

# Consultation

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## Non-domestic market review: Findings and policy consultation

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Contact: Louise van Rensburg

Team: Non-Domestic Retail Policy

Email: [NonDomesticRetailPolicy@ofgem.gov.uk](mailto:NonDomesticRetailPolicy@ofgem.gov.uk)

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We want to see a retail energy market that works in the interests of all consumers. We have been very concerned about the reports we have had from non-domestic customer groups and via our own monitoring about the behaviour of some suppliers. We opened compliance reviews and a broader non-domestic market review, including a Call for Input, to gather evidence and stakeholder views on market issues we identified.

Based on the views and evidence collected through the review process, we have identified and prioritised several key areas of consumer harm and developed a package of proposed policy measures to address these harms. **Through this document, we are consulting on this package of policy measures and have posed a number of consultation questions at the beginning of each chapter.** We have included draft supply licence conditions to illustrate how some of these measures could take effect.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

We welcome views from stakeholders on our proposals.

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## Contents

<b>Non-domestic market review: Findings and policy consultation.....</b>	<b>1</b>
<b>Executive Summary .....</b>	<b>4</b>
<b>1. Introduction .....</b>	<b>11</b>
<b>2. Pricing and contract behaviour.....</b>	<b>19</b>
<b>3. Competition in the market and customer service .....</b>	<b>39</b>
<b>4. Some customer groups need focused support .....</b>	<b>58</b>
<b>5. Next steps .....</b>	<b>72</b>
<b>Appendices .....</b>	<b>74</b>
<b>Appendix 1 – Draft Guidance on Deemed Contracts .....</b>	<b>75</b>
<b>Appendix 2 – Draft Standard Licence Conditions.....</b>	<b>90</b>
<b>Appendix 3 – Updated guidance on domestic classification.....</b>	<b>98</b>
<b>Appendix 4 – Summary of Questions .....</b>	<b>100</b>
<b>Appendix 5 – Glossary .....</b>	<b>102</b>
<b>Appendix 6 – Privacy notice on consultations .....</b>	<b>108</b>

## **Executive Summary**

The last two years have seen unprecedented volatility in wholesale gas and electricity prices, and wider economic pressures that create enormous challenges for households, businesses, and suppliers. Ofgem's mandate is to protect the interests of all consumers, importantly including the businesses, industries, and public services who, now more than ever, need a good service from their energy suppliers.

We have received numerous reports that the non-domestic market is not delivering to our expectations: with accounts of customers struggling to contract with energy suppliers, poor customer service, and larger price hikes than seem necessary. We are determined to investigate poor behaviour in the non-domestic sector and hold suppliers to account.

To help us take the right actions, we needed to identify if issues are temporary, or supplier specific, or whether they show more systemic market issues that may need a deeper market investigation or changes to our rules. We have issued intensive supplier information requests, a Call for Input and undertaken extensive stakeholder engagement to gather information and inform our views.

Overall, while the evidence suggests that some of the issues consumers have faced are driven by challenging market conditions, we have identified clear cases of poor conduct by specific suppliers. We also believe there are specific areas where rule changes are needed, and we are proposing targeted reforms to ensure suppliers across the board raise the bar to deliver better customer support.

We also are asking government to consider making changes to regulation, where we do not currently have vires to intervene or change regulation. This includes wider access to redress support and matters relating to energy brokers. Some domestic consumers do not contract directly with a supplier, but with a third party, such as a landlord or mobile park owner who has agreed a non-domestic contract. We will work with government to get these customers more support. It is also the case that sectors that are perceived to carry more risk, such as hospitality, are not yet seeing better outcomes. Consideration of the economic outlook for this sector, to which risk perceptions are linked, is outside the scope of Ofgem's review.

Non-domestic consumers deserve an energy market where they receive excellent service, fair prices, access to services they need to enable the transition to net zero and

where suppliers are financially resilient. This review sets out Ofgem's thinking on how to achieve this, what we have found and what our proposed next steps are.

## **Actions we are taking now**

### *Deemed contract rates and Energy Bill Relief Scheme*

We know that a big issue many non-domestic customers face is the cost of their energy, with many stakeholders raising the issue of pricing as a top area of concern. As a regulator, we do not generally regulate prices in the non-domestic sector. However, we are holding suppliers to account where they are not following the rules we do have relating to what they charge and taking appropriate action against them. This includes cases where suppliers have been overcharging consumers not under contract (paying deemed contract rates<sup>1</sup>) and not following the rules in applying the government's Energy Bill Relief Scheme (EBRS).<sup>2</sup>

### *Security deposits and fixed price contracts*

Our engagement has revealed stakeholder concerns about security deposits. There has been both an increase in requests for these deposits, and in the levels being requested. We are driving better practices and greater standardisation through our security deposit best practice guide.<sup>3</sup> We are increasing our monitoring in this area, and will, if necessary, consider further changes to our rules in the future.

We are aware of the particularly high financial pressures customers are under who signed fixed price contracts last year when the wholesale price was at its peak, and now do not have the EBRS level of support.<sup>4</sup> While we cannot intervene in commercial contracts, we are giving suppliers the clear message that we expect them to work proactively with their customers and, within their commercial confines, adapt to the difficult circumstances of individual customers to support them wherever possible.

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<sup>1</sup> A deemed contract relationship will normally exist where a customer moves into new premises, and starts to consume gas and/or electricity, without agreeing a contract with a supplier. It can also exist in some circumstances where an existing contract comes to an end and the customer continues to consume gas and/or electricity, but the original contract does not expressly provide for what will happen after expiry.

<sup>2</sup> [Energy Bill Relief Scheme: help for businesses and other non-domestic customers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/energy-bill-relief-scheme-help-for-businesses-and-other-non-domestic-customers)

<sup>3</sup> <https://www.ofgem.gov.uk/publications/non-domestic-best-practice-guide-security-deposits>

<sup>4</sup> Non-domestic customers do still have support under the Energy Bill Discount Scheme, but this support has reduced from the EBRS levels. [Energy Bills Discount Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/energy-bills-discount-scheme)

This may mean finding commercial solutions to renegotiate contracts, reducing prices where needed, and spreading costs so they are more manageable over time. We are pleased to see more than half the suppliers we surveyed now offering alternative contract terms and some introducing hardship funds or increasing debt support. We will continue to engage with stakeholders to make sure this reported support is being felt on the ground.

### *Tenant or occupier transfer*

Ensuring customers can easily switch contracts between suppliers is a key component of effective competition, helping lower contract prices and improve customer service. However, we have received significant evidence of issues related to the Change of Tenancy (CoT) or Change of Occupier (CoO) processes. We have seen examples of unacceptable lengths of time to approve documentation that proves a new tenant has moved into a premise and unreasonable requests for the type of documents needed to prove they are a new business, and therefore not liable for a previous tenant's debt. This can cause significant financial, mental and resource costs for customers. We will work with industry to embed standardisation of document requests into the Retail Energy Code<sup>5</sup>, inviting interested stakeholders to take part in this process.

## **Proposed changes to regulation**

### *Customer complaints and Standards of conduct*

We have received evidence that non-domestic customers are not always receiving the levels of customer service they need and have a right to expect. To tackle this, we are proposing changes to the regulatory framework to require timely responses to complaints and stepped-up reporting to Ofgem on complaint handling. We are also inviting comments on a proposal to widen the standards of conduct rules that currently only apply to Micro Business Consumers.

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<sup>5</sup> The Retail Energy Code is a set of obligations and agreements governing energy market participants' operations in the retail energy market in Great Britain. Energy suppliers are required by their licence conditions to comply with the Code.

### *Transparency*

A well-functioning non-domestic market requires that contracts be fair and transparent to customers, with consumers being able to understand their terms so they can make the right decisions for their businesses.

However, many stakeholders told us that they did not understand the reasons for some large increases to their bills, especially standing charges, and were not always sufficiently aware of what they were paying to third party intermediaries (TPIs), such as energy brokers.

There is an existing requirement that Micro Business Consumers get clear information about third party charges that are added to their contract before they sign it. We are now proposing changing our rules to increase transparency of TPI commissions for all customers.

Additionally, we will work with stakeholders to improve transparency in bills, so there is better understanding of price changes. We will identify best practice and look at where we can help raise awareness.

We are also seeking views on whether to change the rules to require clearer signposting to Citizen's Advice consumer services, as there is a concern that Micro Business Consumers are not always aware of the support they can offer them.

### *Deemed tariffs*

Ofgem's rules are clear that, because a customer cannot choose the terms of deemed rates, these rates must not be unduly onerous. After reviewing the variety of ways suppliers consider deemed contracted rates, we believe there will be benefit in providing some additional clarity to drive more consistency in how the rules are being interpreted. We are proposing to embed more specific guidance to drive up best practice.

### *Third party intermediary dispute resolution*

The TPI sector, including energy brokers, are a critical component of the energy market, providing businesses with important support to find energy contracts that best suit their circumstances. At present, if a Micro Business Consumer cannot resolve a problem with their TPI, they can go to a redress scheme for help. This is because we have required

suppliers securing Micro Business Consumer contracts through brokers to only work with energy brokers who are part of a qualifying redress scheme, which has led to a scheme being set up. Given that we continue to hear that businesses larger than Micro Businesses face similar issues, we are proposing to expand our current licence condition from its existing scope of Micro Business to include larger businesses. This aims to improve customer support directly, ensuring more customers have access to these redress schemes and provide greater clarity on TPI complaint resolution.

## **Recommendations to government**

### *Third party intermediaries' regulation*

We have proposed some changes to our licences that are related to TPIS. However, we are conscious that our proposals do not address wider issues raised about some TPI behaviour. At present, Ofgem does not regulate TPIS, meaning we are not able to intervene when TPIS do not meet the standards the non-domestic sector has a right to expect. We are therefore requesting that government consider implementing regulation of the TPI market, and we are offering our support to do this.

### *Expanding access to the Energy Ombudsman*

It is important that non-domestic customers have adequate access to restitution if they have a dispute with their supplier. While all customers can seek legal routes, this is not always a feasible option for some businesses. Currently, only domestic customers and Micro Businesses can access the Energy Ombudsman. We received a lot of feedback that businesses larger than Micro Businesses would value this support. Therefore, we are requesting that government consider widening access to the Energy Ombudsman, giving more customers an alternative route to address issues with suppliers. We believe this will also help to drive up standards.

### *Domestic consumers on non-domestic contracts*

Some domestic consumers get their energy supply via a non-domestic contract, such as mobile park homes, care homes, or some social housing. Some of these consumers could be in vulnerable situations but do not have a direct relationship with a licenced energy supplier and thus are at risk of missing out on important protections. The number of domestic consumers on non-domestic contracts could well increase as net zero initiatives become more prevalent.



We recognise that this is a diverse group, and a 'one size' fits all approach is unlikely to be an ideal solution. So, we are working closely with government on how we can improve the protections for this group without inadvertently disincentivising suppliers to contract with this part of the market. We are also working with government to explore redress options and how to make it easier for these consumers to take action against unlicensed suppliers breaching the Maximum Resale Price rules.<sup>6</sup> We will continue to engage extensively with groups and stakeholders concerned about this issue, including collaborating with Distribution Network Operators to explore improved support of vulnerable consumers and looking into where we can provide more tailored advice to support them.

## **Next Steps**

Ofgem is committed to taking strong action against suppliers who have not treated customers fairly and not complied with licence conditions. For certain suppliers we are urgently investigating potential breaches through our compliance processes and will not hesitate to take enforcement action if necessary.

Over the summer we will continue our stakeholder engagement with suppliers and consumer groups, to progress the actions we are taking now that do not require licence changes and to develop and deepen our monitoring framework so that we can track developments and consider if and where other changes to our rules are needed. We will also work closely with government to support them in any work related to our recommendations to government.

This policy consultation is about seeking views and specific cost and benefit information on our proposals to inform, tailor, and solidify proposed rule changes. We plan to publish a statutory consultation of any rule changes required after we have considered views from this consultation and gathered further evidence. Given our statutory timings, we invite stakeholders to provide us with as much detail as possible so that we can formally consult on specific rule changes this autumn, which will allow us to publish our decision

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<sup>6</sup> The maximum resale price is the most that anyone can charge for resupplying gas or electricity which has already been bought from an authorised supplier. It is set by Ofgem to be the same prices as that paid by the person who is reselling it, including any standing charges. Breaches of the rules are not enforced by Ofgem; if anyone breaches the rules and charges more than the MRS, they face civil proceedings for the recovery of the amount overcharged and may be required to pay interest on the amount overcharged.

on any changes as soon as possible this winter. In the meantime, we want suppliers to take note of the findings in this document and to actively re-evaluate their internal governance, oversight and culture, with full board member and chair input, to ensure they are delivering the right outcomes for their customers.

Taken together, we believe the proposals we are making, together with our investigations of possible breaches to existing rules, are proportionate and will hold suppliers to account while bringing positive benefits to non-domestic consumers. To deliver the fairer, more competitive, and reliable energy sector that non-domestic consumers need and deserve.

We welcome any feedback on these proposals to [NonDomesticRetailPolicy@ofgem.gov.uk](mailto:NonDomesticRetailPolicy@ofgem.gov.uk) by 6 September 2023.

## 1. Introduction

### Section summary

This section sets out what we are consulting on and the broad context for our work. It gives a summary of the number of responses we received to our Call for Input and provides a guide to what you can find in each of the sections in this document. It also contains links to related publications and how to respond to this consultation.

