 August 2008
<b>Related Publications:</b> Strengthen and Streamline Consumer Advocacy: Regulatory Impact Assessment for proposals on consumer representation and redress – October 2006 – URN 06/1631.		

Available to view or download at:

<http://www.berr.gov.uk/>

Contact for enquiries: Paul Bland

Telephone: 020 7215 5745

What is the problem under consideration? Why is government intervention necessary?

Currently consumers in the gas, electricity and postal services sectors do not have recourse to a binding statutory complaint resolution mechanism when seeking redress. Many consumers who encounter problems in these sectors have difficulty resolving legitimate complaints in a timely manner.

This proposal will enable the Secretary of State to require members of the gas, electricity, and postal services industries to join approved statutory redress schemes whose decisions will be

What are the policy objectives and the intended effects?

To provide consumers with an effective mechanism for resolving complaints in the gas, electricity, and postal services sectors.

To create a body which has the power to enforce resolution of consumer complaints to provide compensation or redress.

To place a greater emphasis on regulated service providers themselves resolving complaints to the satisfaction of the consumer.

What policy options have been considered? Please justify any preferred option.

1. Do nothing
2. Require redress schemes to handle complaints from all consumers in the gas, electricity and postal services sectors
3. Require redress schemes to handle complaints from domestic consumers and 'micro enterprises'

Option 3 is preferred as small businesses ('micro enterprises') have similar usage patterns to domestic consumers in this sector and do not have the economic leverage of large enterprises when attempting to resolve complaints.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Ofgem and Postcomm will keep approved schemes under review – see paragraph 62.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

Malcolm Wicks .....Date: 16th August

## Summary: Analysis & Evidence

<b>Policy Option: 3</b>	<b>Description: Redress schemes for consumer and small business complaints</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  Industry estimated to spend £0.4M setting up schemes, in practice set up costs have proved to be negligible. Burden of regulators approving schemes to be met within existing resources and budgets. Average annual cost does include upscaling complaint handling capacity in postal services companies. We expect these costs to fall (see para 41+42).	
	<b>One-off</b> (Transition)	<b>Yrs</b>		
	<b>£ 0</b>			
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ 3.2M</b>		<b>Total Cost (PV)</b>	<b>£15.5M</b>
<b>Other key non-monetised costs</b> by 'main affected groups'				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  Accurate monetised benefits have proved impossible to estimate but both consumers and small businesses will benefit from access to free independent redress schemes. This policy is part of a package of measures estimated to save industry between £8m and £10m per annum.	
	<b>One-off</b>	<b>Yrs</b>		
	<b>£ 0</b>			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£ 0</b>		<b>Total Benefit (PV)</b>	<b>£ -</b>
<b>Other key non-monetised benefits</b> by 'main affected groups'				
Domestic consumers and micro-enterprise users have certainty of binding complaint resolution and appropriate compensation or other forms of redress. Incentive for regulated providers to resolve complaints effectively in first instance.				

**Key Assumptions/Sensitivities/Risks** Under this option the redress order regulations are made and the relevant licensed providers of gas, electricity and postal services are required to join redress schemes. Those who do not join redress schemes are subject to penalty charges (and possibly enforcement action by the regulators, Postcomm and Ofgem).

Price Base 2006 Year	Time Period Years 7	<b>Net Benefit Range</b> (NPV) <b>£ -</b>	<b>NET BENEFIT</b> (NPV Best estimate) <b>£ -</b>
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What is the geographic coverage of the policy/option?	UK(post);
On what date will the policy be implemented?	1 October 2008
Which organisation(s) will enforce the policy?	OFGEM + POSTCOM
What is the total annual cost of enforcement for these organisations?	NA
Does enforcement comply with Hampton principles?	Yes



Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?*		£8m-£10m*		
What is the value of changes in greenhouse gas emissions?		NA		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		Increase		
Increase of £0	Decrease of £0	<b>Net Impact</b>		<b>£0</b>

Key: Annual costs and benefits: Constant Prices

(Net) Present Value

\*this policy is part of a package of measures estimated to save industry between £8m and £10m per annum.

## Evidence Base (for summary sheets)

### CONSUMERS, ESTATE AGENTS AND REDRESS ACT 2007

#### Proposals to extend statutory redress schemes to the energy and postal services sectors under the Consumers, Estate Agents and Redress Act 2007.

#### Purpose and intended effect

1. The Consumers, Estate Agents and Redress (CEAR) Act 2007 contains provisions to strengthen and streamline consumer advocacy. This includes the creation of a powerful consumer advocate, able to address consumer issues that frequently exist across sectors of the economy; and new, statutory, redress schemes to resolve consumer problems with their regulated gas, electricity, or postal services providers. The full Regulatory Impact Assessment setting out the costs and benefits of the measures was published in October 2006<sup>1</sup>.
2. This Impact Assessment looks in more detail at one particular aspect of the measures contained in that full Regulatory Impact Assessment; specifically, the options for, and the associated costs and benefits of, the scope of the redress schemes in terms of the subject matter of complaints that the schemes may consider and the description of the persons making the complaint. This analysis follows information gathered by the 'Consumer redress schemes in gas, electricity and postal services' consultation carried out in 2007, and subsequent discussions with stakeholders. This Impact Assessment has been further updated in light of actual costs to members of the energy and postal sectors of setting up schemes.

#### Objective

3. The intention behind the requirement for regulated providers to be members of a redress scheme is to provide much greater effectiveness for consumers in resolving (rather than just handling) consumer problems. Currently, Energywatch and Postwatch handle a proportion of consumer complaints in the energy and postal services sectors respectively, and continue to make a huge effort to provide consumers with assistance and support. In 2003/04, for example, a benchmarking study undertaken on behalf of the DTI, HM Treasury and the National Audit Office found that Energywatch and Postwatch needed to devote respectively 41% and 18% of their budgets to handling complaints<sup>2</sup>. Sectoral consumer bodies do not, however, have any powers to enforce resolution: they cannot order the service provider to provide compensation or redress.
4. As a consequence of the new arrangements to be brought in by the CEAR Act 2007, greater emphasis will be placed on regulated service providers to resolve complaints to the satisfaction of the consumer. Where the service provider is unable to resolve the complaint, the complaint can be referred to the redress schemes for resolution. The decision reached by the scheme on each complaint will be binding on the service provider. Thus consumers have much greater assurance that should a complaint with a service provider arise, it will be resolved.

