



Suppliers, consumer groups and other interested parties

Promoting choice and value for all gas and electricity customers

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Dear Colleague,

Classification of premises for the purposes of the standard conditions of the gas supply licence

This consultation presents our minded to position regarding classification of premises for the purposes of the standard conditions of the gas supply licence, which we reached after considering responses to the open letter we published in December 2010.

Responses to this consultation are invited by 23 November 2011 and should be sent to:

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Background

In July 2000, Ofgem consulted on proposals to use a simple common definition for both gas and electricity customers following concerns that some customers, using gas and electricity for domestic purposes, were being denied regulatory protection appropriate to domestic users by the application of volume-related thresholds. In addition, the obligations to protect domestic customers were different in the gas and electricity supply licences.

Ofgem published guidance on this issue in 2002¹. The guidance was issued following publication of new supply licences in October 2001, arising from the implementation of the Utilities Act 2000. The Department of Trade and Industry at the time adopted the following common definitions in the supply licences:

'Domestic Customer' means a customer supplied or requiring to be supplied with gas or electricity at domestic premises (but excluding such customer in so far

¹ [Ofgem's interpretation of the definition of the terms 'domestic customer' and 'domestic premises' as they appear in the gas and electricity supply licences](#), 09 April 2002

as he is supplied or requires to be supplied at premises other than domestic premises)

'Domestic Premises' means premises at which a supply is taken wholly or mainly for domestic purposes

The above definitions of Domestic Customer and Domestic Premises were transposed into the Standard Conditions of the Electricity and Gas Supply Licence ("SLCs"), in SLC 1² and SLC 6 respectively.

SLC 22.1 requires that if a licensee supplies a Domestic Customer it must do so under a Domestic Supply Contract or a Deemed Contract. SLC 22.2 in turn requires a licensee to offer to enter into a Domestic Supply Contract with a Domestic Customer when it receives a request from a Domestic Customer to supply a Domestic Premises. SLC 22.4 requires that a Domestic Supply Contract must be in writing and identify the charge for supply and the charge for any other goods or services separately and reflect the licence provision relating to termination of the Domestic Supply Contract. Relevant extracts from SLC 1 together with a copy of SLC 6 and SLC 22 are attached in Appendix 1.

The SLCs generally envisage that a Domestic Customer (and in turn a supply to Domestic Premises) will be a supply to an individual within Domestic Premises, e.g. an apartment or house, and that there will be a direct contractual relationship between the energy supplier and an individual.

Following the implementation of these definitions, Ofgem was asked by suppliers and Industrial and Commercial (I&C)³ customers to clarify its interpretation of the terms Domestic Customer and Domestic Premises as they are used in the gas and electricity supply licences.

In particular, we were asked how they apply to commercial businesses providing residential services, such as nursing or care homes, and to residential landlords, including local authorities. These businesses and landlords had, at the point of issuing this guidance in 2002, benefited from the wider pricing options available to I&C customers.

We stated in the guidance that changes in the definition of Domestic Customer and Domestic Premises were not intended to extend regulatory protection appropriate for Domestic Customers to I&C customers, whether or not they are in business to provide residential or accommodation services. We stated that the provision of such services should not be regarded as a 'domestic purpose'. Consequently, where gas or electricity is supplied in connection with services on a commercial basis (including residential or accommodation services), Ofgem expects that I&C contract terms would continue to apply.

Where the interpretation of 'Domestic Customer' and 'Domestic Premises' remains in dispute, we stated that Ofgem may, upon application and if appropriate, determine whether a customer should be treated as domestic or I&C.

As was implied by the guidance, the need for Ofgem to determine upon application how a customer should be treated reflected that there could be certain specific circumstances where the characteristics of a customer would make it difficult to ascribe a domestic or non-domestic identity, and would need to be considered individually.

In this context, an issue has been brought to our attention regarding how suppliers classify customers in particular residency structures. The example we were alerted to was how customers in domestic apartment blocks are treated when their gas is bought collectively by a wholly tenant owned non-commercial residential management company on a not-for-profit basis for the purpose of providing heat. Earlier in the year we published an open

² For the full licence condition, please see Ofgem's electronic public register at <http://epr.ofgem.gov.uk/>.