### Context

- 1.1 Ofgem's role is to protect all energy consumers. We want a market where customers receive great service, fair prices, have access to services that enable the transition to net zero, and where suppliers are financially resilient.
- 1.2 With a backdrop of market turbulence and wider economic pressures, we have been keen to understand whether worrying reports of consumer harm in the non-domestic sector were caused by short term conditions, or whether they are indications of broader system concerns in the non-domestic sector, or supplier concerns.
- 1.3 To obtain further detail, we engaged with suppliers<sup>7</sup> and consumer groups using roundtables and bilateral meetings. We used the information gathered to create a formal information request to suppliers, as well as to formulate a Call for Input (CfI) for all stakeholders.
- 1.4 We set out the key issues we had identified in our CfI this February.<sup>8</sup> We wanted to hear the experience of a range of stakeholders, and asked for evidence, input and proposed solutions. The information from the CfI, as well as the formal information request to suppliers, our own investigations into supplier behaviours, and engagement with stakeholders, has informed our proposals set out in this consultation.

### Scope of review and Ofgem's role

- 1.5 The non-domestic energy market has a wide range of supplier business models and different consumer needs. Non-domestic customers are very diverse, in their spend, engagement, and knowledge of the energy market. They range from small

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<sup>7</sup> [Letter to non-domestic suppliers about reports of non-domestic customer harm | Ofgem \(November 2022\)](#)

<sup>8</sup> Published 28<sup>th</sup> February 2022 with responses requested by 31<sup>st</sup> March 2023. Link to the Call for Input on our website [here](#).

business customers with very low energy usage or few employees and turnover, which we have classified as Micro Business Consumers.<sup>9</sup> These are often domestic-like customers with limited knowledge of the energy market. At the opposite end of the spectrum, there are large industrial customers. These use a huge amount of energy, are often energy intensive users and have specialist energy staff to manage their own wholesale trading activity. Between these two extremes are customers that range in energy use, energy sector knowledge and include multi-site customers.

- 1.6 There are over 60 active non-domestic suppliers with differing business models. Some supply only one fuel, gas or power (electricity), or both. Some specialise in certain segments of the market (eg large users or smaller users of energy). For power, 84% of the larger business market<sup>10</sup> is served by 10 suppliers, and 92% of the smaller business market<sup>11</sup> is also served by 10 suppliers, though across these groupings some of these suppliers differ. For gas, 86% of the smaller business market is served by 10 suppliers whereas 89% of the large business market is served by 5 suppliers.<sup>12</sup>
- 1.7 Third Party Intermediaries (TPIs), which includes energy brokers, play an important role. TPIs work with most business customers to secure contracts (around 60% of larger customers, and about 25-30% smaller customers). We do not regulate TPIs but estimate there to be at least around 2,000 in the market, based on the number that provide services for Micro Business Consumers.<sup>13</sup>
- 1.8 As the independent energy regulator for Great Britain, our role is to protect current and future consumers by working to deliver a greener, fairer energy system. Our duties and powers to meet these objectives are established by a statutory framework that is established by Parliament. We license energy suppliers and ensure they comply with the rules of their license and any duties

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<sup>9</sup> We define a Micro Business Consumer as one which meets the following criteria: uses less than 100,000 kWh of electricity a year; uses less than 293,000 kWh of gas a year; or have fewer than 10 employees (or their full-time equivalent) and an annual turnover total not exceeding 2 million Euros.

<sup>10</sup> For the purposes of this illustrative information, we have grouped supply in the following way: Larger business can often have multiple sites per customer, so we show supplier market share for larger energy use customers by volume. For this analysis only, we are classifying those customers with profile classes 5 to 8 and half-hourly (HH) meters as larger business customers for power and those with annual consumption over 73,200 kWh for gas.

<sup>11</sup> By smaller business customers, for this analysis only, we mean those with profile classes 3 or 4 for power and those with annual consumption below 73,200 kWh for gas.

<sup>12</sup> Ofgem's market share monitoring using Elexon and Xoserve data.

<sup>13</sup> There were 1,767 TPIs registered with a micro business ADR scheme as of 17/07/2023. Some TPIs will only work with larger customers and would not be captured in this number.

set by government in law - including, for example, competition and consumer protection laws.

- 1.9 In line with our powers, we cannot investigate or help resolve individual complaints made to energy companies (for domestic and Micro Business Consumers, Citizens Advice and the Energy Ombudsman can do this). Our role is to regulate where necessary to protect consumers' interests. If we make proposals for any changes to regulatory requirements, we ensure that these are proportionate. We investigate supplier behaviour where we believe a company has breached a condition of their license or the requirements of consumer protection or competition policy.
- 1.10 It is the government's responsibility to set policy for the energy sector and propose changes to the statutory framework. Where we think there are policy gaps that affect consumers, we can call this out. We continue to work with government to drive positive outcomes for all consumers.

### **Call for Input**

- 1.11 In our CfI, we grouped the concerns we identified into three themes of potential harm: Pricing and contractual behaviours; Competition in the non-domestic sector; and Focused regulatory support for specific groups of customers.
- 1.12 Stakeholders were given contextual information for each theme, as well as specific details of the concerns and related questions for them to give their feedback and evidence. An open question was included at the end for stakeholders to address any item they felt we had missed and was important to focus our attention on.

### **Number of responses to Call for Input**

- 1.13 We received a total of 72 responses from a range of stakeholders:
- 37 responses from individuals (eg business customers)
  - 18 from trade bodies and consumer groups
  - 12 from energy suppliers
  - 5 from Third Party Intermediaries, including energy brokers
- 1.14 Responses were collated and analysed by topic, so that we could get a view of each issue from across the stakeholder spectrum.

## Section Guide

- 1.15 The document largely mirrors the structure in our Call for Input and sets out the findings from the evidence and information we gathered, followed by our views and proposals.
- 1.16 Section 2 covers pricing and contract behaviour, including accessing supply contracts, price movements, security deposits, and rules associated with the Energy Bill relief Scheme (EBRS) and deemed contract rates. In addition to asking questions about our proposed actions, we also give further information of actions we have already taken.
- 1.17 Section 3 covers issues related to factors that impact and drive competition in the market. This focuses on factors that prevent timely switching of supply contracts, specifically related to change of tenancy or change of occupier issues. It also covers factors relating to poor complaints handling and related support. We also set out more details on more in-depth monitoring we will be doing.
- 1.18 Section 4 covers the topics related to questions we asked about more focused support for some customer groups. We discuss matters relating to domestic consumers who take their supply via a non-domestic contract and also specific aspects relating to Micro Business Consumer rules.
- 1.19 The main document closes with outlining our Next Steps; what to expect next from us, and when. Our appendices include the full details of the draft guidance we are seeking views about on deemed contracts (Appendix 1), some of our proposed amendments to supply licence conditions (Appendix 2), and our updated guidance on domestic classification (Appendix 3). A summary of all of our questions appears in Appendix 4. We also provide a glossary of terms in Appendix 5 and our privacy notice of consultation in Appendix 6.

## Related publications

- 1.20 Directly related to this work, please see below links to letters we have sent suppliers, an interim update on our non-domestic review work we sent government, and a link to our CfI.
- [Letter to non-domestic suppliers about reports of non-domestic customer harm | Ofgem](#) (16 November 2022)
  - [Letter to Chancellor of the Exchequer from Jonathan Brearley on Non-domestic supply market concerns and actions | Ofgem](#) (30 January 2023)

- [Call for input on the Non-Domestic gas and electricity market | Ofgem](#) (28 February 2023)
- 1.21 We have also published a Debt and Disconnection best practice guide and a best practice guide for Security deposits:
- [Open letter: Good practice expectations for non-domestic suppliers on issues surrounding debt management and disconnection of customers | Ofgem](#) (20 December 2022)
  - <https://www.ofgem.gov.uk/publications/non-domestic-best-practice-guide-security-deposits> (26 July 2023)
- 1.22 Closely related to this work, we published guidance earlier this year on third party intermediary alternative dispute resolution schemes.
- [Decision on Guidance for Third Party Intermediary Alternative Dispute Resolution scheme criteria | Ofgem](#) (2 June 2023)
- 1.23 We also, earlier this year, published a consultation on consumer standards for domestic customers (see link below). Within that, we sought views on an overarching consumer standards framework that sets out how we could regulate to raise consumers standards and how we can continue to most effectively monitor and track consumer standards issues going forwards. This future work will consider both domestic and non-domestic regulation holistically. The current statutory consultation on the consumer standards work, in the link below, focusses on immediate changes in the domestic licence conditions, just as this document focusses on immediate changes in the non-domestic market, to make sure we support customers in the near terms. But please note that, as set out in the consultation below, thinking about future frameworks of regulation will be considered across both domestic and non-domestic sectors.
- [Consultation on a framework for consumer standards and policy options to address priority customer service issues | Ofgem](#) (3 May 2023)
  - <https://www.ofgem.gov.uk/publications/consumer-standards-statutory-consultation> (26 July 2023)

## **Consultation stages**

- 1.24 The key dates of the consultation process are set out in Figure 1.1 below.

**Figure 1.1: Consultation stages**

<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Stage 4</b>	<b>Stage 5</b>
Consultation open	Consultation closes. Deadline for responses	Responses reviewed and published	Statutory consultation	Consultation decision
26/07/2023	06/09/2023	Autumn 2023	Autumn 2023	Winter 2023-24

## How to respond

- 1.25 We want to hear from anyone interested in this consultation. Please email your response to [NonDomesticRetailPolicy@ofgem.gov.uk](mailto:NonDomesticRetailPolicy@ofgem.gov.uk) by 6 September 2023.
- 1.26 We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 1.27 We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

## Your response, data and confidentiality

- 1.28 You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.
- 1.29 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 1.30 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its



statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 6.

- 1.31 If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

## General feedback

- 1.32 We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:


1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

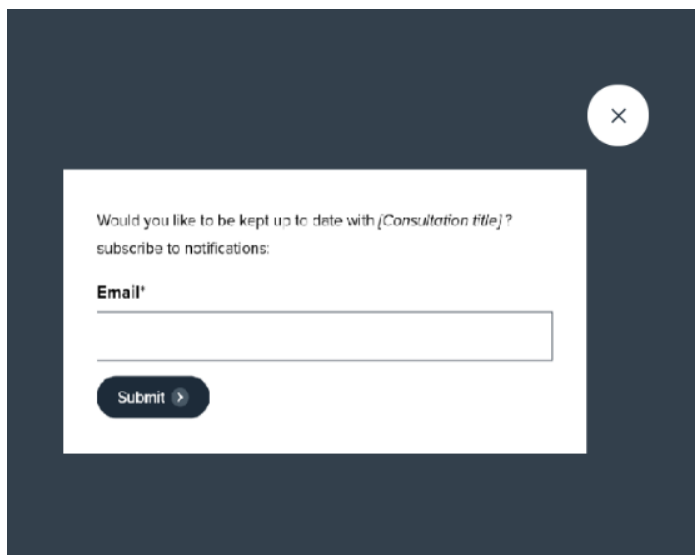
Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk)

## How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)

Notify me 



Would you like to be kept up to date with [Consultation title]?  
subscribe to notifications:

**Email'**

Submit >

Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

**Upcoming** > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

## 2. Pricing and contract behaviour

### Section summary

This section covers our findings in relation to pricing and contracting behaviours and our proposed actions, where they align with our vires. We also cover the allegations that suppliers have unnecessarily increased prices at the time the EBRS was introduced and charged too much for deemed contract rates. We include an update on our review into non-domestic suppliers' compliance with their deemed contract rates obligations that are set out in the licence conditions and seek views on our proposed guidance on the supply licence conditions for deemed contract rates.

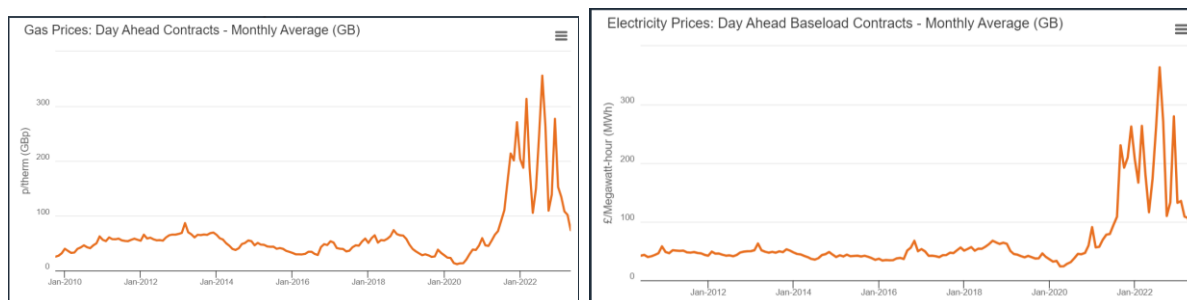
### Questions

- Q1. Do you agree with our proposal to agree voluntary improved pricing transparency and if so, please include comments on the particular areas you would like to see made more transparent?
- Q2. Do you agree with our proposed definition of 'significantly exceeds'? Please provide your reasons.
- Q3. Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.
- Q4. Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?
- Q5. Do you have any further comments on our proposals for the deemed contract guidance?
- Q6. Do you have any other comments on the other proposals in this Pricing and contract behaviour section?

### Issues

- 2.1 In our Call for Input, we outlined the significant market turbulence and high prices customers had faced last year (see Figure 2.1).

*Figure 2.1: Gas Prices: Day ahead contracts, monthly average, and Electricity Prices: Day ahead baseload contracts – monthly contracts*



Source: [Wholesale market indicators | Ofgem](#)

2.2 Many stakeholders reported struggling to secure any energy contracts. Where there were offers to contract to supply energy, stakeholders reported that they were offered unnecessarily high prices, unreasonable requests for security deposits, up-front payments, or other obligations to secure a contract. There were also allegations that supplier actions were in breach of both deemed contract rules<sup>14</sup> and rules under the EBRs. We asked questions about this in our CfI, and also requested detailed information from suppliers. We set out below our findings, views and proposals.