#### Background

5. The CEAR Act 2007 contains measures to strengthen and streamline consumer advocacy. These measures include the creation of a more powerful and coherent consumer advocate (the new National Consumer Council) from energywatch, Postwatch and the existing National Consumer Council, and the extension of redress schemes to the energy and postal services sectors. The Act also places a duty on the regulators in the

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<sup>1</sup> Available at <http://www.dti.gov.uk/files/file34656.pdf>.

<sup>2</sup> PricewaterhouseCoopers, March 2004, Benchmarking Review of energywatch and Postwatch. Available at <http://www.dti.gov.uk/files/file25231.pdf>.

energy and postal services sectors (the Office of Gas and Electricity Markets (Ofgem) and the Postal Services Commission (Postcomm) respectively) to prescribe complaint handling standards in their sector.

6. Alongside the measures in the Act, the telephone and online consumer advice service supported by the Office of Fair Trading – “Consumer Direct” – will be extended to provide a first point of contact for consumers in all sectors. This avoids consumers with enquiries and complaints first having to determine where to go for help. Consumer Direct will be able to provide help and advice about progressing a consumer’s complaint with their service provider. If the service provider is unable to resolve the complaint, the consumer is then able to take their complaint to a redress scheme.
7. The Act gives the Secretary of State the power to require “regulated providers” of specified services to belong to a “qualifying redress scheme”. This is explained in the Act as follows:
  - (a) regulated providers are licensed electricity suppliers, electricity distributors, gas suppliers, gas transporters, postal service providers; and – potentially in future – water undertakers, sewerage undertakers, or licensed water suppliers;
  - (b) a redress scheme means a scheme under which consumer complaints may be made to, and investigated and determined by, an independent person;
  - (c) an independent person is one who is independent of the regulated provider against whom the complaint is made and the relevant regulator for the sector; and
  - (d) a qualifying redress scheme is one which has been approved by the relevant regulator for the sector, or one which is administered by the Secretary of State.
8. Redress schemes provide consumers with the means to obtain resolution and redress for complaints in cases where the regulated provider has not been able to resolve the complaint to the consumer’s satisfaction. The Act specifies a minimum range of forms of redress which must be available to a complainant, comprising provision of an apology or explanation; payment of compensation; or taking such other action in the interests of the complainant as the independent person may specify.
9. As is generally the case in existing redress schemes, the intention is that the schemes will consider complaints brought to them only where the regulated provider has first had the opportunity to resolve the complaint themselves. The determinations made by the schemes on a complaint would be binding on the regulated provider, and compensation or other forms of redress could be awarded where appropriate. The consumer would retain the right to pursue their complaint further if they wished to do so, through action in the courts, for example.
10. Regulated energy and postal services providers are able to establish their own redress scheme(s) for approval by the regulator. However, the Act also confers a power on the Secretary of State to establish a redress scheme. This is to ensure that if industry has not established a suitable scheme by the time the order to belong to one comes into force, the Secretary of State is able to establish one which industry can join, to avoid regulated providers being in breach of the order.
11. All schemes (except those established by the Secretary of State) must be approved by the sectoral regulator. When deciding whether to approve a scheme, the regulator must take account of the criteria set out in the CEAR Act. This includes consideration of the manner in which the scheme will be operated; the interests of relevant consumers; and generally accepted principles of best practice in relation to schemes for providing redress to consumers.
12. This Impact Assessment was consulted on in partial form in the ‘Consumer redress schemes in gas, electricity and postal services’ consultation published on 5 July 2007.
13. The consultation closed on 27 September 2007, and around forty written responses were received from consumer bodies, regulatory bodies, ombudsman organisations, industry, and other parties.

14. Responses showed broad support for the Government's proposals, and provided constructive and insightful contributions to the development of the detailed measures. The consultation informed the policy making process and led to minor amendments – in particular to the proposed definition of 'micro enterprises'. A full Impact Assessment was published on 21 December 2007 to accompany the Government response to the consultation. This document further updates that position in light of discussions with interested parties and to properly reflect the costs of the redress schemes brought forward by industry.

### **Rationale for government intervention**

15. In competitive markets, companies will compete for business on either price or customer service, or both. Companies that don't take customer complaints seriously can be punished by customers switching to alternative suppliers. The pressure to attract and retain customers should therefore act as a powerful incentive for business to act responsibly and to take complaint handling seriously.
16. The gas and electricity markets were opened to competition in 1998/99, and there is evidence that customers are switching suppliers to get the best deal. For example, in 2006, over 4 million people switched energy supplier<sup>3</sup>. Active switching of suppliers indicates that customers are aware of the choices offered to them in a competitive supply market and that they are taking advantage of these choices. The fact that customer switching occurs is an indication that companies do not have substantial market power and risk losing customers if they raise prices above the competitive level.
17. However, switching rates are not necessarily an ideal indication of the competitiveness of a market, as a high switching rate may indicate that offers from competing suppliers have not reached the competitive level. This is the level where economic theory suggests that the tariffs and quality of service offered by competing suppliers are very close, thus not offering customers sufficient incentives to switch supplier.
18. Despite an unprompted recognition rate of only 4%, energywatch received 136,615 enquiries and handled 70,000 complaints<sup>4</sup> in 2004/05. In 2005/06, the number of enquiries rose to 222,892, whilst the number of complaints fell slightly to 62,000<sup>5</sup>. The number of complaints received in 2006/07 remained stable at about 62,000<sup>6</sup>.
19. In 2005, after more than 8 years of competition, energywatch made a supercomplaint to the energy regulator, Ofgem, concerning the treatment of consumers by regulated gas and electricity suppliers in relation to billing. Ofgem determined that energy suppliers should establish a redress scheme to resolve outstanding billing disputes in a fair and independent way.
20. The funding for energywatch comes from the energy industry, and ultimately therefore from energy consumers. However, the contribution from individual regulated energy providers is not related to the number of complaints handled by energywatch in relation to that provider. There is therefore very little incentive on regulated providers to reduce the number of complaints received about them by energywatch (other than any potentially negative impact on their reputation), as providers are able to free ride on the contributions from others.
21. In contrast, redress schemes generally receive the majority of their funding from case fees, which is therefore directly related to the number of complaints resolved in relation to each regulated provider. This gives control over the cost of handling complaints from their own customers back to the regulated providers, creating a real incentive to deal effectively with consumer complaints in the first instance in order to reduce the cost of onward referral.
22. In the postal services sector, the UK's mail market was opened to competition on 1 January 2006. However, in 2005/06, Royal Mail retained a 97% market share<sup>7</sup> in the regulated addressed letters market. Market pressures to improve complaint handling in the postal services sector may therefore be fairly weak. Instead,