³ For the avoidance of doubt, in this letter I&C refers to all non-domestic customers.

letter on issues surrounding the definition of Domestic Customers and Domestic Premises in the licence.

Open letter consultation

In December 2010 we published an open letter in which we asked for stakeholders' views on whether it is necessary to amend the definition of Domestic Customer and/or Domestic Premises within the standard conditions of the gas supply licence.

In the open letter we stated that we consider that in certain specific circumstances, the current licence wording means that a supply of gas to a legal entity acting on behalf of individual residents within an apartment block is also a supply to Domestic Premises and that the legal entity is a Domestic Customer. These circumstances are that the legal entity does not provide commercial services to residents, such that it does not charge residents for a supply of gas. For the avoidance of doubt, these circumstances do not include where the legal entity purchases gas which it then on-supplies to individual residents. Our position on this issue is consistent with our 2002 guidance.

A specific example of where these circumstances apply is where a non-profit making management company requests a supply of gas to one single meter point within an apartment block where the gas is in turn used to generate heat for individual domestic residences within that apartment block.

Responses to the open letter consultation

The open letter consultation closed on 31 January 2011. We received 18 responses from various stakeholders: large and small suppliers, one industry association, residential management companies and associations, individual customers, one consumer group, one gas distribution network company and the energy dispute resolution scheme. None of the responses was marked as confidential and all are published on Ofgem's website⁴.

Suppliers and other respondents have opposing views based mainly on the different interpretation of the current licence conditions. Suppliers generally disagree with our view and do not support any possible licence changes, while other respondents are supportive.

The majority of the Big 6 suppliers, two small suppliers and the industry association disagree with our view that in certain specific circumstances, the current licence wording means that a supply of gas to a legal entity acting on behalf of individual residents within an apartment block is also a supply to Domestic Premises and the legal entity is a Domestic Customer. They argue that the current licensing regime and Ofgem's guidance issued in 2002 define the Domestic Customer as an occupier of individual premises and the legal entity (commercial and not-for-profit) acting on behalf of a number of individual residents as a Non-Domestic Customer. Some of these respondents also noted that where individual customers receive services such as heat from a central boiler they are not gas customers but heat customers and therefore outside the present regulatory framework.

As a consequence, most of these respondents are also opposed to amending the definitions of a Domestic Customer and/or Domestic Premises within the SLCs to clarify the position that in certain circumstances, a supply of gas to a legal entity acting on behalf of individual residents is a supply to Domestic Premises and to a Domestic Customer. They believe that the current framework is working and argue that any changes would make practical problems to ensure compliance with Section B of the Standard Conditions which include specific protections for domestic customers. Four of these respondents also felt that some form of bespoke contracts for this group of customers would be appropriate. One respondent suggested that Ofgem should issue additional guidance to clarify current definitions.

⁴ www.ofgem.gov.uk

Several respondents agree with our view, including a residential management company, residential associations, a consumer body, one small supplier and one large supplier. One of these respondents argues that there is no requirement in the licence that, to qualify as a Domestic Customer, the purchasing entity must be an individual. For other respondents it is self-evident that the supply of gas to a residential apartment block will be wholly or mainly for a domestic purpose and that the overriding principle behind domestic status is that of the end user.

Four of these respondents also believe that the existing licence conditions would not need any changes or may need very small changes. Two residential associations suggested the adoption of the definitions used in the VAT regulations (i.e. any supply which is to residential premises or to premises which are an adjunct to those premises should be classed as residential).

Ofgem's minded to position

Having considered the issue further since our open letter, and in light of responses to the consultation, our position remains as we set out in our 2002 guidance. We believe that non-commercial collective⁵ purchase of gas supplied to a single meter point for wholly or mainly domestic use should be classified as supply for domestic purposes on the proviso it is not resold. We consider this is an appropriate classification where the entity that holds a contract for the supply of gas passes through those costs directly to domestic consumers without any mark-up, and is therefore not considered to be acting for a commercial purpose. In this case, as long as the end use of gas is for domestic purposes, regardless of what that domestic use is, this view holds.