## Securing energy contracts

### Our findings

2.3 We received numerous reports from customers and customer representatives about problems in securing any contract offers from suppliers. There is no obligation for suppliers to supply all non-domestic customers that approach them to ask for an energy supply contract. Evidence we collected from suppliers on their offers during 2022 confirms that at certain times last year, when the market was at its most turbulent, most suppliers did not offer fixed term contracts due

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<sup>14</sup> Where a customer is supplied based on a deemed contract relationship, the supplier is required by its licence to take all reasonable steps to ensure that the terms of its deemed contracts are not unduly onerous, as set out in Standard Condition 7.3 of the gas and electricity supply licences. Standard Condition 7.4 contains a test for assessing whether the charges for the supply of gas and/or electricity under a deemed contract will be unduly onerous.

the market volatility and mark to market issues,<sup>15</sup> with some stopping to offer any contracts for a short time when prices were at their peak and most volatile. Suppliers said they were either unable to obtain fixed price offers from wholesalers, or suppliers could not afford to offer fixed priced contracts as they would have needed to post huge collateral amounts to purchase the energy, that they could not afford.

- 2.4 However, the data we have collected shows that since November 2022, customers are increasingly able to receive offers for an energy contract again. Respondents to our CfI, from trade bodies, TPIs and suppliers, agreed that, with one notable sector exception, overall there has been an increasing improvement in offers to contract this year, albeit this is not yet back to previous pre-energy crisis levels. Stakeholders reported that both the number of suppliers offering contracts in the market and the variety of types of contracts are improving, including increasing numbers of longer-term contracts. They accredited this to improving conditions in the wholesale energy markets, although they note that prices remain more volatile than usual and are still at around twice the levels of historical prices (See Figure 2.1). Some suppliers reported still being cautious about offering longer term contracts, because of the continued mark to market risk and collateral requirements.
- 2.5 All stakeholders that responded noted that the exception to this improvement is the hospitality sector, which continues to struggle to secure contracts. We also identified in our data from suppliers that certain high-risk sectors, and particularly hospitality, are more likely to be turned down when their creditworthiness is assessed. Suppliers and TPIs reported that the view about creditworthiness of businesses in this sector remains poor, and some suppliers refuse to accept hospitality businesses regardless of their credit score, including some suppliers with large market shares. Although one of those suppliers noted that they are improving their analytics to allow them to quote for the appropriate level of risk on an individual business basis. One stakeholder felt that while wholesale markets may have improved, the potential economic downturn in 2023 could have a material impact on sectors dependent on discretionary spend which could lead to

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<sup>15</sup> Open positions in the market are 'marked' each day or sometimes within day. This process involves establishing a fair market price for a given position, calculating whether each position has made a loss or a profit. Margin is cash and non-cash collateral that are collected to protect against future or current risk exposures resulting from market price changes or in the event of a counterparty default. When the mark to market position changes, more margin, or collateral in over-the-counter (OTC) markets, can be called for. Large margin calls can have a big impact on working capital, impacting liquidity and requiring an increase in credit facilities.

high levels of insolvency in sectors that have already accumulated large levels of debt during the Covid pandemic.

### **Our views and proposals**

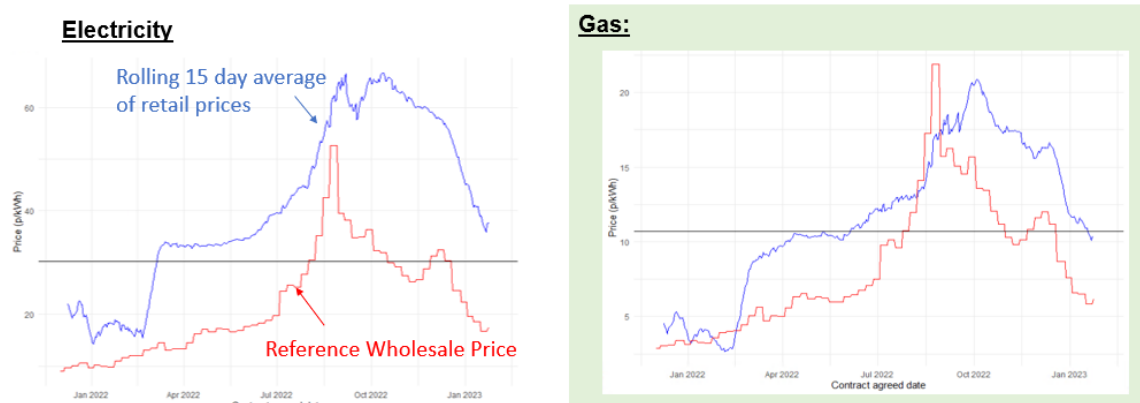
- 2.6 We note the improvement in the number of contracts available to most non-domestic customers. We expect that as market conditions move closer to normal levels, offers to supply energy will continue to increase, as suppliers feel more confident in expanding their portfolios and more actively competing for more business. This will have positive impacts on both price and service. However, we will be increasing our monitoring in this area to keep a close eye on this.
- 2.7 But we also note that not all business customers are experiencing an improvement in outcomes. Reported higher risk sectors are still seeing limited contracting options. We cannot address sector specific challenges; that is a matter for government. We have considered potential implications of actions we could take but these are limited and would likely result in unintended negative consequences for energy customers more generally. A more cohesive review that can look across the range of factors causing issues in a particular sector is needed, rather than an energy specific one, and this only government can take. We do, though, believe our proposals in this consultation document will help all customers, including and perhaps particularly those in hospitality. We will continue to engage closely with stakeholders to identify areas of concern and work closely with government to support them in any review they do.

## **Prices**

### **Our findings**

- 2.8 On average, data shows that prices have come down from their peak last year, although there was a lag following peak wholesale prices where they continued to be high for a short time (see Figure 2.2).

Figure 2.2: Comparing wholesale and retail prices



Source: Department for Energy Security and Net Zero

- 2.9 Some respondents to our CfI, including TPIs working across the market, also reported a lowering in prices in general. However, a reduction in price was not being reported by sectors like hospitality that are viewed as higher risk. Representative groups in the hospitality sector reported that those companies willing to quote for supply are still applying high risk premiums to the prices offered to their sector. Suppliers note they are seeing continued higher credit risk ratings attached to hospitality sectors by credit rating companies and have concerns about high predicted insolvencies in the sector.
- 2.10 Respondents to the CfI also reported that price changes were not transparent. In many instances, they experienced significant price hikes in not only unit rates, but standing charges as well, with no clear explanation as to why. Our review of supplier pricing models showed that suppliers approach pricing differently. Typically, though, standing charges (pence per day) usually recover fixed costs including metering and certain network charges, while the unit rates (pence per kWh) are usually made up of costs that vary by usage such as the cost of commodity. Suppliers can differ on where and how they allocate costs such as risk, margins and operating costs.
- 2.11 Suppliers reported that wholesale cost volatility was a key driver in commodity risk associated costs increasing over 2022. There were also increases in other risks, such as bad debt risk<sup>16</sup> as levels of bad debt rose.

<sup>16</sup> Some debt on energy bills cannot be recovered and is ultimately written off by energy suppliers.

- 2.12 Standing charges vary considerably across suppliers,<sup>17</sup> driven in part by different elements included in the standing charge. Suppliers reported changes in network charges driving cost increases in the standing charges. In particular, from the changes being applied from April 2022 from Ofgem’s targeted charging review that made changes to how use of system charges were allocated.
- 2.13 A particular area of concern raised by stakeholders in the CfI and wider engagement this year was related to customers anticipated increase in energy bills from April this year when government support changed. Stakeholders expressed gratitude to the support they were afforded via the EBRS between last October and March this year. However, some customers signed contracts last year that run past March this year, when the wholesale price was at its peak. These customers and their representative groups reported severe concerns about the rise in energy bills they would experience when the EBRS support stopped at the end of March 2023<sup>18</sup>. Trade bodies reported in the CfI that energy suppliers had done very little to assist businesses who faced that cliff edge. One trade body reported that they were aware of only one supplier offering a ‘blend and extend contract’ where the existing high price contract is joined with a new lower priced contract and the rates smoothed out to lower current costs.

## **Our views and proposals**

- 2.14 Last year the industry and wider economy faced significant turmoil, with customers facing significant pressure from high energy bills. Wholesale prices have since moved down, with summer wholesale gas prices having more than halved since the start of the year. But, this is still higher than pre energy crisis prices and there is no guarantee that prices will continue to reduce as we move into winter. Average wholesale gas prices in June this year were around double that seen in June in the 5-years up until 2021. In addition, wholesale market volatility continues to be higher than historical norms. These features mean that the costs suppliers face in securing energy on the market, and the levels of risk they need to manage, will continue to be higher than historical costs and risk premiums will be priced into the contracts they offer as part of their costs.

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<sup>17</sup> For example, in 2022, the deemed rate standing charges ranged substantially across all non-domestic suppliers from 19p to £300 a day for power, and 18p to £400 a day for gas. The deemed rate unit prices ranged from 1.3p (which is an evening/weekend rate) to £7.29 per kWh. Source: Non-domestic RFI part 2 (Feb 2023).

<sup>18</sup> We note that non-domestic customers will continue to receive support, albeit reduced, via the Energy Bills Discount Scheme, until 31 March 2024. [Energy Bills Discount Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk)



- 2.15 When a supplier secures a fixed term contract, they usually purchase most of the energy needed for the duration of the contract at the time it was signed. So, the prices for the duration of a fixed rate contract will reflect the wholesale circumstances at the time the contract was agreed. The combination of these factors will likely result in overall energy bills taking longer to drop. In addition, contract rates offered are impacted by credit ratings for business customers. Perceived riskier sectors will have risk premiums built in related to those higher risk scores. So, recovery in energy markets is also linked to wider economic factors. This has resulted in some sectors, and particularly the hospitality sector, not seeing the same recovery.
- 2.16 Information from suppliers set out that they continued to price cautiously given we have not yet returned to stable energy markets nor broader stability in economic conditions. We also expect that the delayed drop in prices of contracts was related to the slow increase in the number of contracts on offer. But we would expect to see more competitive pricing as more suppliers return to the market, and the data appears to support this. As with other areas, we will keep a close eye on this as we go into another winter as the picture could change rapidly.
- 2.17 We have looked at the profits suppliers have made. Generally, the sector shows a return to 'normal' profit levels after a period of loss during the Covid pandemic. We note that typical profit margins average between 3.6% losses up to positive 4.2% between 2019 and 2022<sup>19</sup>. Not all suppliers are profitable, although more are forecasting a profit this financial year than since 2020 when most posted negative profits. Profits in 2023 are forecast at similar levels to 2022, while forecasts for 2024 are lower, although still positive, which is critical for long term investment.
- 2.18 We do not price regulate the non-domestic supply market. However, where suppliers set unduly onerous prices for their deemed contract rates, which is the one area we do have relative price rules, we are acting (see later in this section). There are also a number of other actions we are taking that we believe will help, and in some cases, we have seen evidence this is already helping.
- 2.19 Ofgem cannot intervene in commercial contracts. But we, together with government, have pressed suppliers to do all they can to support their customers who are fixed onto high-priced contracts. We want suppliers to reach out to their

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<sup>19</sup> Source: Ofgem assessments

customers in a timely manner and offer to discuss their current contracts and what alternative arrangements can be made to support their customers.

- 2.20 We have seen some evidence that suppliers have acted on the pressure from government and Ofgem. One contract option includes offering a 'blend and extend' contract (increasing the length of a fixed-rate contract but at a lower overall price) where this may be applicable. This may help customers that signed contracts at the peak of wholesale prices that are no longer receiving government support, as it offers a way of reducing their energy bills. There has been an increase in blend and extend tariff offers (we have gathered information that shows over 50% of suppliers now offer this) but ultimately it is a commercial matter and will not suit all customers and suppliers. Suppliers may not be able to offer contract renegotiation. This may be unaffordable for the supplier depending on their hedging strategy as they will have purchased energy to cover the initial contracts agreed with their customers. Also, options such as 'blend and extend' could result in affordability issues for customers, with higher bills being extended over a longer period, which may be higher than new contracts if future contract offers are lower. So, the focus of our messaging has been on engaging with customers to see where assistance can be given, whether it is related to contracts or other matters. Suppliers have also described other actions they are taking to assist their customers. These include reviewing payment methods, debt repayment deferment, contributions to support funds and signposting support organisations.
- 2.21 We have also followed up on some reports from customers where they believed that suppliers were not doing all they could to help. While we are not staffed to assist with individual concerns, as this is not our statutory role, we asked customer groups to send us through particularly egregious cases where they did not believe suppliers were doing all they could. In one case, a customer had been trying to reach out to discuss options with their supplier but was struggling to get any support from them. On reviewing the case with the supplier, they identified issues in the processes they had put in place to support customers, and resolved them, helping the customer and many others in the process. We will continue to listen to particularly egregious concerns being raised by customer groups who do not feel that suppliers are doing all they can to support their customers, and we will continue to offer support as we can, within the limits of our vires and resources.
- 2.22 With regards to the comments about a change in network charges being a large driver of the changes in standing charges, we note that as part of network pricing

changes, some of the charges were changed from a unit price that varied with usage, to a fixed rate per day per site, which increased the standing charge. There is a banded charging structure made up of fixed transmission and distribution residual charges, based on capacity or consumption at a site. The Targeted Charging Review (TCR) changes for distribution came into effect in April 2022, and new transmission residual charges along with changes to the Balancing System charges came into effect in April 2023.