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<sup>3</sup> Ofgem press release, 23 April 2007, available at <http://www.ofgem.gov.uk/Media/PressRel/Documents1/Ofgem17.pdf>.

<sup>4</sup> Energywatch Annual Report 2004/05, available at [http://www.energywatch.org.uk/uploads/Annual\\_Report\\_2004\\_2005.pdf](http://www.energywatch.org.uk/uploads/Annual_Report_2004_2005.pdf).

<sup>5</sup> Energywatch Annual Report 2005/06, available at [http://www.energywatch.org.uk/uploads/Annual\\_Report\\_2005\\_2006.pdf](http://www.energywatch.org.uk/uploads/Annual_Report_2005_2006.pdf).

<sup>6</sup> Energywatch management information.

<sup>7</sup> Postcomm website, available at <http://www.psc.gov.uk/competition/competitive-market-reviews.html>.

the sectoral regulator – Postcomm – has a role to ensure that licensed postal operators, including Royal Mail, meet the needs of their customers throughout the UK.

23. The redress schemes to be established under the CEAR Act, alongside the prescription of complaints handling standards by the sectoral regulators, should therefore ensure that consumers have their complaints dealt with more effectively by the service provider in the first instance, with the certainty of resolution through the redress schemes where the service provider has been unable to resolve the complaint satisfactorily.
24. Further, the cost of onward referral to a redress scheme provides a strong incentive for regulated providers to ensure that consumer complaints are dealt with effectively in the first instance. For example, the number of complaints received by Postwatch fell from about 34,000 in 2004/05<sup>8</sup> to just over 18,000 in 2005/06<sup>9</sup> and less than 11,000 in 2006/07<sup>10</sup>. Postwatch attribute part of this reduction to the introduction of a Complaints Recharge Agreement with Royal Mail, whereby Royal Mail pays Postwatch an annual charge in proportion to the number of complaints they receive.

## Consultation

25. The public consultation on the measures in the CEAR Bill to strengthen and streamline consumer representation took place between January and April 2006. The consultation asked for views on the benefits of extending redress schemes to the energy and postal services sectors. Nearly all respondents to that consultation agreed that it would be beneficial to extend complaint resolution through redress schemes to the energy and postal sectors, due to the clear benefits this would offer to both industry and consumers.
26. The Government response to the 2006 consultation stated that as a result of the views expressed in response to that consultation, the Government will make it a statutory requirement for regulated providers in the energy and postal services sectors to belong to approved redress schemes. This proposal was taken forward in the CEAR Bill.
27. The CEAR Bill became an Act of Parliament in July 2007. The Department for Business, Enterprise and Regulatory Reform (BERR) launched a public consultation on 5 July 2007 to make proposals and to seek views of interested parties on the scope of the new statutory redress schemes by reference to:
  - (a) the regulated service providers who should be required to be members of the schemes;
  - (b) the description of complainants who should be covered by the schemes and
  - (c) the subject matter of the complaints which should be dealt with by the schemes.
28. The consultation closed on 27 September 2007, and around forty written responses were received from consumer bodies, regulatory bodies, ombudsman organisations, industry, and other parties.
29. The July 5 consultation proposed that the description of complainant who should be specified in the Order as those in respect of whom service providers would be required to belong to a redress scheme should be domestic and micro-enterprise consumers, where a micro-enterprise consumer is an enterprise with a headcount of less than 10, and whose annual turnover and/or annual balance sheet total does not exceed € million.
30. There was agreement among respondents that the definition should cover domestic consumers, and that small businesses should also be eligible to take their unresolved complaints to redress schemes. There were,

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<sup>8</sup> Postwatch Annual Report and Accounts, 2004-05, available at <http://www.postwatch.co.uk/pdf/policydocs/Annual%20Report%202004-05.pdf>.

<sup>9</sup> Postwatch Annual Report and Accounts, 2005-06, available at <http://www.postwatch.co.uk/pdf/policydocs/Postwatch%20Annual%20Report%202005%20-%202006.pdf>.

<sup>10</sup> Postwatch management information.

however, some concerns from respondents over the definition of small businesses proposed in the consultation – the “micro-enterprise” definition. In particular, it was apparent that it would not provide the necessary degree of certainty for consumers, service providers, and redress schemes. Industry respondents in the energy sector pointed out that they would be unable to easily assess whether a small company had fewer than 10 employees or a turnover of less than €2 million per year. They suggested that usage thresholds would be more meaningful in the gas and electricity sectors.