However, we note there are particular cases where the size of gas consumption will be significantly higher than a typical domestic residence. For example this may occur where there are multiple tenancy flats in which one central gas-fired boiler (and therefore a single meter point) provides heat to a large number of domestic customers. For the avoidance of doubt the size of consumption is not the defining characteristic of whether or not a customer should be considered to be domestic or non-domestic. We were clear on this issue in our 2002 guidance. However, the size of consumption may be relevant to the type of domestic contract offered.

Where there is a traditional relationship between a supplier and the occupants of a single domestic household, there are provisions in the licence which afford those Domestic Customers particular protections, for example protections for vulnerable customers. In the case of non-standard domestic residency structures, such as in the example of multiple domestic tenants described above, we would expect that the supplier and the domestic customer may need to enter into a bespoke domestic contract⁶ to accommodate the increased volumes of supply and for the Domestic Customers to receive the same protections as envisaged with a standard domestic residency structure.

We recognise that our interpretation of SLC 1, SLC 6 and SLC 22 will give clarity to the policy intent behind the licence provisions, and consequently may reveal alternative practices that are applied because of different interpretation of the licence condition. For this reason we are seeking feedback from respondents to consider whether there are any unintended consequences that may arise, given the position set out above. Specifically, we would be interested to hear respondents' views on the following:

1. How do you currently treat multiple tenancy sites with single gas boilers with a small number of Domestic Customers?

⁵ In this case collective purchase is defined to the limited case of owners and tenants of the premises having direct control over the entity that is collectively purchasing the supply of energy.

⁶ We envisage the bespoke domestic contract will include terms relating to the agreed charges, duration and termination of the bespoke domestic contract, and any security deposit requirements.

2. How do you currently treat multiple tenancy sites with a single meter point serving a large number of Domestic Customers whose combined consumption is significantly above that of a traditional single domestic residence?
3. How many customers with whom you have a contract would be affected by the clarification described above?
4. What would be the impact on your business of the clarification described above?
5. In principle, would it cost more for high consumption Domestic Customers as described above to be supplied with a bespoke domestic contract for gas rather than a non-domestic contract?

A further related issue has emerged with regard to the interpretation of the provisions of the supply licence. A question has been raised as to whether certain customers should be allowed to change their classification from domestic to non-domestic if such a change would yield materially better contractual terms. For the avoidance of doubt, we do not consider that this would be compliant with the terms of the licence, specifically SLC 22.1. Our view is that the licence is sufficiently clear on this issue that the type of contract a customer is offered by a supplier should be based on the specific residency situation of the customer. The type of contract a customer is eligible for should only change from domestic to non-domestic or vice versa if the specific circumstances of that customer change accordingly.

To confirm, Ofgem's regulatory remit is restricted to the provisions governing the supply of energy between a licensed supplier and a Domestic or Non-Domestic Consumer. Ofgem does not have regulatory jurisdiction over the provision of heat. However, we note that the government is currently considering this issue, and will bring to the attention of DECC the issues described in this open letter.

Next steps

Responses to this consultation are invited by 23 November 2011 and should be sent to:

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We are happy to accept responses by post or email.

Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website at www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000. Respondents who wish to have their responses remain confidential should clearly mark the document(s) to that effect and include the reasons for confidentiality. Respondents are asked to put any confidential material in the appendices to their responses.

Yours faithfully,

David Hunt

Head of Retail

Appendix 1 - SLC 1 (relevant extracts), SLC 6, SLC 22

Condition 1. Definitions for standard conditions

- Domestic Customer means a Customer supplied or requiring to be supplied with gas at Domestic Premises but excludes such Customer insofar as he is supplied or requires to be supplied at premises other than Domestic Premises;
- Domestic Premises has the meaning given in and is to be interpreted in accordance with standard condition 6 (Classification of premises);
- Non-Domestic Customer means a Customer who is not a Domestic Customer; and
- Non-Domestic Premises has the meaning given in and is to be interpreted in accordance with standard condition 6 (Classification of premises).

Condition 6. Classification of premises

Domestic Premises

6.1 Unless the context otherwise requires, a Domestic Premises is a premises at which a supply of gas is taken wholly or mainly for a domestic purpose except where that premises is a Non-Domestic Premises.