- 2.23 Use of system charges recover the costs of the broader network, and a cross subsidy was removed that was acting against the interests of consumers. This meant that there have been costs increases for some groups of consumers who were not previously paying or making an equitable contribution to the cost of the system. Distribution network companies' charged suppliers the new rates from April 2022, and suppliers choose how and when they pass these costs through to customers. Some are priced on a 'pass through' basis, where the supplier invoices the customer when and what they are charged by the network company. Other fixed term contracts bundle anticipated costs, with the supplier taking a view on what they expect the network to charge them over the term of the contract for that customer. Many long-term fixed term contracts would have been renewed over the autumn, and this would have been when suppliers applied the new charges.
- 2.24 Clearly, there needs to be an improvement in pricing transparency. Given the vast range in types of contracts offered in the non-domestic sector, we do not consider it is appropriate, or perhaps even useful, for us to mandate specific bill information. In the first instance, though, we will work with suppliers and customers to voluntarily agree where and what additional transparency can be given more consistently. Some suppliers offer clear explanations about the contents on their bills on their websites and we encourage more suppliers to set this out more clearly. We will also look at what role Ofgem can play in providing better information, including when mandated charges elements take effect. We will seek to bring in these improvements before winter this year.
- 2.25 We also remind suppliers that contract with Micro Business Consumers of their obligations in the supply licence (Condition 0A) to treat their customers fairly, and this includes communicating in plain and intelligible language with more important information being given more prominence. These standards of conduct apply to designated activities, including billing.

## Security Deposits

### Our findings

- 2.26 Suppliers use a range of credit risk management tools. These include requesting security deposits, bank guarantees and up-front payments. Stakeholders responding to our CfI said that they had seen significant examples of what they believed were disproportionate and unreasonable behaviour related to securing a contract. There were reports of significantly higher security deposits being asked for,<sup>20</sup> as well as other security measures such as bank guarantees or up-front bill payments, that went beyond what they felt should be reasonably asked for. This was exacerbated by some companies taking many months to return a deposit after final bills had been settled. Stakeholders said that the need to supply high upfront payments or security deposits has a significant impact on cash flow. This can place further pressure on companies and increase the likelihood of debt.
- 2.27 One TPI noted that the energy market securitisation is underpinned by a small number of third-party insurers. They said that if credit insurance cannot cover the full value needed or is removed, the supplier will look for other ways for the credit risk to be covered, for example in the form of a security deposit. Stakeholders wanted to see greater transparency in the stated tolerance and mechanisms for managing credit risks.
- 2.28 We requested data from suppliers on the numbers and levels of security deposits being requested and their risk management policies. Our data confirms that most suppliers will perform credit checks on a potential customer and then they may apply a range of risk mitigation strategies if the credit check is below a certain threshold. The data we received from suppliers showed that the most common way suppliers mitigate risks is through asking for a security deposit, reported by 43% of suppliers. Around 28% of suppliers reported using up-front payments of anticipated bills. Credit insurance was an option for 17% of suppliers overall. Bank guarantees are used by 17% of suppliers.
- 2.29 Data from information requested from suppliers for 2022 confirmed that the volume of security deposits being asked for and their average value increased in 2022. The median value of a security deposit for gas remained at around £5,000 between January and August 2022 before increasing to over £12,000 between

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<sup>20</sup> One respondent said they had evidence of security deposits of up to 80% of the annual contract cost being requested.

September and October 2022.<sup>21</sup> The median value of security deposits for power increased throughout 2022 from just under £8,000 in January 2022 to just over £45,000 in December 2022. At the same time, our review of supplier policies found that company's policies have not, in general, changed. The security deposit values being asked for are based on the same criteria, but because bills have gone up, their values increased.

- 2.30 Suppliers reported that more companies have failed credit checks, which has resulted in more businesses being asked for security deposits when prices were higher. From supplier data, the monthly number of security deposits requested for power remained around 400 each month between January and August 2022, then rose to a peak of 530 in November before dropping back towards 400 a month at the end of the year. With regards to gas, we observed a steadier growth, with the number of requested security deposits rising from around 150 per month in January 2022 to a small peak (of around 190) in November before lowering back in December to a similar level observed in January 2022. Several suppliers reported in their RFI responses that they ask for the equivalent of around 3 months of expected energy use at contracted rates for their security deposit, although this did sometimes rise to 6 months where the supplier reported they followed more lenient disconnection policies.

### **Our views and proposals**

- 2.31 Security deposits are one-way suppliers can manage their risk, and in some cases their availability allows a customer to get a contract that they otherwise would not have the credit-worthiness to secure. So, we do believe they are an important tool. However, we are concerned about the number of issues raised about security deposits and the problems these can cause to customers, which were made worse by poor transparency and unclear expectations. As a result, Ofgem has worked with trade bodies and suppliers to develop a best practice guide for security deposits. This has been published on Ofgem's website this July.<sup>22</sup> At this stage, we don't want additional supply licence rules to have unintended consequences of removing security deposits as an option for consumers, further restricting the supply choices consumers could have. We will monitor whether this

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<sup>21</sup> Suppliers provided the mean and median values of the security deposits they requested each month for each of their segments in 2022. We took the mean of these figures across all suppliers (for each of their segments) who provided a security deposit with the exception of two I&C suppliers who requested security deposits of over £4m.

<sup>22</sup> <https://www.ofgem.gov.uk/publications/non-domestic-best-practice-guide-security-deposits>

results in improved outcomes for consumers and if not, consider whether we need to make more formal rules.

- 2.32 We note that there are other options suppliers can use to manage their risk, and that sometimes these alternatives are not available to higher risk sectors. Sector specific issues are a matter for government. As noted previously, we will continue to work with government and stakeholders as much as we are able.

## **EBRS compliance**

### **Our findings**

- 2.33 We reviewed 60 non-domestic suppliers' adherence with the EBRS qualifying financially disadvantaged customer (QFDC) legislation.<sup>23</sup> Whilst we found that the majority of relevant suppliers had implemented and provided a QFDC discount for their eligible deemed customers, there were a number of concerns with some suppliers' adherence with this part of the scheme. Key areas of concern included:

- Not identifying deemed customers who were eligible for the QFDC discount.
- Not communicating the amount of the QFDC discount to eligible deemed customers.

- 2.34 Stakeholder input also flagged that a small number of suppliers had not correctly implemented the core EBRS legislation, for example applying the EBRS discount, resulting in financial detriment to their customers.

- 2.35 We also reviewed allegations that suppliers had increased their deemed unit rate(s) and standing charge(s) following Government communication and subsequent implementation of the EBRS. We did identify some cases where these increases occurred, and we engaged with relevant suppliers to understand what the driver (or drivers) was for these increases.

### **Our views and proposals**

- 2.36 We took the following actions under each of the issues flagged:
- Where instances of not identifying deemed customers who were eligible for the QFDC discount occurred, suppliers have since retrospectively applied the discount and rebilled customers to the new rate(s).

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<sup>23</sup> [The Energy Bill Relief Scheme Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- Where suppliers did not communicate the amount of the QFDC discount to eligible deemed customers, suppliers have since communicated the discount to their eligible deemed customers.
- A number of suppliers paid into Ofgem's Voluntary Redress Fund in recognition of their failure to fully implement the above QFDC legislation.
- Where we identified that a small number of suppliers had not correctly implemented the core EBRS legislation, resulting in financial detriment to their customers, we have referred the cases to government, who are responsible for looking into compliance in those areas and await feedback on whether we need to take enforcement action.

2.37 Where we engaged with suppliers who seemed to have suspicious increases that aligned with the introduction of the EBRS, the most common rationale for these increases were increased wholesale costs; increased transportation/industry costs; increasing risk due to more deemed customers in their portfolio (due to the lack of contract offers in the market at the time). We did not gather clear evidence in our analysis of suppliers increasing their prices to offset the benefit of the EBRS, or to fraudulently 'game' the scheme.

## **Deemed contract rates**

### **Our findings**

2.38 Individuals, trade bodies, and TPIs gave evidence of suppliers charging very high deemed rates in our CfI. They often referenced contracted rates with suppliers to show a large difference between the contracted rate and the deemed rate. One example that was provided to us gave deemed rates that were 10 times higher than the comparable contract rate with the same supplier. The number of customers on deemed rates was not insignificant: there were around 330,000 deemed meter points for power and 72,000 deemed meter points for gas in 2022.<sup>24</sup> This equated to about 12% and 10% of all meter points for power and gas respectively in 2022.

2.39 Many responses referenced the Change of Tenancy process (CoT), which highlights how this is linked to deemed rates. Consumers who undergo a lengthy CoT process are exposed to deemed rates for longer than may be necessary.

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<sup>24</sup> This is the (rounded) mean value of the total number of meter points (across all non-domestic suppliers) provided each month throughout 2022.

There were concerns, especially from TPI's, that suppliers were deliberately obstructing the CoT process, with a wide range of CoT requirements between suppliers. One TPI said that in some cases, suppliers raise transfer objections to block a CoT request on the grounds of debt even though the customer is on a deemed contract. CoT is addressed as a separate issue within this document, in section 3.

- 2.40 Suppliers said that there can be extreme difficulty in securing engagement with deemed customers. One supplier reported their experience that customers do not always understand that they have a supplier. Suppliers also reported that when customers are using energy outside of a negotiated contract, customers may not believe them when they contact them to say that they are their supplier.
- 2.41 Suppliers gave evidence that the likelihood of debt is higher for deemed rate customers. This is exacerbated by a licence condition that does not allow suppliers to block transfer requests for deemed customers. Suppliers also noted that in the current economic environment they are seeing increased bad debt from customers on deemed contracts.
- 2.42 Suppliers and a trade body explained that there is significantly more uncertainty on the volumes a customer will use on a deemed contract, which results in a greater risk to the supplier as they are not able to hedge with certainty. A couple of suppliers noted that deemed contract rates can be cheaper than fixed contract rates. While deemed contract rates are usually higher than contracted rates for the reasons which are provided above, in a rising price environment deemed rates may at times be cheaper than fixed contract rates because deemed rates are set less frequently. This happened at times during 2022, as evidenced by the Request for Information (RFI) data which we have collected.
- 2.43 One consumer group raised the link between customers in debt and high upfront contracting demands from suppliers. They noted that customers fell into debt on deemed rates, and then struggled to contract at cheaper rates due to, for example, high security deposits. The consumer group asked that suppliers engage with customers who had built up debt since being in a deemed contract, to negotiate affordable repayment plans and to consider whether high security deposits are appropriate.
- 2.44 One TPI noted that the higher bad debt costs that suppliers add to deemed rates result in a 'never ending cycle'. That is, higher deemed rates result in a greater likelihood of customers being unable to pay their deemed contract bills, which in turn could drive up the bad debt risk for suppliers. This same TPI also noted that



customers on deemed rates may be more vulnerable to bad practices from unscrupulous TPIs. In particular, customers are offered contracted prices that appear far cheaper in comparison to the deemed rates, but are in reality higher due to the TPI fees which have been added. Another TPI said that one supplier presents deemed rate contract bills with at 'Agreement end date' set several months ahead which may cause customers to think they are in a fixed term contract.

- 2.45 From the evidence that we collected from suppliers, we noted that deemed rates may be updated at different times depending on the supplier, their pricing methodologies, and their hedging strategies. Some suppliers update their deemed rates multiple times a year, whilst others update them less frequently. The monthly variability of deemed rates was mentioned as both a positive and negative in responses to our CfI. One park home owner noted that it was difficult for customers to budget for energy if the deemed rate changes monthly. Two park home owners said that such frequent variation of rates increased their admin costs. A TPI noted that some suppliers do not update their rates often enough and may charge old rates as a result. They added that this would be impacted by the time of year, with winter usually seeing higher prices.
- 2.46 Both an individual and a consumer support group raised challenges regarding supplier communications on deemed rates. The support group specifically noted that some customers may be moved onto deemed rates by their supplier without their knowledge. They said this was because some suppliers do not always issue clear documentation that informs customers when their fixed term is ending and notifying them of their available choices. An individual said that they wished to be notified of changes in deemed rates 30 days ahead.
- 2.47 In general, there were requests for clarity on the terms that constitute a deemed rate situation versus an 'Out of Contract' (OoC) situation. These being similar but separate, and with different regulatory requirements. We are intending to provide clarity on this terminology in our proposed deemed rate guidance which is laid out in Appendix 1 of this document. Similarly, the appropriateness of applying OoC rates vs deemed rates was flagged by a consumer support group; who noted that in some cases OoC rates may be being applied by suppliers when in fact deemed rates should be in place.
- 2.48 Some of the responses we received in the CfI from individuals and TPI's offered solutions to high rates and the high monthly variability of deemed rates by setting hedging and pricing strategies, capping rates, and asking suppliers to update their deemed rates more frequently. A TPI said that they wished to see

the Energy Ombudsman return to ruling on whether deemed rates were 'unduly onerous'. They felt that this should be within their remit as the Alternative Dispute Resolution providers for Micro Business Consumers. We have also heard from suppliers and a TPI that it would be beneficial to provide guidance around SLC 7.3 and 7.4. They said it would be helpful for Ofgem to provide further detail on the practices which we would consider to be compliant with this SLC, and those which we would consider not to be compliant with this SLC.

## **Our views and proposals**

### Compliance and Enforcement of deemed rate non-compliance cases

- 2.49 We accept that a number of factors mean that deemed contracts may incur higher costs to the supplier. The customer is not known to the supplier and is not bound by a negotiated contract. This may increase the bad debt risk as suppliers may face a higher risk of non-payment and be unable to recover any non-payments. The consumption profile of the deemed rate customer is also unknown, and suppliers will often be unable to purchase energy in advance, or mis-calculate what they need, which can increase the wholesale costs and risks. In addition to this, location-specific costs are usually unknown until after the delivery of energy. Deemed rates may be updated at different time intervals depending on the supplier, their pricing methodologies, and their hedging strategies. Some suppliers update their deemed rates multiple times a year, others update them less frequently.
- 2.50 But in the responses to the CfI, we received complaints that some suppliers were charging very high deemed rates, more than overcompensating for the higher costs. That is, their deemed contract rates that may be unduly onerous, in contravention of Standard Licence Conditions (SLC) 7.3 and 7.4.<sup>25</sup>
- 2.51 Ofgem may carry out investigations into the activities of suppliers we believe may have breached one or more conditions of their licence or other relevant requirements. We are concerned that a number of suppliers have not complied with SLC 7.3 and 7.4. Therefore, Ofgem is investigating these suppliers' compliance with the Licence Conditions.