31. For the gas and electricity sectors, we proposed to replicate the original definition of small businesses as far as possible, by re-casting the criteria for the threshold. The upper threshold for action in a small claims court is £5,000, as is the threshold for the Telecommunications Ombudsman Scheme. It seemed appropriate to set the same level for gas and electricity consumers, but having due regard to the practicalities of implementation. When we published the Government response in 2007 we proposed to enter into further discussions with energy businesses, Ofgem, and Energywatch with a view to establishing whether there were suitable consumption thresholds which would provide a practical proxy for consumers whose annual bill was £5,000, and whether such a usage threshold would form a preferable definition of micro-enterprise customer.
32. In the postal services sector, it is difficult to make a case to distinguish the position of recipients of mail by size, and we therefore planned to establish that all recipients of mail from licensed postal services providers should have access to a redress scheme.
33. For purchasers of postal services, it is appropriate to exclude those who have a written service contract with their provider, and to focus on the products and services provided under licence. This acknowledges that – as with other sectors – regulated businesses will from time to time establish premium or complementary products of services which fall outside the scope of their licence.
34. In response to the 2007 consultation we proposed that the description of complainants who should be covered by the redress schemes in each sector is as follows:
  - (a) for gas consumers:
    - (i) domestic consumers, and
    - (ii) any other consumers whose annual Bill is less than £5,000 (or an analogous consumption threshold)
  - (b) for electricity consumers:
    - (i) domestic consumers, and
    - (ii) any other consumers whose annual Bill is less than £5,000 (or an analogous consumption threshold)
  - (c) for postal services consumers:
    - (i) all recipients of mail, and
    - (ii) all users of products provided under a licence, excluding consumers who have a written service contract with the licensed postal services provider.
35. In light of the consultation we decided to implement the proposals set out as Option 3, while making the amendments to the definition of micro-enterprise as set out above. (Full details of the December 2007 Government response can be found in the document ‘Consumer redress schemes in gas, electricity and postal services: Government response to consultation’ URN 07/1737). Details of the options considered can be found in the Annex to this Impact Assessment.

## **Developments since the publication of the Government response**

36. Discussion with energy businesses, Ofgem and Energywatch on our proposed revision to the micro-enterprise definition (para 31) led to further refinements of the definition. This dialogue revealed that adopting the proposed definition could potentially exclude some very small businesses who should clearly benefit from the redress scheme. These included owners of small convenience stores and pub landlords who had relatively few full-time staff and small turnovers, but tended to have energy bills which were significantly larger than the proposed threshold.
37. We agreed that consumption thresholds roughly equivalent to an annual bill of £5,000 should be combined with the European Commission definition of micro-enterprise originally proposed. This approach was adopted so that energy suppliers could easily identify small businesses who should have access to the scheme based upon their usage thresholds, without excluding small companies who had high usage profiles. The definition of micro-enterprise customer therefore becomes:
- (a) an annual consumption of
    - (i) electricity of up to 55,000 kWh or
    - (ii) gas of up to 200,000 kWh;
  - or
  - (b) (i) fewer than 10 employees (or their full time equivalent); and
    - (ii) an annual turnover or annual balance sheet total not exceeding € million;
38. Since 21 December 2007 redress schemes satisfying the standards set down by the CEAR Act have been formed by both the energy and postal services industries. Both schemes have been approved by the respective regulators (Ofgem and Postcomm) and are due to become statutory schemes on 1 October.
39. The former Energy Supply Ombudsman scheme has been widened to include network companies and small suppliers while IDRS Ltd will operate the redress scheme in the postal services sector.
40. As both of these schemes are now established we are able to more accurately assess the costs to industry of complying with the requirement to establish and join statutory schemes. However, aspects of these costs are commercially sensitive and are therefore presented in an aggregated form, combining energy with post.
41. Members of the industry estimated that transition costs of establishing or refining existing schemes were very low. The bulk of the cost of operating the schemes arose from estimated case costs (the number of estimated cases multiplied by the case handling cost of the respective scheme), followed by annual membership fees. The estimated annual cost (including membership and operating the schemes) in the energy and postal services sectors is £3.2 million per annum. However, it should be noted that this estimate includes some estimate of the cost of upscaling internal industry complaint handling procedures not included in previous Impact Assessments.
42. We expect these costs to fall over time as the procedures put in place by energy and postal services suppliers in response to the new complaint handling regulations take effect.

## **Small Firms Impact Test**

43. Members of each redress scheme will agree a mechanism for funding the scheme which covers its costs of operation. Schemes are typically funded by a subscription fee paid by each member and a case fee for each complaint referred.
44. In terms of the case fee, each regulated provider can to a large extent control their costs by ensuring that most complaints are resolved internally, without the need for onward referral to the scheme. The best performing service providers will face the lowest costs – the Financial Ombudsman Service, for example, does not charge for the first two cases they deal with in a year from the same member – whilst those performing less well will be incentivised to improve their internal complaints handling systems to reduce the amount paid to the redress scheme in case fees.

45. The subscription fees, on the other hand, are generally payable by all members of a scheme, regardless of the number of complaints referred. In this way, smaller service providers in the energy and postal services sectors could potentially face a proportionately higher cost of membership than larger providers.
46. Redress schemes generally attempt to avoid this by setting a subscription fee based on firm size or turnover. For example, for businesses regulated by the Financial Services Authority, the levy for membership to the Financial Ombudsman Service ranges from around £100 a year for a small firm of financial advisers, to over £300,000 for a high-street bank or major insurance company<sup>11</sup>. The subscription fees for members of the Office of the Telecommunications Ombudsman (Otelos) are related to the retail value of the services and products covered by the ombudsman service, and range from £90 to over £675 a year<sup>12</sup>. The Communications and Internet Services Adjudication Scheme (CISAS) charges members a subscription fee based on annual turnover, from £100 plus VAT to over £750 plus VAT<sup>13</sup>.
47. The CEAR Act requires regulators to have regard to the provisions of each redress scheme submitted for approval, including the funding provisions of each scheme. Further, when approving a scheme, regulators follow the principles of good regulation, as set out by the Better Regulation Executive<sup>14</sup>, such as proportionality and targeting, to ensure that no unintended consequences will result from the funding mechanism of the redress scheme being put forward for approval. Regulators will therefore ensure that any subscription costs take account of the impact on smaller members of the proposed redress scheme. For instance, the new Energy Ombudsman scheme recently approved by Ofgem only charges £100 per year to small suppliers.
48. Small firms in sectors other than energy and postal services should benefit under both options 2 and 3, as consumers of energy and postal services. These benefits, such as certainty of independent complaint resolution and the provision of compensation or other forms of redress where appropriate, are set out in more detail in the benefits section above.

