



Suppliers, consumers, consumer organisations and representatives, academics and other interested parties

Promoting choice and value for all customers

Direct Dial: 020 7901 7000
Email: MarketMonitoring@ofgem.gov.uk

Date: 24 June 2010

Dear Colleagues,

Statement on Deemed Contracts

1.1. The purpose of this statement¹ is to set out Ofgem's general view on an aspect of the interpretation of the deemed contract provisions² of the Gas Act 1986 and the Electricity Act 1989, namely whether they only apply once gas and/or electricity is consumed.

1.2. "Deemed contracts" arise as a result of statutory provisions and come into existence between a person and a licenced supplier in certain circumstances, where the licenced supplier supplies gas and/or electricity otherwise than in pursuance of a contract.

1.3. Ofgem's general and non-binding view, on the basis of our interpretation of the relevant statutory provisions as a whole, including consideration of the Government's original policy proposals³ for the deemed contract provisions, is that gas and/or electricity would need to be consumed in order for a deemed contract to arise between a licenced supplier and the occupier/owner of premises. However, Ofgem wishes to make clear that the interpretation of legislation is ultimately a matter for the courts. Further, the precise legal position will depend on the individual circumstances of each case.

1.4. In so far as an interpretation of any aspects of the deemed contract provisions is necessary for the performance of its statutory functions⁴, Ofgem intends to adopt a case-by-case assessment of all relevant circumstances⁵ before reaching a view on any particular matter.

1.5. It is also worth noting that Ofgem is currently carrying out a general market monitoring⁶ exercise in respect of the charges which apply to deemed contracts.

¹ This statement is being published pursuant to section 35(1) of the Gas Act 1986 and section 48(1) of the Electricity Act 1989.

² For the purposes of this statement, the 'Deemed Contract provisions' are paragraph 8(1) of schedule 2B to the Gas Act 1986 and paragraph 3(1) of Schedule 6 to the Electricity Act 1989

³ See 'A Fair Deal for Consumers: Modernising the Framework for Utility Regulation, The Future of Gas and Electricity Regulation, The Government's Proposals for Legislation' (September 1999).

⁴ For example, the enforcement of licence conditions or consumer protection law.

⁵ For example, this may include reviewing evidence as to whether gas and/or electricity has been consumed during the period of time when a deemed contract is alleged to have come into effect.

⁶ Pursuant to section 34 of the Gas Act 1986 and section 47 of the Electricity Act 1989.