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<sup>25</sup> Gas Supply Standard Licence Condition <https://www.ofgem.gov.uk/sites/default/files/2023-03/Gas%20Supply%20Standard%20Consolidated%20Licence%20Conditions%20-%20Current.pdf>; Electricity Supply Standard Licence Condition <https://www.ofgem.gov.uk/sites/default/files/2023-03/Electricity%20Supply%20Standard%20Consolidated%20Licence%20Conditions%20-%20Current.pdf>

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- 2.52 We have issued RFIs to suppliers to look into their deemed rates and to ask suppliers to explain to us how they are complying with SLC 7.3 and 7.4.
- 2.53 Where suppliers did not give satisfactory responses to our questions, we are investigating further. We will continue to assess compliance with the SLC across the market and engage in compliance and enforcement activity where appropriate, in line with our Enforcement Guidelines.<sup>26</sup>

#### Deemed Contract Rates Guidance

- 2.54 We have identified a number of areas where suppliers could benefit from guidance on deemed contract rates, including several areas raised by stakeholders in response to our CfI. As noted above, suppliers have also highlighted to us that guidance would be useful on this SLC. Therefore, we propose that a guidance document is an appropriate and proportionate tool to provide further clarity on SLC 7.3 and 7.4, whilst addressing the issues raised in the CfI and in the market on deemed rates.
- 2.55 It should be noted that as the SLC applies both to domestic and non-domestic suppliers, the guidance would also apply to domestic and non-domestic suppliers. However, any references to specific licence conditions for domestic consumers, are not applicable to non-domestic consumers.
- 2.56 We regulate deemed contracts as the nature of deemed contracts means that customers have no ability to choose; there is no negotiated contract in place between the customer and the supplier before they start consuming energy. This means that if consumers are on deemed contracts in which they are facing very high deemed rates, there is little they can do about it, especially if they are unable to otherwise secure a contract. As noted above, we have heard reports from stakeholders, through the CfI and independent discussions, that consumers are in some cases facing very high deemed rates. We have also collected data on deemed rates through the RFIs which we have issued, as mentioned above. Through these RFIs we are aware, for example, of those deemed rates which are particularly high.<sup>27</sup> Therefore, we are of the view that it is appropriate that we protect customers from unduly onerous deemed rates through enforcement of this SLC.

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<sup>26</sup> The Enforcement Guidelines <https://www.ofgem.gov.uk/publications/enforcement-guidelines>

<sup>27</sup> Deemed rate standing charges for one supplier exceeded over £1,800 per day for power and reached £400 per day for gas in 2022. Deemed rate unit prices exceeded 700p per kWh for power for one supplier in 2022 and 65p per kWh for another supplier for gas.

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- 2.57 We are aware of the link between deemed rates and CoT, and the combination of the reports of very high deemed rates and delays to CoT are particularly concerning. Customers often find themselves on deemed rates following a CoT. The longer a CoT takes, the longer a customer may be forced to remain on deemed rates. It should be noted that we are not proposing to address CoT within the guidance for our deemed contract licence conditions, as it is not within the scope of SLC 7.3 and 7.4. The guidance will however benefit those customers on deemed rates who are awaiting CoT, by ensuring that suppliers deemed rates are in compliance with SLC 7.3 and 7.4. (See section 3 for our proposals on improving the CoT process).
- 2.58 We wish to issue guidance to provide further clarity on SLC 7, in particular SLC 7.3 and SLC 7.4. A draft guidance document for deemed contracts, the Guidance on Deemed Contracts (the 'guidance'), has been created and can be found in Appendix 1 of this consultation document. We intend to issue this guidance following consultation. We are seeking representation from stakeholders on the draft guidance in this appendix as a part of this consultation and will take into account responses we receive from stakeholders. Our key proposals for the contents of the guidance are also laid out below in summary.
- 2.59 We have at this stage based the guidance largely on pricing related issues we have encountered. This should not be taken to mean that other unduly onerous terms are not within the scope of the SLC or a guidance document.
- 2.60 The guidance we are consulting on here lays out key principles and definitions for deemed rates, such as the difference between OoC rates and deemed rates and provides further clarity on our understanding of 'significantly exceeds'. It also addresses what Ofgem considers to be good practices for the setting of deemed contract rates, including aspects of what we consider to be unduly onerous. These are key areas which stakeholders have highlighted to us as being unclear. It should be noted that Ofgem have previously published guidance on deemed contract relationships as per SLC 7.3.<sup>28</sup>
- 2.61 We propose that suppliers should have regard to relevant classes of customers - in this context this may include differentiating on consumption rates, meter classifications and/or region - when setting their deemed rates, to ensure that

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<sup>28</sup> Guidance Note on Deemed contract relationship  
<https://www.ofgem.gov.uk/sites/default/files/2021-11/Guidance%20on%20deemed%20contracts%20as%20per%20Standard%20Licence%20Condi on%207.3%20of%20the%20Gas%20and%20Electricity%20Supply%20Licences.pdf>

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their deemed contract pricing considers the customer base which they serve. We consider that the term 'relevant class of consumer' does not refer to simply domestic or non-domestic customers, but instead refers to sub-categories of customers such as micro business, SME and I&C, or HH and non-HH, for example, to mirror the fact that suppliers' pricing for contracted rates across those categories differs, as the cost base differs.

- 2.62 The setting of deemed contracts rates very high as an incentive for customers to move onto fixed rates is not a valid justification for very high deemed rates and may not be compliant with SLC 7.3 and 7.4.
- 2.63 We propose that suppliers should review their deemed rates regularly, and that this should be on a quarterly basis. This review should be regular enough to ensure that prices are appropriate and that the amount of revenue suppliers are receiving from their deemed contract customers is not significantly exceeding the supplier's costs of supplying energy to the consumer on a deemed contract and at the least in line with SLC 7.4. We believe that this strikes the right balance in ensuring that deemed rates are reflective of energy prices and the suppliers deemed customer base, but also allows customers to have sufficient certainty for business planning. We feel that it is unlikely that a 6-month review or longer is sufficient to be reflective of changing cost elements; and that any more frequently than quarterly may be too unpredictable for consumers. We do not expect a review to necessarily result in a price change for deemed rates, unless it is shown that they need to be updated to better reflect the costs and/or the customer base. We are particularly keen to hear stakeholders' points of view on whether they feel the quarterly time frame is appropriate.
- 2.64 Altogether, these measures intend to ensure that suppliers have clarity on what Ofgem considers compliant with SLC 7.3 and 7.4, address the concerns raised by stakeholders, and balances the increased risk that suppliers may face from deemed rate customers. The main proposals are intended to ensure that deemed rates are reflective of a supplier's customer base, that there is appropriate reasoning behind deemed rate pricing strategy, and that deemed rates are regularly reviewed.
- 2.65 We are keen to hear the views of all stakeholders on the content of the guidance. We will consider views from this feedback and from any other relevant engagement before we finalise this guidance. We will also consider during this engagement whether further licence changes or guidance is required. We wish to make clear in this policy consultation document that that once finalised the

guidance will be both binding and enforceable for Domestic and Non-Domestic suppliers.

### 3. Competition in the market and customer service

#### Section summary

We want to see a market in which competition drives improvement in customer services and processes to encourage best practice. This section looks at the factors impacting this and the customer service outcomes. It covers issues related to the Change of Tenancy processes, and our regulatory response. The section also covers responses related to debt and disconnection, allegations of poor customer service, and if consumers have confidence that there are adequate and transparent signposting and means of redress if they believe they have been mistreated. We are consulting on proposed actions.

#### Questions

- Q7. Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?
- Q8. Are Micro Business Consumers aware they can contact Citizens Advice for support? Do we need to introduce a rule requiring suppliers to signpost them more specifically?
- Q9. Is an obligation requiring efficient and timely complaints handling needed? If so what are the costs and benefits associated with introducing this?
- Q10. Is an obligation requiring recording, handling and processing of complaints in accordance with consistent rules needed? If so, what are the costs and benefits associated with introducing this?
- Q11. Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not be expanded to apply to all non-domestic customers?
- Q12. We are seeking stakeholder views on our suggested proposals to government around increasing access to the Energy Ombudsman. Should there be a threshold on who can access the Energy Ombudsman? If so, where should this be set?
- Q13. We are seeking stakeholder views on the proposed changes to the rules requiring suppliers work with TPIs who are members of a redress scheme. Additionally, what are your views on the costs and benefits associated with the different proposals?
- Q14. What are views from stakeholders on how long it would take to set up and register for a wider TPI ADR scheme, one that goes beyond Micro Business Consumers?

Q15. What are your views on our proposal to expand SLC 0A (non-domestic Standards of Conduct)? Do you have any views on which consumers they should or should not apply to? Please provide any views on costs and benefits of making this change.

Q16. Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?

## Issues

3.1 We asked about the quality of service in the non-domestic market, as we were concerned that if there was not meaningful competition, there would not be good customer outcomes. In December 2022 we published an open letter to non-domestic suppliers, setting out good practice expectations around debt management and the disconnection of customers.<sup>29</sup> We asked in our CfI whether these best practice steps were being followed. We also asked if suppliers' complaints processes were easy to find and if we need to strengthen the rules around complaints processes. We questioned whether suppliers were adequately explaining their price changes and asked for more information about whether there continued to be issues when there was a Change of Tenancy (CoT) or Change of Occupier (CoO). We had heard a number of concerning reports about these topics, including feedback on customer service more generally.

## Change of Tenancy

### Our findings

3.2 Stakeholders reported that one of the most significant problems they faced related to some processes around a CoT/CoO. However, the reasons for respondents thinking the issues were significant varied according to their part of the process.

3.3 Customers reported excessive and inconsistent documentation requested by suppliers to prove a CoT/CoO. They reported that the documents that are requested to prove a CoT/CoO varies hugely between suppliers. This process can cause significant delays when trying to secure a new contract and take up a lot of time to source all the requested documentation. Customers also reported that suppliers could take weeks to respond, asking for more information each time and

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<sup>29</sup> [Open letter: Good practice expectations for non-domestic suppliers on issues surrounding debt management and disconnection of customers | Ofgem](#)



delaying the whole process further. Cases were referenced where the evidence requested would only be available to the customer weeks or months after they have moved into a new premises, meaning they were unable to move off deemed rates for many months. In some cases, customers reported they were forced to pay off debt that wasn't associated with their own business, but instead was related to a previous tenant, just to get the process moving forward.

- 3.4 A number of suppliers, on the other hand, were concerned that CoT/CoO process was a significant cause of bad debt and had concerns that a scaling back of government support, along with continuing volatility in wholesale prices, meant that the potential for fraudulent applications would increase. Some suppliers provided evidence where businesses had claimed to change hands, but had not, to avoid payment of bills.

### **Our views and proposals**

- 3.5 The answers provided to us in the CfI showed a clear majority of respondents considered the issues around CoT/CoO to be a major cause of issues and costs. Issues around this process have been reported previously, but when energy bills are high, this becomes very acute. Clearly, the lack of consistency across suppliers as to which documents, or combination of documents, were required to demonstrate a CoT is a key issue. They often resulted in businesses having to stay on deemed contract rates for longer than necessary.
- 3.6 A current supplier can object to the transfer of a customer to another supplier in specific circumstances. Condition 14 of the electricity and gas supply licences sets out when a supplier can object to a transfer. The detailed processes around a customer switching from one supplier to another is set out within the Retail Energy Code (REC), the industry code that manages the switching arrangements between suppliers. All licenced energy suppliers (among others in the industry) must comply with the REC. These industry processes allow a CoT indicator to be used by a gaining supplier to advise the current supplier that the contracting customer is not the customer they have on record and that any objection they may otherwise make to the transfer of the previous customer may be invalid. Just as the gaining supplier should use reasonable endeavours to ensure that the CoT indicator is only used where there is a new owner or occupier, the current supplier should also use reasonable endeavours to establish whether the CoT flag has been used correctly by the gaining supplier, when determining whether there are reasonable grounds to issue an objection in accordance with condition 14 of the supply licence.

- 3.7 We believe that a consistent set of documents (or document options) to evidence a CoT/CoO should be established. This would allow customers to know what to expect and for genuine requests to be accepted by the supplier and only weakly evidenced requests to be investigated further. This may not prevent all instances of the CoT being used inappropriately but should allow genuine cases to pass through without delay. This should also reduce cases where new tenants feel pressured into paying off debt raised by past tenants.
- 3.8 The criteria set out would need to be discussed and agreed with stakeholders, but we envisage this working in much the same way as an individual would confirm their identity when applying for a passport or bank account. For example, there could be an approved list of possible documents to provide evidence for a specific aspect. This should streamline the process in most cases and prevent requests for irrelevant and difficult to obtain evidence of tenancy.
- 3.9 The Retail Energy Code Company (RECCo) manages the rules set out in the Retail Energy Code. Given this change of tenancy indicator is flagged via industry processes, we propose that the agreed documents to prove CoT should be developed and agreed within REC processes. We have discussed this with RECCo, who also identified a need for clear guidelines for change of tenancy. We will work with them to take forward discussions with stakeholders to agree the core documents to be requested. We want this work to commence as soon as possible and have the range of documents identified this year, and the change proposal given effect through the REC by the end of the financial year, to include the list within the rules of transfer. We want both supplier and customer representatives to take part in these discussions, and any TPIs who deal with CoT issues. Interested stakeholders who wish to be part of these discussions should email [recco\\_strategy@retailenergycode.co.uk](mailto:recco_strategy@retailenergycode.co.uk) copying in [NonDomesticRetailPolicy@ofgem.gov.uk](mailto:NonDomesticRetailPolicy@ofgem.gov.uk) .
- 3.10 Once there is an agreed set of documentation, we will publish these on our website.
- 3.11 Where we were presented with specific examples of poor practice by a supplier, we have referred these to our compliance and enforcement teams who will take forward investigations as per our guidelines. We will continue to monitor the market.