## Competition Assessment

49. The proposals would have an impact on regulated providers in the energy and postal services sectors in that they would be required to be members of an approved redress scheme, and would therefore have to pay a fee to contribute towards the cost of the scheme. As industry itself will be setting up the scheme(s), the fees will need to be agreed by all member firms.
50. It is therefore unlikely that the fees will be set at levels that will affect competition between firms in the same sector. If charges for a particular scheme are considered to be too high, firms will have the option of either joining a different scheme, or establishing a new one.
51. However, as noted above, redress scheme subscription charges that disproportionately impact on small firms would be detrimental to competition. Again, any redress scheme will need to be approved by the relevant sectoral regulator who is required to have regard to the provisions of the scheme when granting approval, and who should follow the principles of good regulation to ensure that the risk of any such unintended consequence does not materialise.
52. Another concern in relation to competition may arise if firms are asked to pay more for consumer representation in their sector, which could deter firms from entering the market or cause existing firms to withdraw from the market due to higher costs.

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<sup>11</sup> Financial Ombudsman Service website, available at

[http://www.financialombudsman.org.uk/faq/businesses/answers/funding\\_a1.html](http://www.financialombudsman.org.uk/faq/businesses/answers/funding_a1.html).

<sup>12</sup> Otelos website, available at <http://www.otelos.org.uk/downloads/otelos-schedule-of-chargesApril2007.pdf>.

<sup>13</sup> CISAS website, available at [http://www.cisas.org.uk/Joining\\_CISAS.asp](http://www.cisas.org.uk/Joining_CISAS.asp).

<sup>14</sup> See

[http://www.cabinetoffice.gov.uk/regulation/consultation/consultation\\_guidance/planning\\_a\\_consultation/principles\\_good\\_regulation.asp](http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/planning_a_consultation/principles_good_regulation.asp).



53. However, the total amount of funding required from service providers in the energy and postal services sectors for consumer representation under the new arrangements (of which the redress schemes are a part), is estimated to be significantly less than providers in these sectors pay for the current system.
54. Thus in the energy sector, it is not envisaged that existing service providers will withdraw from the market due to higher costs, as costs will be lower overall. Similarly, new entrants to the market will be required to contribute less towards the new system of consumer representation than they would under the current system.
55. In the postal services sector, only Royal Mail currently funds Postwatch under the terms of its licence issued by Postcomm. Under the new arrangements, Postcomm will continue to determine which service providers contribute towards the cost of consumer representation, and the extent of that contribution. However, under options 2 and 3, other service providers in the sector may be required to belong to a redress scheme, with an associated cost. Given the estimates in the costs section above for the likely cost of the scheme(s), and that (as noted above) it is envisaged that any subscription cost will be related to firm size or turnover (and thus ability to pay), it is not envisaged that the cost of membership to the redress scheme will be sufficient to deter new entrants to the postal services market.
56. It may be argued that a requirement for all regulated providers in a sector to belong to an approved redress scheme reduces the ability of those firms relying on good customer service to compete, as to a certain extent it brings all regulated providers up to a similar level of customer service. However, the emphasis of the new arrangements is on regulated providers dealing effectively with consumer complaints in the first instance, without the need for onward referral to a redress scheme. Regulated providers are therefore still free to compete on levels of customer service **before** complaints reach the point at which they need to be escalated to the redress scheme.
57. Further, ensuring that all regulated providers in the sector are members of a redress scheme may improve competition, as consumers considering switching provider are assured that if they do have the need to complain, that complaint will ultimately be resolved and compensation or other forms of redress awarded as warranted, whichever provider they may choose to switch to.
58. Overall, therefore, we do not anticipate that the proposed measures will have a significant effect on competition in any of the sectors affected by the proposals.

## Other tests

59. After initial screening as to the potential impact of this policy on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

## Enforcement, sanctions and monitoring

60. The CEAR Act 2007 amends the Gas Act 1986 (c. 44); the Electricity Act 1989 (c. 29) and the Postal Services Act 2000 (c. 26) to enable Ofgem and Postcomm to enforce membership of an approved redress scheme in the same way as they currently enforce other relevant requirements and licence conditions.
61. This means that, first, regulators may make such provision by order as is needed for the purpose of securing compliance with the requirement or condition. Second, the sectoral regulator may fine the regulated providers who refuse to belong to an approved statutory redress scheme up to 10% of turnover.
62. Ofgem and Postcomm will monitor compliance with the requirement to be a member of a redress scheme, and will also monitor each redress scheme(s) to ensure that it continues to meet the criteria set out in the Act, and any further detailed criteria established by the regulator. For example, Ofcom undertook a review in 2005 of the Alternative Dispute Resolution procedures it had previously approved, and Ofgem has recently undertaken a review of the existing voluntary Energy Supply Ombudsman service to ensure that it continues to work effectively for consumers.



## Range of policy options considered in previous consultations

### Option 1: Do nothing

63. The CEAR Act confers a power on the Secretary of State (rather than a duty) to make an order requiring regulated energy and postal services providers to belong to a redress scheme. The Secretary of State could therefore determine not to use this power. However, redress schemes are an integral part of the new arrangements provided for in the CEAR Act, and are part of the package of measures which includes the prescription of complaint handling standards by the sectoral regulators.
64. The vast majority of responses to the consultation in 2006 on the measures in the CEAR Act to strengthen and streamline consumer representation expressed the view that it would be beneficial to extend complaint resolution through redress schemes to the energy and postal sectors, due to the clear benefits this would offer to both industry and consumers.
65. The redress schemes are required in order to provide assurance to consumers of complaint resolution, and the provision of compensation or other forms of redress where warranted.
66. The cost of onward referral to a redress scheme also provides a strong incentive for regulated providers to ensure that consumer complaints are dealt with effectively in the first instance by the service provider, which would be lost in the absence of such schemes.