Non-Domestic Premises

6.2 Unless the context otherwise requires, a Non-Domestic Premises is a premises, that is not a Domestic Premises, at which a supply of gas is taken and includes:

(a) a premises where:

- (i) the person who has entered into a Contract with the licensee for the supply of gas to the premises is a person who has entered or will enter into an agreement with any other person for the provision of a residential or any other accommodation service at the premises; and
- (ii) the terms of the agreement referred to in sub-paragraph 6.2(a)(i) are commercial in nature and include a charge for the supply of gas to the premises (whether such charge is express or implied); and

(b) any other premises that is to be treated as a Non-Domestic Premises under paragraph 6.4 or 6.6.

Changes in use of gas

6.3 This paragraph applies if:

- (a) after the licensee enters into a Non-Domestic Supply Contract with a Customer; or
- (b) after a Deemed Contract for a Non-Domestic Premises begins, the Customer begins using the gas supplied to his premises under that contract or deemed contract wholly or mainly for a domestic purpose.

6.4 If paragraph 6.3 applies, the Customer's premises will be treated as a Non-Domestic Premises for the purposes of this licence until the Non-Domestic Supply Contract or the Deemed Contract, as appropriate, ends.

Multi-Site Contracts

6.5 Unless the context otherwise requires, a Multi-Site Contract is a Contract for the supply of gas to:

- (a) one or more Non-Domestic Premises; and
- (b) one or more Domestic Premises which are occupied for a purpose ancillary to that for which any of the Non-Domestic Premises is occupied, where all of those premises are owned or occupied by:
 - (i) the same person or body of persons whether corporate or unincorporate; or
 - (ii) an Undertaking (for this condition only, the "principal undertaking") and a Holding Company, Subsidiary or Subsidiary of the Holding Company of that principal undertaking or any other Undertaking in which the principal undertaking has a Participating Interest.

6.6 A Domestic Premises supplied by the licensee under a Multi-Site Contract will be treated as a Non-Domestic Premises for the purposes of this licence until that contract ends.

Condition 22. Duty to offer and supply under Domestic Supply Contract

Licensee's obligations

22.1 If the licensee supplies gas to Domestic Premises, it must do so under a Domestic Supply Contract or a Deemed Contract.

22.2 Within a reasonable period of time after receiving a request from a Domestic Customer for a supply of gas to Domestic Premises, the licensee must offer to enter into a Domestic Supply Contract with that customer.

22.3 If the Domestic Customer accepts the terms of the Domestic Supply Contract offered to him under paragraph 22.2, the licensee must supply electricity in accordance with that contract.

22.4 A Domestic Supply Contract must:

- (a) be in Writing; and
- (b) include all the terms and conditions for the supply of gas, including:
 - (i) a term separately identifying the Charges for the Supply of Gas and the charge for any other good or service to be provided; and
 - (ii) a term reflecting the provisions of standard condition 24 (Termination of Domestic Supply Contracts) in relation to the ending of the contract in the circumstances set out there.

22.5 If a Domestic Premises is in the part of the North of Scotland referred to in an order made by the Secretary of State under section 7B of the Act, the licensee must ensure that the Charges for the Supply of Gas for the premises comply with that order.

Exceptions to licensee's obligations

22.6 The licensee is not required to comply with the obligations set out in paragraphs 22.2 or 22.3 in any of the following circumstances:

- (a) the licensee may breach regulations made under section 29 of the Act if it supplies gas to the Domestic Premises, provided that it has taken all reasonable steps to prevent such breach from occurring;
- (b) it is not reasonable in all the circumstances of the case for the licensee to supply gas to the Domestic Premises, provided that, if it is already supplying gas to the premises, it has given at least seven Working Days' Notice of its intention to stop doing so; or
- (c) the licensee requires the Domestic Customer to pay a Security Deposit and he does not do so, except if that deposit is in breach of any of the requirements in paragraphs 3 and 4 of standard condition 27 (Payments, Security Deposits and Disconnections).

Provision of Domestic Supply Contracts

22.7 If a person requests a copy of any form of Domestic Supply Contract that the licensee may offer under paragraph 22.2, the licensee must send a copy of that form of contract to that person within a reasonable period of time after receiving the request.