## **Debt and Disconnection processes**

### **Our findings**

- 3.12 The majority of the respondents to our CfI either did not respond to our question about whether suppliers were following our best practice around debt management or said that they had not received any evidence either way on this point. One customer representative provided evidence of poor debt handling but noted that this related to the period before our guidance was issued. One energy broker noted that some suppliers are not properly checking whether customers were paying the direct debits, which can cause issues to build up. One customer said that the only time they had been in a debt situation was because of errors on the supplier's side, and poor communication about why bills had been re-issued. Another representative body said that did not have specific examples but did hear regularly about lack of effective communication by suppliers. As noted above, some respondents noted that delays and lack of accepting evidence in the CoT process can result in debt issues arising.
- 3.13 Our own data shows that total combined debt from Micro Business Consumers (including debt being repaid and arrears across gas and electricity) reached around £700 million in Q1 2023. This is an increasing trend observed since Q4 2021, mainly explained by the growing average value of debt per customer, broadly in line with the increase in prices. Disconnections for Micro Business Consumers have generally increased over time for both fuels; it was up by 4% compared to the previous quarter and up by 46% compared to Q4 2021, coinciding with the gas crisis and the increased debt level.
- 3.14 Citizens Advice provided evidence that debt management, affordability and disconnection cases for Micro Business Consumers continued to make up over 20% of cases in February 2023. They are concerned that numbers will increase when government support is reduced. They provided examples of unreasonable demands for the repayment of this debt, lack of notice before a disconnection, and unclear debt collection processes.

### **Our views and proposals**

- 3.15 We will work with Citizens Advice over the summer to determine whether the cases they provided are related to a breach of existing licence conditions, or whether we need more specific rules or binding guidance in this area. Off the back of this work, we may initiate compliance and enforcement activity or, if appropriate, consult on rule changes. This also links to the next topic.

## **Complaints handling and resolution**

### **Our findings**

- 3.16 We asked if suppliers complaints processes are easy to find, and we did not receive complaints about finding the contact details or information about the process for raising complaints. We note that last year we reviewed suppliers' websites and contacted suppliers where we did not feel their complaints information was clear enough, and we have seen improvements since then. In our CfI, some suppliers noted that they had improved the presentation of their complaints information since our earlier review and one also said that they had expanded the route through which a customer can contact them about a complaint.
- 3.17 But, we also expect to see suppliers follow their stated processes and resolve issues in a timely manner. We are very concerned by the reports of poor complaints handling by suppliers, particularly on the time frame for complaints to be resolved. Some customers told us they have had open complaints with suppliers for a number of months. Some stakeholders have noted cases where suppliers take weeks or in some cases months simply to acknowledge receipt of a complaint. One respondent said that in general many suppliers do not meet their own Service Level Agreement (SLA) on responses, which often causes customers significant issues or costs. One respondent felt that what a supplier states on their website is immaterial as they do not follow their own processes outlines on their website– greater monitoring is needed to ensure good outcomes.
- 3.18 Citizens Advice believe that Micro Business Consumers are not always aware that they can reach out to them for support. The number of contacts Citizens Advice receive from Micro Business Consumers does not appear high, as a proportion of total customers, and often by the time they do get in contact, their issues have been going on for some time. They said they would welcome the same formal requirements on suppliers to signpost Citizens Advice on bills as domestic suppliers are required to do, in Condition 31G of the supply licence.
- 3.19 For non-domestic customers who are not Micro Business Consumers there is no time frame in which complaints must be resolved, and some customers have their complaints sit with suppliers for months with limited engagement. Several responses suggested that there ought to be a statutory timescale or SLA for suppliers to respond to customer complaints. As well as calling for timescale limits for complaints to be dealt with, stakeholders also asked for information from suppliers to be clear, transparent, and not misleading.

- 3.20 We also regularly receive emails of complaint from non-domestic customers. These emails detail their personal situation and how they are unable to reach a solution with their supplier. They are contacting us as they don't know who else to turn to, to seek support and advice.
- 3.21 In addition, while TPI regulation does not fall within Ofgem's remit, we have been made aware of a number of concerns within the TPI market via the CfI and our wider work. Whilst the majority of TPIS offer an extremely valuable and important service to their customers, we are seeing increasing instances of poor behaviour with a minority of TPIS. We have received reports of TPIS engaging in misleading sales, harassing customers and not being transparent about the services they offer. For example, we received reports of TPIS only working with a small number of suppliers to secure contracts despite giving the impression to business customers they would be fully searching the market for the best deals. Customers feel unable to take action against TPIS who they feel have misled or mistreated them, with many left feeling frustrated and out of pocket. We have asked government to look into more formal regulation of the TPI market, including the need for a formal redress scheme with a specified provider, as there is in energy and other sectors. We will continue to work with government to drive positive outcomes for customers.

## **Our views and proposals**

### Signposting support:

- 3.22 Given our findings on the signposting of complaints processes, we do not believe there is a need for any changes to the rules on displaying complaints processes.
- 3.23 However, we do consider there may be a gap in signposting obligations. Condition 31G of the supply licence includes requirements that suppliers must ensure each domestic customer is provided with information in a form and at a frequency that is sufficient to enable that domestic customer to quickly and easily understand, including:
- how to seek impartial advice from Citizens Advice consumer services, and
  - what their rights are as regards to the means of dispute settlement available in the event of a dispute, including how to identify and contact the Energy Ombudsman.
- 3.24 There is not an equivalent requirement to signpost to Citizens Advice for Micro Business Consumers, even though they can access the same support as domestic customers, from the same regulations. We note that not all suppliers signpost

Citizens Advice, although most seem to signpost the Energy Ombudsman on their websites.

- 3.25 We would like to hear from stakeholders about whether Micro Business Consumers are aware that they can contact Citizens Advice for support, and if we should include a rule to signpost Citizens Advice for Micro Business Consumers more specifically. (In particular, rules similar to supply licence conditions 31G1, 31G2, 31G3, and 31G7 that apply to domestic customers). We want to hear more about the need for this and also the costs associated with it. We have a specific question for stakeholders in this document and will also explore this further in stakeholder meetings.

### Support and redress

- 3.26 Ofgem's remit does not extend to intervening in individual disputes and are therefore unable to offer resolution and advice to customers. Micro Business Consumers, as noted above, can access Citizens Advice and the Energy Ombudsman. The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (the "Complaints Regulations") sets out requirements for regulated providers to have a complaint handling procedure and certain requirements related to this,<sup>30</sup> including referring domestic and Micro Business Consumers to a qualifying redress scheme within a specified time period. The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008<sup>31</sup> requires suppliers of domestic and Micro Business Consumers to join a qualifying redress scheme.
- 3.27 The Energy Ombudsman is an established ADR scheme for Micro Business Consumers and domestic customers seeking redress for unresolved complaints with suppliers. The Energy Ombudsman provides ADR to all relevant consumers as defined in the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 under schedule 2. They are monitored by Ofgem to ensure they remain the most appropriate and effective body to provide the scheme.
- 3.28 All customers can seek independent legal advice and take formal legal proceedings against a supplier or a TPI. However, this is costly and can take significant time. Legal Futures, in an article published December 2022, highlighted that, for small claims courts, it took on average 51.2 weeks from

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<sup>30</sup> [The Gas and Electricity \(Consumer Complaints Handling Standards\) Regulations 2008 \(legislation.gov.uk\)](#)

<sup>31</sup> [The Gas and Electricity Regulated Providers \(Redress Scheme\) Order 2008 \(legislation.gov.uk\)](#)

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issue to trial.<sup>32</sup> For many businesses, especially smaller ones, the time and cost to do this is unviable and therefore taking legal proceedings is not a realistic alternative.

3.29 We are very concerned about the responses to our CfI and other contacts we have received that talk about very lengthy and frustrating experiences by customers larger than Micro Business Consumers when trying to resolve issues with their supplier. We are worried that customers face greater detriment because in many instances it is reportedly unfeasible for businesses to seek legal intervention. For example, they may feel forced into paying debt they do not believe they owe. This also means that there can be less pressure for suppliers to invest in good processes to enable quick resolutions, or to improve processes that work against customers. This can particularly be a problem if the customer is in a sector where there are fewer suppliers offering contracts.

3.30 We want to ensure that non-domestic customers can effectively resolve complaints with their supplier in a timely and appropriate manner. At present, if a non-domestic customer who is not a Micro Business Consumer is experiencing lengthy delays to resolve a complaint or does not accept the resolution offered by the TPI or energy supplier, they have limited routes of challenging this, especially if they are unable to afford legal costs. We propose two proposals to resolve this issue. First, we could expand supplier complaints handling requirements to include more non-domestic consumers by amending the regulatory framework, and second, we could work with government to amend legislation to expand access to redress schemes. We believe that given the number of reports we have had from customers about the above issues means that it is not a viable option to do nothing.

*Proposal 1: Expanding complaints handling requirements*

- 3.31 We want to achieve the following outcomes for all non-domestic customers:
- a. suppliers handle complaints from their non-domestic customers in an efficient and timely manner; and
  - b. suppliers record, handle and process these complaints according to consistent rules in order for Ofgem to monitor supplier complaints handling effectively (more on this in Monitoring, paragraphs 3.63-3.69).

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<sup>32</sup> [Wait time for county court trials reaches new all-time high - Legal Futures \(December 2022\)](#)

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- 3.32 The Complaints Regulations place requirements on suppliers for the handling of domestic and Micro Business Consumer complaints. To achieve the above desired outcomes, we are considering making changes to the regulatory framework for complaints handling. For example, by introducing a licence condition, or working with government to explore making changes through legislation, to ensure complaints handling requirements extend to a greater proportion of the non-domestic market.
- 3.33 The benefit of this change is that it would provide clear requirements for suppliers to follow and a route for Ofgem to better monitor the issues that arise. This will allow Ofgem to proactively take compliance action against suppliers that are breaching the rules. We intend to seek information from non-domestic suppliers on how they currently capture complaints data, to inform our views on applying complaints handling requirements more broadly.
- 3.34 Suppliers that are already following good practices should not face greater costs to meet the requirements to resolve issues in a timely manner. A cost to making this change is that it would mean suppliers would face some costs in setting up a reporting process.
- 3.35 We are therefore seeking views on the costs and benefits for development and implementation of one or both requirements set out in paragraph 3.31 above. Also, we recognise that it may not be appropriate to extend complaints handling requirements to all non-domestic consumer complaints. For example, one customer reported that they did not have issues dealing with their supplier to resolve complaints because they had a dedicated relationship manager. This can often be the case for large business customers, who would also likely have more complex issues to resolve, that have greater cost implications and who are better equipped to access legal support. We therefore would like to hear stakeholder views on the threshold above which they do not believe these requirements are appropriate. The information we have received about problems resolving issues has not included details of the size of business experiencing the problems, other than that they were not Micro Business Consumers.

*Proposal 2: Work with government to amend regulation for broader access to redress*

- 3.36 The complaints handling and redress regulations for domestic and Micro Business Consumers set time limits and access to a third party to resolve a dispute, free of charge to the customer. They specify if these customers have raised a complaint and not received a satisfactory response within 8 weeks (or before then if a deadlock letter is provided), they can reach out to a qualifying redress scheme.



As such, this provides an incentive for all parties to resolve the complaint promptly to achieve resolution before 8 weeks as this will involve a cost for the supplier in the form of a case fee.

- 3.37 We would like to work with government to explore amending regulation, so that more non-domestic customers can access this support set out in regulations. We believe this will lead to better outcomes and resolutions offered to customers. Who can access the Energy Ombudsman is defined in the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008.<sup>33</sup> This definition currently defines a relevant consumer as one which fulfils either the definition of domestic consumer or a Micro Business Consumer. The proposed changes would require an amendment to schedule 2. This is not an unprecedented move as the definition of relevant consumer was altered in 2014 via the Gas and Electricity Regulated Providers (Redress Scheme)(Amendment) Order 2014.<sup>34</sup> This was done to amend the definition of Micro Business Consumer.
- 3.38 There is also an example where the scope of an Ombudsman has been widened to incorporate larger businesses. The Financial Ombudsman was expanded to include businesses that employ up to 50 employees, have an annual balance sheet below £5m or an annual turnover of less than £6.5m.
- 3.39 Any changes to regulation would require investigation by government on the costs and benefits of making a change, and also a decision on how far to expand the support. We expect that sometimes larger businesses will likely have complex issues that could require a resolution of scale or complexity that is best served elsewhere, for example, the courts. Therefore, they are unlikely to need to access redress via the Energy Ombudsman, and it would be more appropriate for them to seek legal support.
- 3.40 By setting a limit on who can access schemes, costs can be reduced. However, it is important that the definition of who can access schemes is appropriate to ensure all those who need access are captured in this definition. We know that non-domestic suppliers segment their customers in very different ways. For example, there is not one universally clear way of defining 'large customers' so it is not a simple matter to exclude them. Categorisation can be defined via energy consumption, employee numbers and/or company turnover. More work would need to be done to find a suitable threshold.