### Option 2: Require redress schemes to handle complaints from all consumers in the energy and postal services sectors.

67. Option 2 would require a redress scheme(s) to be established in the energy and postal services sectors which had the authority to handle all complaints (regardless of subject matter) in these sectors. The scheme(s) could be used to obtain redress by all descriptions of consumers, including domestic consumers, small and medium sized enterprises and large businesses.
68. From a practical perspective, the types of complaints to be included within the scope of the redress scheme(s) to enable them to work effectively alongside other existing arrangements would include those which:
  - (a) have been considered by the service provider, and not resolved to the satisfaction of the consumer;
  - (b) relate to the regulated products and services of the service provider, as provided to the complainant, unless there is an established alternative route for resolution of the particular class of complaint;
  - (c) concern complaints about the way in which the service provider handled the initial complaint;
  - (d) concern complaints where there was no evidence to support the complaint, but which were not handled by the service provider in accordance with an established standard or code of practice.
69. An example of an alternative route for resolution of a particular class of complaint (as in (b) above) are the guaranteed standards of performance in the gas and electricity sectors, which provide for automatic compensation of specified amounts where consumers have suffered a loss of supply for a period. These forms of compensation are set out in regulations. The redress schemes do not need to cover the same ground, but might become involved in cases where compensation has not been paid under the regulations, and a consumer considers that it should have been.
70. Another example is that of disputes over charges quoted by gas or electricity distribution companies for connection to a network. In legislation, there is an established role for Ofgem to determine the charge in the event of a dispute. Therefore there does not appear to be a need for these complaints to be resolved by a redress scheme directly, although the scheme may have a role in ensuring that the complaint is passed to the most appropriate party for action and resolution.
71. An example of a complaint where there is no evidence (as in (d) above), might involve a consumer posting a letter which is then lost in the post, but where there is no receipt for the collection of the letter by the postal system and no evidence of it having been posted. In these cases, the regulated service provider could have a code of practice for dealing with the complaints, or the issue could be covered in complaint handling standards set by the regulators. Referral of a complaint to the redress scheme could then be made on an administrative basis: that the regulated provider failed to follow the code of practice or standard.

### Option 3: Require redress schemes to handle complaints from domestic consumers and micro-enterprises.

72. Under this option, redress schemes would need to be established in the gas, electricity and postal services sectors which could be used by domestic and micro-enterprise consumers, where:

- (a) domestic consumer means an individual who purchases, uses, or receives, in Great Britain, goods or services which are supplied in the course of a business by a regulated provider, or an individual in Northern Ireland who purchases, uses or receives postal services from a regulated provider; and
  - (b) micro-enterprise consumer is a gas or electricity user whose annual bill is less than £5,000 (or suitable equivalent threshold)<sup>15</sup> and all recipients of mail from licensed postal services providers; and all users of postal products and services provided under license, with the exception of those consumers who have a specific bi-lateral written contract with the postal services provider.
73. There is an argument that micro-enterprises have the same lack of commercial power as domestic consumers. In gas and electricity markets, micro-enterprises may have similar levels of energy consumption as larger domestic consumers, for example. The smallest business consumers may face very similar problems and have similar complaints to those of domestic consumers.
74. In 2005, 95.2% of all enterprises in the UK had less than 10 employees<sup>16</sup>. This option would therefore require regulated providers in the energy and postal services sectors to establish redress schemes which could be accessed by about 95% of enterprises in the UK in order to achieve complaint resolution and redress.
75. In the case of both domestic and micro-enterprise consumers, it is envisaged that complaints could be accepted from persons – including agents – acting on behalf of the consumer.
76. The types of complaints to be covered would be the same as for option 2.

### Sectors and groups affected

77. The sectors affected are the gas, electricity and postal services sectors. The regulated providers in these sectors would be required to belong to a redress scheme once the Secretary of State has made the order under the CEAR Act. “Regulated providers” are defined in the Act as licensed electricity suppliers, electricity distributors, gas suppliers, gas transporters and postal service providers.
78. Consumers in the energy and postal services sectors would also be affected. Consumers would have the assurance that if their service provider is unable to resolve their complaint, it can be taken to a redress scheme whose decision is binding on the provider, and who can offer compensation or other forms of redress as appropriate. Consumers would include not only domestic consumers but also micro-enterprise consumers. Large business consumers of energy and postal services would also be affected under option 2.

### Devolution

79. Issues concerning the postal services sector are reserved, such that, for example, Postwatch currently has a remit to represent consumers throughout the United Kingdom. We therefore propose that the redress scheme(s) in the postal services sector should also have a remit to consider complaints from consumers throughout the UK.
80. In the energy sector, energywatch currently has a remit which covers Great Britain only – energy consumers in Northern Ireland are represented by the General Consumer Council in Northern Ireland. We therefore propose that the redress scheme(s) in the energy market will apply to energy consumers in Great Britain only.

### Funding

81. The redress schemes will be funded by the members of the scheme, who will decide and agree upon the funding structure for their particular scheme. Most redress schemes are funded by a subscription fee (typically based on the size of the firm or its turnover), coupled with a case fee that is payable by each member for every case referred to the scheme. Schemes are usually free to consumers.
82. Redress schemes are usually operated on a cost recovery basis. General practice is for fees to be set at a level to cover the costs of the scheme, based on an anticipated number of complaints. Fees can be reviewed on a regular basis and adjusted to reflect any differences in the actual number of complaints received from the estimated levels of complaints.
83. Similarly, any scheme administered by the Secretary of State would operate purely on a cost recovery basis and would not be profit making – any subscription costs or case fees charged to members of the scheme would be set at a level and periodically adjusted in order to only cover the costs of running the scheme.

<sup>15</sup> Note: When we first consulted in July 2007 a micro-enterprise was defined as a business with fewer than 10 employees and a turnover/balance sheet of under €2m per annum.

<sup>16</sup> SME Statistics 2005, Small Business Service, available through <http://www.dtistats.net/smes/200612/index.asp>.

## Benefits

### Option 1: Do nothing

84. This option would not result in any additional benefits, although it would avoid the costs associated with the other options, as set out in the costs section below. However, consumers would not benefit from certainty of complaint resolution or the provision of compensation or other forms of redress where warranted.
85. Further, if in the absence of redress schemes, it was decided to maintain the complaint handling role of Postwatch and energywatch, industry would continue to be required to fund this activity, and would not benefit from the cost savings associated with the measures as a whole<sup>17</sup>.

### Option 2: Require redress schemes to handle complaints from all consumers in the energy and postal services sectors.

86. Extending the availability of redress schemes to complaints in the energy and postal services sectors would produce the following benefits for consumers:
- strong incentive for regulated providers to resolve complaints effectively and efficiently in the first instance, due to the cost of onward referral to the redress scheme for each complaint referred;
  - consumers have certainty of resolution of a complaint, as decisions are binding on the regulated providers (but not on the consumer);
  - compensation or other forms of redress (such as an explanation or an apology) for consumers where this is warranted;
  - quicker resolution of complaints for consumers as companies would have to resolve the complaint within a set period of time or the complainant could go to the redress scheme. Redress schemes, in general, get complaints resolved quicker than the courts as they have targets on the time taken to make a decision on a case; and
  - the service is entirely free to consumers.
87. Under option 2, these benefits would accrue to all consumers (including all business consumers) of energy and postal services.
88. The regulated providers who are the members of the redress scheme may also benefit from membership. For example:
- consumer access to a redress scheme that can offer certainty of redress will enhance a customer's confidence in purchasing a service should the situation arise whereby the customer has a complaint with the service received;
  - in more competitive markets, treating complaints seriously and having a reputation for excellent customer service may be a deciding factor for customers when choosing a provider;
  - the cost of the redress scheme(s) is borne by the relevant regulated providers who therefore gain control of the administrative costs of complaints resolution;
  - a redress scheme will provide a valuable way of resolving burdensome and difficult complaints – in the long run it may save time and resource to have a dispute dealt with outside the company; and
  - although the redress schemes will not create new rules for the performance of functions by regulated providers, the process of resolution of complaints by the redress schemes will provide valuable feedback for the regulated providers. This feedback should inform their own internal policies and procedures, enabling regulated providers

<sup>17</sup> For an assessment of the costs and benefits associated with the measures as a whole, see the full Regulatory Impact Assessment, available at <http://www.dti.gov.uk/files/file34656.pdf>.

to avoid similar difficulties with other consumers and improve both their own commercial performance and, importantly, their general standard of performance to consumers.

89. Further, the redress schemes, along with the extension of the Consumer Direct service to consumers in the energy and postal services sectors, will replace the industry funded complaint handling role of energywatch and Postwatch. In 2003/04, energywatch and Postwatch needed to devote £5.3 million and £1.9 million respectively (41% and 18% of their total budget)<sup>18</sup> to handling complaints.
90. Well advertised and managed redress schemes provide a more level playing field for vulnerable consumers, consumers with disabilities and those with English as a second language who might find it more difficult to resolve complaints on their own.

**Option 3: Require redress schemes to handle complaints from domestic consumers and micro-enterprises.**

91. The benefits outlined above under option 2 for regulated providers would also accrue under option 3. The benefits for all consumers under option 2 would accrue to domestic and micro-enterprise consumers under option 3; the difference between the two options is that under option 3, there would be no additional benefit over and above the existing system for larger business consumers.
92. However, it is likely that it would be micro-enterprises, who make up about 95% of all businesses in the UK, that would take most advantage of having access to external help with their complaints. For example, energywatch report that over 95% of their current total monthly contacts from business are from businesses with less than 10 employees<sup>19</sup>. Following the 2007 consultation we decided to amend the definition of micro-enterprises to a gas or electricity user whose annual bill is less than £5,000 (or suitable equivalent threshold) and all recipients of mail from licensed postal services providers, and all users of products and services provided under license, with the exception of those consumers who have a specific bi-lateral written contract with the postal services provider.
93. We anticipated that this revised definition would properly capture small companies who are no more able to resolve complaints than domestic consumers while offering the advantage that energy companies will be more readily able to assess whether a complainant should be referred to the relevant redress scheme. We subsequently entered into further discussions with energy businesses, Ofgem and Energywatch with a view to establishing whether consumption thresholds equivalent to an annual bill of £5,000 would provide a suitable definition of a micro-enterprise. An update on this position can be found in paragraphs 36-42.
94. Many larger business consumers will have sufficient commercial power to resolve problems direct with regulated providers and will not want to seek redress through statutory redress schemes. Their services may be provided under contracts, backed up by specialist staff with the skills to monitor and assess the performance of the service providers against these contracts.
95. These larger business consumers are therefore likely to be able to use their commercial position to resolve complaints, or to have the freedom and expertise to seek alternative service providers. For such consumers, access to a redress scheme for when things go wrong may not provide any significant additional benefit.
96. This option will also help create a more level playing field for vulnerable consumers, consumers with disabilities and those with English as a second language who might find it more difficult to resolve complaints on their own.
97. It is therefore anticipated that the benefits associated with option 3 are about the same as for option 2.

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<sup>18</sup> DTI and HM Treasury report (July 2004), “Consumer Representation in Regulated Industries” (available at <http://www.dti.gov.uk/files/file25252.pdf>).

<sup>19</sup> energywatch management information.

## Costs

### Option 1: Do nothing

98. This option would not result in any additional costs to industry. However, there would be a potential cost to consumers in terms of not having recourse to an independent arbitrator if the service provider is unable to resolve the complaint satisfactorily.
99. The requirement in the CEAR Act for Ofgem and Postcomm to prescribe complaint handling standards that are binding on regulated providers in their sectors should ensure that this cost is lower than it would otherwise be. However, there is likely to be a proportion of complaints which, for whatever reason, cannot be resolved between the service provider and the consumer.

### Option 2: Require redress schemes to handle complaints from all consumers in the energy and postal services sectors.

#### Policy costs

100. On behalf of the DTI, KPMG produced an estimate of the likely cost to regulated providers in the energy and postal services sectors of extending redress schemes to these sectors. The estimate is based on the level of complaints received by energywatch and Postwatch in 2005/06 which would fall within the likely terms of reference of a redress scheme, and takes account of the existence of the Energy Supply Ombudsman scheme established by the Energy Retail Association on 1 July 2006<sup>20</sup>.
101. The estimate suggested that regulated providers in the energy and postal services sectors would face total set-up costs of about £0.4 million. This was based on industry making use of existing schemes through expansion, rather than setting up an entirely new scheme. If industry were to establish an entirely new scheme, set-up costs may be higher. For example, the set-up costs in 2003 for the electronic communications ombudsman – Otelo – amounted to £1.3 million.
102. KPMG also estimated an ongoing total running cost of the required scheme(s) of about £2.2 million per annum, to be split between regulated providers in the energy and postal services sectors. (This compares to Otelo, which had administrative expenses totalling £1.4 million in 2004/05 – a 36% lower budget to resolve an estimated 21% fewer complaints.)