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<sup>33</sup> [The Gas and Electricity Regulated Providers \(Redress Scheme\) Order 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>34</sup> [The Gas and Electricity Regulated Providers \(Redress Scheme\) \(Amendment\) Order 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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- 3.41 There is a risk when defining who can access ADR that there will be groups left out of the definition who would benefit from accessing ADR. We have seen this with some smaller businesses larger than Micro Business Consumers currently closely missing out on ADR when they would benefit eg they have 11 employees.
- 3.42 One option that could be explored is whether there would be merit in not setting a threshold and allowing any customer who needs to, to access the scheme. To expand access to ADR to all customers is not an unprecedented move as currently Ireland's independent energy and water regulator, The Commission for Regulation of Utilities (CRU)<sup>35</sup> has an ADR scheme available for all final customers, including non-domestic customers. If the Energy Ombudsman were to maintain limits on the levels of restitution and also continue to refuse to address cases that are too complex, there may be a natural threshold that would occur.
- 3.43 The benefit of pursuing this option is that all non-domestic customers wishing to access ADR are able to, in a way that imposes lower costs on the parties than if they were to go to court. There would likely be self-selection whereby larger non-domestic customers would choose alternative routes available to them such as the courts if the outcomes are more suitable to their circumstances. Another benefit of this option is that the Energy Ombudsman would be feeding data and insight back to energy suppliers, energy brokers, Ofgem, and the wider sector to help improve standards and identify systemic issues early, about a broader cohort of non-domestic customers.
- 3.44 But this option could raise costs more than an established threshold would. There would likely be more cases going to the Ombudsman to consider and there would be extra costs for suppliers who must pay a case fee each time. It is also likely that annual subscription fees for membership of the scheme would increase. Extra overall costs to suppliers will ultimately likely mean higher costs for customers.
- 3.45 To support any work government does on this, we are keen to hear from stakeholders on whether there should be a threshold for access to a redress scheme and what the threshold should be. We will provide any evidence and views related to regulation changes to government, to support them in their consideration.

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<sup>35</sup> [Complain to the CRU | CRU.ie](https://www.cru.ie)

## Standards of Conduct

- 3.46 Standard Licence Condition 0A of the Gas and Electricity Supply Licences contains rules to ensure suppliers treat Micro Business Consumers fairly, known as the Standards of Conduct (SoC). The SoC are enforceable broad principles which relate to certain aspects of billing, contract, and transfer activities that suppliers engage in with Micro Business Consumers.<sup>36</sup> The broad principles include requirements that suppliers must:
- behave and carry out actions in a fair, honest, transparent, appropriate and professional manner
  - provide information (whether in writing or orally) to each Micro Business Consumer which, amongst other things, is complete, accurate and not misleading, and communicated in plain and intelligible language
  - make it easy for Micro Business Consumers to contact the supplier, acting promptly to put things right when the supplier makes a mistake, and to otherwise ensure that customer service arrangements are fit for purpose and transparent.
- 3.47 We consider the SoC cover areas where stakeholders have raised concerns with us, such as poor customer service from suppliers, including poor provision of information, and challenges contacting their supplier. However, we note that the current non-domestic SoC only apply to Micro Business Consumers.
- 3.48 We consider suppliers should treat all of their customers fairly and in line with the principles set out in the SoC. From the responses we have received to our CfI, there appear to be a number of areas where customers larger than Micro Business Consumers do not believe they are being treated fairly. Multiple stakeholders, including consumer groups, trade bodies and energy brokers, called for protections which SLC 0A could address. In particular, some stakeholders noted concerns about suppliers providing clear and transparent information about bills and terms and conditions of energy contracts.
- 3.49 We are therefore proposing to expand the SoC to apply to more non-domestic consumers, to ensure consumer protections are extended and suppliers also treat their non-domestic customers fairly. We expect that by expanding the SoC we will better ensure suppliers focus on delivering good consumer outcomes. We are considering options to expand to all non-domestic consumers, or only a sub-set of

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<sup>36</sup> Standard Licence Condition 0 sets out the domestic Standards of Conduct.

non-domestic consumers, and would like to hear stakeholder views on who they think the SoC should apply to.

- 3.50 We consider that suppliers who carry out good business practices should be capable of achieving the broad principles set out in the SoC for all their customers and should not face significant cost in meeting these requirements if we were to expand the scope of the SoC. Nevertheless, we are seeking stakeholder views on costs and benefits of expanding the SoC to either all non-domestic consumers, or a proportion of non-domestic consumers who are larger than Micro Business Consumers.

## **Access to Third Party Intermediary Alternative Dispute Resolution (TPI ADR)**

### **Third Party Intermediaries**

- 3.51 As stated in the findings section above, TPI regulation falls outside of Ofgem's vires. They also fall outside of energy regulations discussed above relating to complaints processes and dispute resolution. Therefore, there are limited routes for complaints resolution should a customer be unhappy with treatment of service offered by a TPI. We identified this as causing significant harm to Micro Business Consumers when conducting the Micro Business Strategic Review.<sup>37</sup> We introduced a licence condition<sup>38</sup> that places a requirement on suppliers to ensure any TPI they work with, when working on a Micro Business Consumer contract from 1 December 2022, must be signed up to a Qualifying Dispute Settlement Scheme (QDSS).
- 3.52 The scheme seeks to aid Micro Business Consumers who have unresolved issues with a TPI/energy broker. With the absence of TPI and broker regulation, we wanted to create the incentives for QDSS schemes for TPIs to mirror the support customer can receive when they can't resolve their issues with their supplier.
- 3.53 Currently we are only aware of one QDSS scheme operating, which is run by the Ombudsman Services. Whilst the scheme is new, it is already helping customers achieve good outcomes. Over the period from 1 December to mid-July 2023

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<sup>37</sup> [Micro Business Strategic Review: Decision to modify the SLCs of all gas and electricity supply licences | Ofgem](#)

<sup>38</sup> This ADR scheme is in place via a licence condition on suppliers, in gas, this is SLC20.6 and in electricity it is SLC20.5. We issued guidance on what we believe constitutes a qualifying Scheme in June 2023.

Ombudsman Services report 285 accepted cases, of which 144 have received an outcome. Of these, 71% were upheld for the Micro Business Consumer.

- 3.54 Responses to our CfI and other stakeholder engagements show that businesses greater than Micro Businesses can similarly struggle to reach a satisfactory solution to issues with TPIs. Given the responses to our CfI, we are also proposing to expand this protection.
- 3.55 We have identified a number of policy options to address the above concerns:
- Option 1: Take no action
  - Option 2: Expand the requirement for suppliers to only work with TPIs that are signed up to a QDSS to cover all non-domestic customers, not just Micro Business Consumers.
  - Option 3: Expand the requirement for suppliers to only work with TPIs that are signed up to a QDSS to a limited section of the non-domestic retail energy market (eg greater than micro business but excluding large customers).
- 3.56 As in the previous section proposing changes to the Energy Ombudsman, the policy intent is to ensure all customers receive suitable complaint resolution and can access support to get it, if they need it. Therefore, we do not believe Option 1 to be preferable. We have heard about clear consumer harm and to take no action would allow consumers to continue to face detriment. We also note that the original scheme ensured that the redress facility for Micro Business Consumers was mirrored across suppliers and TPIs. If the government moved forward on widening access to the Energy Ombudsman, which is for customer and energy supplier redress, then we would want the option to access TPI redress to match the customer base that can access the Energy Ombudsman. If it doesn't, it could introduce confusion.
- 3.57 Option 2 proposes ensuring all non-domestic customers working with a TPI have access to an ADR scheme. This is the highest cost option as it would require all TPIs to register and pay to be part of an ADR scheme. Whilst this requirement is currently in place for TPIs working with Micro Business Consumers, which includes around 1,770 TPIs<sup>39</sup>, there are some TPIs who do not work with Micro Business Consumers and therefore would be engaging in this process for the first time and incurring a new cost. The benefit of pursuing this option ensures all customers

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<sup>39</sup> There were 1,767 TPIs registered with an ADR scheme as of 17/07/2023

needing to access ADR are able to, complaints with TPIs are resolved in a timely and effective manner, and more confidence in using TPIs would likely increase.

- 3.58 Option 3 poses a lot of the same costs and benefits as highlighted in the previous section on proposed Energy Ombudsman expansion. Namely this restricted option would likely have lower cost for TPIs due to the lower volume of cases and potentially some TPIs would not need to join it. But there is the risk that by restricting who can access the ADR scheme, a customer who is in need of the scheme is excluded.
- 3.59 To explain more clearly how we propose to amend licence conditions to extend access to this scheme beyond Micro Business Consumers, the changes have been outlined in Appendix 2. Any licence modification process will follow the statutory requirements.<sup>40</sup> This includes further consideration of costs and benefits so we are seeking input from all stakeholders on these proposals (which can be made confidentially). Also to note, given there are a number of TPIs in the market, we anticipate it could take a significant amount of time for them to register with an ADR scheme. Therefore, we would be proposing a longer timeline for licence condition changes to take place.
- 3.60 The proposal above is applicable in an environment where there is no formal regulation of TPIs. We have asked government to look into more formal regulation of the TPI market, including the need for a formal redress scheme, as there is in energy and other sectors. We will continue to work with government to drive positive outcomes for customers. We are proposing expanding our TPI ADR licence obligation in the expectation that it will take time for formal regulation of this sector to be considered and, if deemed necessary, to be set up. But we will continue to engage with government to ensure this will be the case.
- 3.61 We also note that government have now published the summary of responses document to their previous TPI Call for Evidence.<sup>41</sup> Alongside this publication, government has also set out how they will take forward targeted reforms aimed at making the retail market work better for consumers, become more resilient and investable, and support the transformation of the energy system. If

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<sup>40</sup> As set out in S11A Electricity Act 1989 and S23 Gas Act 1986 which requires us to conduct a statutory consultation on the proposed licence changes for a minimum period of 28 days and following our decision being published the modified licence condition to enter into effect not less than 56 days after publication of the decision.

<sup>41</sup> <https://www.gov.uk/government/consultations/third-party-intermediaries-in-the-retail-energy-market-call-for-evidence>

government decides to take forward any further work on how TPIs operate then they will consult as part of their wider programme of retail market reform.

- 3.62 A final note regarding the TPI issues flagged to us: One of the issues raised regarding TPIs in the non-domestic sector was that of mis-selling. Mis-selling can include being pressured into purchasing something you did not want or being misled or incorrectly advised about your purchase. This is unacceptable and illegal; if you believe you have been mis sold you may have the right to compensation. Please see the Consumer Protections from Unfair Trading Regulations of 2008 to see if you have been subject to mis-selling.<sup>42</sup> Ofgem has some powers in relation to brokers under the Business Protection from Misleading Marketing Regulations (BPMMR). Under these regulations Ofgem has powers to clamp down on brokers and other organisations that are marketing energy products or services to business customers in a misleading way. Ofgem can seek undertakings from brokers and other organisations to stop misleading marketing activity or apply to the courts for an injunction to ensure that they are complying with the legislation. Any criminal offences related to the BPMMRs can be enforced by Trading Standards and the Competition and Markets Authority can also take action. We note that our proposal to expand access to the ADR scheme for businesses experiencing unresolved issues with TPIs will also offer some support for those customers who raised concerns around their experiences with TPIs.

### **Improved monitoring**

- 3.63 We have powers to request monitoring information from energy suppliers to help us carry out our regulatory functions and monitor the market.<sup>43</sup> We issued several information requests to suppliers and industry, focused on practices in the non-domestic market, to gather evidence to inform our review of the market and help develop our current policy proposals. We would like to continue to receive and monitor this information to inform our regulatory activity on an ongoing basis and ensure the information collected covers a larger portion of the non-domestic market.

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<sup>42</sup> [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>43</sup> Section 47A of the Electricity Act 1989 and section 34A of the Gas Act 1986 gives Ofgem the power to require information for monitoring purposes. SLC 5 also requires licence holders to provide information requested by Ofgem which is reasonably required or for the purposes of performing Ofgem's statutory functions.

- 3.64 We will therefore be increasing our monitoring activity of non-domestic suppliers and capturing more information on an ongoing basis through a regular Request for Information (RFI), with broader coverage than the current regular RFI that covers the Micro Business segment of the non-domestic market. This will ensure that suppliers receive fewer ad-hoc RFIs, allowing suppliers to better plan for responding to Ofgem requests. We expect that once processes are embedded, a regular RFI will allow for more streamlined regulatory processes. Through increasing our routine monitoring we will better identify where we need to target to improve outcomes for customers, for example via compliance action or rule changes. This will also better support us taking proactive actions.
- 3.65 We will engage with suppliers over the summer following the publication of this consultation to develop and refine a regular RFI.
- 3.66 For information, the areas we are considering expanding upon include:
- Complaints handling and processing
  - Change of tenancy
  - Contract offer information, including security deposits
  - Debt and disconnection
- 3.67 This additional information will not be limited to Micro Business consumers.

### **Larger non-domestic businesses complaints monitoring**

- 3.68 As set out earlier, requirements for complaints handling are set out in The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008.<sup>44</sup> The requirements for capturing, handling and recording complaints focus on domestic and Micro Business Consumer complaints, and there are fewer rules relating to larger non-domestic complaints.<sup>45</sup>
- 3.69 We recognised that when we request information on non-domestic complaints from suppliers there could be a large degree of inconsistency in the information we receive. The routine collection of data on complaints in domestic and Micro Business Consumers has driven consistency in how complaints are recorded. To make sure the data we collect can be meaningfully compared across suppliers, we will need to engage with suppliers to get a good, shared understanding of the

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<sup>44</sup> [The Gas and Electricity \(Consumer Complaints Handling Standards\) Regulations 2008 \(legislation.gov.uk\)](#)

<sup>45</sup> In this context, larger non-domestic complaints refers to any complaint from a business larger than a Micro Business.



data before we request it, and consider if and where we need to specify changes. If our engagement or increased monitoring activity highlights that further obligations are required in this area, we may need to propose additional rules.