#### Administrative costs

103. There will be an additional cost to Ofgem and Postcomm of approving a redress scheme(s) (which will be a one off cost for each scheme approved) and monitoring of the scheme's ongoing compliance with the approval criteria. The total cost of approval and monitoring will depend on the number of schemes approved.

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<sup>20</sup> However, any redress scheme in the energy sector would need to be approved by Ofgem against the criteria set out in the CEAR Act to ensure that it qualified as a statutory scheme under the provisions in the Act.

**Option 3: Require redress schemes to handle complaints from domestic consumers and micro-enterprises.****Policy costs**

104. The cost of option 3 would differ from option 2 in that the redress schemes established by industry would only be required to resolve complaints from domestic consumers and micro-enterprises.
105. Enquiries and complaints from all business consumers account for about 10% of the total currently received by energywatch<sup>21</sup> (energywatch currently receives around 2,000 contacts a month and dealt with just under 5,000 complaints in 2006/07 from businesses). Similarly, just less than 10% of complaints received by Postwatch (about 950 in 2006/07) are from business<sup>22</sup>.
106. Option 3 would require redress schemes to be established that handle complaints from micro-enterprises, but not those from larger businesses. Based on current trends in complaint numbers, redress schemes under option 3 could therefore be required to handle up to 10% fewer complaints than under option 2, depending on the number of complaints within this 10% that are from micro-enterprises.
107. It is anticipated that the vast majority of complaints from business are likely to come from micro-enterprises. Larger businesses are more likely to have the experience and resources required to get the best deals from the market and to obtain effective resolution of their complaints when they arise. This suggests that, of the 10% of complaints received from business, the majority are likely to be from micro-enterprises.
108. Given that the difference in the number of complaints received by the redress scheme(s) under options 2 and 3 is only likely to be up to 10%, and that some of the set-up costs of each redress scheme will only have a weak link to the number of complaints likely to be received (such as scheme development costs and consultancy advice), it is assumed that the set-up costs under option 3 are likely to be roughly the same as for option 2, of about £0.4 million.
109. The running costs of a redress scheme, however, may be more directly related to the number of cases handled by the scheme. The redress schemes under option 3 would be required to handle up to 10% fewer cases than under option 2. Assuming a direct relationship between running costs and the number of cases therefore implies a running cost under option 3 of between £1.98 million per annum (£2.2 million minus 10%) if all business complaints are from larger businesses, and £2.2 million if all business complaints are from micro-enterprises with less than 10 employees.
110. In practice, it is envisaged that the actual cost will be nearer the upper end of this range (£2.2 million). However, the cost of option 3 is expected to be slightly lower than under option 2 as there will be a level of cost associated with ensuring that the redress scheme(s) are in a position to handle complaints from large business (e.g. staff training in issues relevant to larger business consumers), even if few complaints from this description of consumers are expected to be referred.

**Administrative costs**

111. As with option 2, there will be an additional cost to Ofgem and Postcomm of approving a redress scheme(s) and monitoring the scheme's ongoing compliance with the approval criteria.
112. The total cost of approving the redress scheme(s) will be dependent on the number of schemes approved, rather than the coverage of individual schemes. The slightly narrower scope of the schemes required under option 3 (compared to option 2) could potentially lead to regulated providers establishing fewer redress schemes, which would lead to a lower administrative cost on the regulators associated with option 3 than for option 2. Alternatively, the same number of schemes could be established under both options. In this scenario, the scope of the scheme would be wider under option 2 than option 3, but the cost to the regulator of approving and monitoring the scheme would be more or less the same under both options.

<sup>21</sup> Energywatch management information.

<sup>22</sup> Postwatch management information.



## Summary of Costs and Benefits

Option	Costs	Benefits
Option 1: Do nothing	No additional costs. However, the cost savings from the consumer advocacy measures in the CEAR Act would not be fully realised.	No additional benefits.
Option 2: Require redress schemes to handle complaints from all consumers in the energy and postal services sectors.	One-off set-up costs to the energy and postal services industry of about £0.4 million.  Ongoing cost to industry of about £2.2 million per annum.	All consumers have certainty of complaint resolution and compensation or other forms of redress where warranted.  Redress schemes are also part of a package of measures estimated to save industry (and ultimately therefore consumers) up to £9m per annum (see para 87 for revised assessment).
Option 3: Require redress schemes to handle complaints from domestic consumers and micro-enterprises.	One-off set-up costs to the energy and postal services industry of about £0.4 million.  Ongoing cost to industry of between £1.98 and £2.2 million per annum.	Domestic and micro-enterprise consumers have certainty of complaint resolution and compensation or other forms of redress where warranted.  Redress schemes are also part of a package of measures estimated to save industry (and ultimately therefore consumers) up to £9m per annum (see para 87 for revised assessment).

113. Options 2 and 3 offer a very similar level of benefit, as the additional benefit associated with option 2 over option 3 which would accrue to medium and large businesses is thought to be marginal. However, the cost of option 2 compared to option 3 is expected to be slightly higher. Option 3 is therefore preferred to option 2.
114. The cost of option 3 is higher than option 1. However, redress schemes are part of a package of measures to be brought in by the CEAR Act. The measures as a whole were initially estimated to save industry up to about £9 million per annum<sup>23</sup>, whilst at the same time creating a stronger consumer advocate to represent the interests of consumers. More recent estimates suggest that savings to industry lie between £8.1m and £10m per annum, depending upon early disposal of property owned by the legacy bodies (energywatch and Postwatch) and the ability of industry to further reduce complaints handled by Consumer Direct.
115. Introducing redress schemes to the energy and postal services sectors will also offer substantial benefits to consumers, in terms of creating certainty of complaints resolution, and the award of compensation or other forms of redress where warranted.
116. The benefits of option 3 are therefore expected to significantly outweigh the costs of transition to the new arrangements. While option 1 would avoid these costs, it would also not result in the benefits offered by option 3, including the ongoing savings associated with the measures as a whole.
117. The preferred option is therefore option 3 and this formed the basis for the decision presented in the Government response in December 2007.

<sup>23</sup> See the full Regulatory Impact Assessment for the entire package of measures, available at <http://www.dti.gov.uk/files/file34656.pdf>.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No