## 4. Some customer groups need focused support

### Section summary

This section looks at the responses we received in relation to whether there was a need for more focused regulatory support for specific groups of customers. We first look at responses and proposals related to those domestic consumers behind non-domestic supply contracts that do not contract directly with a licenced supplier and who may not have the protections they need. We then cover our Micro Businesses rules and whether we should expand the definition of Micro Business Consumer or look at more focussed support. This section will outline the responses we received for each of these areas, set out our views and invite comments on our proposals.

### Questions

- Q17. What are the views of Distribution Network Operators (DNOs), Independent Distribution Network Operators (IDNOs), Gas Distribution Networks (GDNs), and Independent Gas Transporters (IGTs) on the potential issues of targeting support to vulnerable end users supplied through non-domestic contracts?
- Q18. What changes to the Maximum Resale Price direction would improve its effectiveness and what are the potential downsides to any changes?
- Q19. What are the costs and benefits associated with the proposal to expand TPI commissions disclosures to all non-domestic customers? How long would it take suppliers to implement this policy?
- Q20. Are there views on how commissions disclosure is best presented to be understood by consumers?
- Q21. Should we expand commissions disclosure to all non-domestic customers or a sub-set of customers, and if a sub-set do you have views on how to define this?
- Q22. Do you have any further comments on the proposals in this section on focussed consumer support?

### Issues

- 4.1 In the CfI we sought stakeholder views on where domestic consumers who are served by non-domestic supply contracts are not having their needs met because of their contract arrangement. This group of domestic consumers do not receive many of the protections afforded to domestic customers who have a direct relationship with a domestic supplier, despite often displaying characteristics which may indicate vulnerability. We wanted to know if and where they may need

additional safeguards. We also sought opinions on updates and clarifications of the guidance on domestic classification.

- 4.2 We also asked if we should extend our Micro Business Consumer definition to include other groups of customers or put in place new rules for specific groups of customers, and we asked for suggestions of how these could be defined. We also wanted to hear from suppliers and other stakeholders about the possible impact of expanding the Micro Business Consumer definition or of creating new rules relating to a new class of customer in the supply licence. This was in reaction to concerns that some small to medium Enterprises (SMEs) who fall outside the Micro Business Consumer definition also find it difficult to actively engage in the energy market and do not have the time or resources to deal with poor supplier behaviours through the courts. This may mean that there is insufficient market pressure to correct inappropriate supplier behaviours towards these groups of customers

## **Domestic customers behind non-domestic contracts**

### **Our findings**

- 4.3 In the CfI we wanted to know what additional protections respondents think might need to be put in place to protect domestic customers who are supplied via a non-domestic contract. We had many responses from a wide range of respondents, including suppliers, trade bodies, consumer support groups, businesses, and domestic consumers in this situation. We are grateful to everyone who took the time to share their thoughts.
- 4.4 There was a clear majority of respondents (by a ratio of 2:1) who believed that domestic consumers supplied by non-domestic contracts are in need of additional protections.
- 4.5 Organisations that represent groups of domestic consumers being supplied energy through a non-domestic contract have raised with Ofgem that domestic consumers in this situation were disadvantaged by their supply situation, primarily due to not being covered by the price cap and the Energy Price Guarantee (EPG).<sup>46</sup> Stakeholders also raised the lack of consumer protections

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<sup>46</sup> The government has since provided financial assistance via the EBSS-Alternative Funding and Alternative Fuel Payments (EBSS-AF and EBSS-AFP respectively) arrangements for domestic consumers in non-standard supply situations, including those being supplied through non-domestic contracts during the 2022-23 GB energy crisis.

typically extended to domestic consumers supplied via a domestic contract, whether in the Standard Licence Conditions (SLCs) or elsewhere.

- 4.6 Historically non-domestic contract prices were generally lower than domestic tariffs. However, since the energy crisis, with no price cap on non-domestic rates, this has inverted, meaning this category of domestic consumers are feeling the double impact of fewer support mechanisms and higher prices than if they were supplied directly via domestic contracts.
- 4.7 Official statistics on this group of consumers is limited. Because they do not have direct contractual relationships with the domestic consumers impacted, licensed suppliers do not know how many consumers may be in this situation. The government estimate that approximately 900,000 domestic consumers are supplied by non-domestic supply contracts.<sup>47</sup> It has also been suggested by stakeholders that the proportion of consumers in this cohort who have vulnerabilities could be higher than in the licenced domestic supplier sector due to the type of residency arrangements involved.
- 4.8 CfI respondents particularly noted the difficulty in having these domestic consumer vulnerability needs recorded anywhere, and the lack of support in the event of planned or unplanned outages and disconnections. In a typical domestic supply situation, these issues would be covered by the Priority Services Register (PSR).
- 4.9 One respondent commented that there is no 'one size fits all' approach to addressing this issue. They said that the regulatory and legislative changes required to protect park homes residents would need to be very different from those aimed at people paying for their energy via rents inclusive of bills to a landlord (eg some social housing tenants, or in some Houses of Multiple Occupation), for example. Given the solutions are likely to need both licence and regulatory changes, they suggested Ofgem and the government work together to achieve the required solutions.
- 4.10 In the CfI we asked what additional protections respondents think might need to be put in place to protect domestic customers who are supplied via a non-domestic contract. There was a clear majority of respondents who believed that domestic consumers supplied by non-domestic contracts were in need of additional protections. Those that disagreed were suppliers or supplier trade body

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<sup>47</sup> [900,000 more households to benefit from £400 of government energy bill support - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/900-000-more-households-to-benefit-from-400-of-government-energy-bill-support)

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representatives. First and foremost, they are concerned that well-intentioned changes to the structure of the non-domestic market, particularly if made quickly, could have far reaching and negative unintended consequences. Consequences such as suppliers not offering contracts to consumers where they suspect domestic residents might be the eventual end users, reducing choice and competition for this type of consumer. Suppliers noted that other legislation exists to protect these consumers in certain areas. The Health and Safety at Work Act 1974 applies to any action by a supplier that exposes any third party (such as a domestic consumer) to risks to their health and safety. All suppliers must have regard to this before disconnecting supply.

- 4.11 Some suppliers also said that the drive to net zero will likely result in more domestic consumers behind non-domestic contracts, with more developers and landlords looking to build on-site renewables and consolidate demand to maximise optimisation benefit. So they agreed that this was an important area to focus on. But they felt that given broader work being considered in this area by the government, it would be better for Ofgem to work with government and consider changes in the round.
- 4.12 We note that government has now published a Call for Evidence on domestic consumers with non-domestic energy supply contracts alongside other publications on retail market reform.<sup>48</sup> The Call for Evidence will be used to collect information on this group, specifically the advantages and disadvantages of these arrangements and the choices that these groups have in the retail energy market. The information gathered from the Call for Evidence will be used to determine if longer-term protections are required for this group.

### **Our views and proposals**

- 4.13 This group of domestic consumers covers a broad range of residency situations including, but not limited to, residents in care homes, assisted living arrangements, tenants in multiple occupancy buildings, residents in flats/apartments attached to a pub or other business, residents in caravan parks, residents in houseboats, and residential accommodation for higher-education students etc. This range adds complexity to developing potential policy measures to increase consumer protection. Policies will likely also intersect with government

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<sup>48</sup> [Domestic consumers with non-domestic energy supply contracts: call for evidence - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/domestic-consumers-with-non-domestic-energy-supply-contracts-call-for-evidence)

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policy areas, and other parts of the energy industry beyond the non-domestic supply market.

- 4.14 So far, we have been working closely with stakeholder groups including those representing park and care home residents, who have provided valuable insight into the complexities faced by such consumers. This in turn helped inform our thinking around the need for extra protections for domestic consumers in this situation.

#### Access to Priority Services Register

- 4.15 Domestic suppliers are obliged to keep a PSR of their vulnerable customers under Condition 26 of the supplier SLCs. This obligation does not extend to non-domestic suppliers, as their contract is with a non-domestic customer. Domestic consumers who are supplied through a non-domestic contract will instead be in contract with a landlord or management agent, for example, responsible for producing bills.
- 4.16 We considered whether to extend the obligation to keep a PSR of vulnerable consumers to non-domestic suppliers. But in considering the costs and benefits we do not believe this would deliver positive outcomes. Suppliers do not have a relationship with any consumer that sits beyond the entity they have a supply contract with, so to establish a PSR or similar scheme would be practically difficult. There can be a high volume of domestic residents sitting behind the non-domestic contracts, and they are often transient. This adds complexity to any attempt to register these vulnerable domestic consumers, and more so when there is not a direct relationship with them.
- 4.17 In addition, unlike licensed domestic suppliers, there is not an obligation on non-domestic suppliers to supply to all customers that make a valid request. New rules around a PSR for this specific group of non-domestic customers would carry a high risk that non-domestic suppliers would withdraw from offering contracts to any premises whom they suspected may include domestic consumers. This would cause even further harm to this group of domestic consumers, and to already struggling sectors of the non-domestic economy where domestic consumers are often living in ancillary premises of non-domestic business premises eg hospitality and agriculture.
- 4.18 Instead, we believe that working with the network companies (DNOs, IDNOs, GDNs, and IGTs) rather than non-domestic suppliers is the better option for a number of reasons. Firstly, the supply licence stipulates that PSRs kept by

domestic suppliers provide support around billing and metering services, which are less applicable to domestic consumers who are served by non-domestic contracts as there will be a non-domestic intermediary dealing with such matters on their behalf. Second, DNOs have incentives to provide appropriate support services to consumers in vulnerable situations. They also already keep PSRs as stipulated in their own distribution licence conditions and therefore have experience in accommodating vulnerability of consumers in a way that non-domestic suppliers do not. Finally, the sort of protections that respondents raised with us in the CfI and other conversations included outages, and the network operator is who customers contact in the case of an outage.

- 4.19 Ofgem has already been engaged in dialogue with the network operators on the topic of increased protections for vulnerable consumers. In November 2022 Ofgem completed a review of compensation arrangements for electricity customers following a severe weather event.<sup>49</sup> This review made several recommendations, divided into immediate and longer-term recommendations, that we believed would better acknowledge the impacts of extended power cuts on customers. Longer term recommendations include looking at how better to provide compensation in the case of outages for domestic consumers who are supplied via non-domestic contracts.
- 4.20 Ofgem will engage with the network companies to explore practical ways in which vulnerable people can be better supported in the event of a power cut or emergency situation. Ofgem is planning on holding a workshop with DNOs and GDNs over the summer on this topic.
- 4.21 We believe we also have a role to play in offering more tailored advice to these domestic consumers, working with consumer organisations. We have already done work with mobile park home representatives. Working with the Department for Levelling up, Housing and Communities (DLUHC), we published a dedicated advice page on the Ofgem website for park home residents.<sup>50</sup> We will do similar work with other groups.

### Maximum Resale Price

- 4.22 From responses to the CfI and other related stakeholder conversations, several issues were raised in relation to the Maximum Resale Price (MRP). The MRP

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<sup>49</sup> [Review of Severe Weather Compensation Arrangements for Electricity Customers | Ofgem](#)

<sup>50</sup> [Advice for park home residents | Ofgem](#)

applies when any person buys gas or electricity from a licenced supplier and resells it to someone else for their use. The most common and pressing of the issues raised was the penalties for non-compliance, which seem to work to the detriment of the domestic consumers.

- 4.23 The MRP direction is issued under section 37 of the Gas Act 1986 and section 44 of the Electricity Act 1989 by Ofgem that fixes (by amount or methodology) the maximum price at which gas and electricity may be resold.<sup>51</sup> The current maximum price at which each unit of gas or electricity may be resold is the same as that paid to the authorised supplier by the person reselling it. In other words, the reseller cannot make a profit from reselling energy. This direction applies commonly in situations such as houses of multiple-occupancy, bedsits, marinas, and park homes.
- 4.24 The MRP applies when the energy usage is estimated, as well as when it is measured by an appropriate meter. The MRP gives the end consumer the right to know the prices in the contract between the energy supplier and the reseller; they also have the right to see the documentary evidence of this if they request it. There are caveats and exemptions within the direction, of which the most relevant for this consultation is that the MRP does not apply where the cost of energy is not billed separately and is instead included as part of a tenant's rent agreement or pitch fee (for camping or park home residency), etc. We are therefore mindful that resellers could decide to switch to a 'bill inclusive' model if they are not satisfied with changes to the MRP. This would deprive affected consumers the price protection of the MRP, and an element of control over their total energy bill.
- 4.25 There are penalties for non-compliance with the MRP. If a reseller does not produce the documentary evidence to support the prices they are charging, the MRP (and, if appropriate, the share of standing charge payable by that consumer) shall be reduced by a proportion which is equal to twice the base rate of Barclays Bank plc which applied on the date when the request was made. This reduction in price shall continue for the period the reseller fails to meet the request. If the reseller breaches the MRP by overcharging on energy or the standing charge, interest on the amount of the excess shall be recoverable, in addition to that excess. Interest shall be calculated on a rate equal to twice the average base rate

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<sup>51</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/2014/03/mrp\\_direction.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2014/03/mrp_direction.pdf)



of Barclays Bank plc which was applicable during the period in respect of which the excess is calculated.

- 4.26 The main cause of the difficulty in relation to these penalties is that disputes relating to the MRP are currently heard in the First-tier Tribunal (Property Chamber). Ofgem is not the enforcement body. The need to go to tribunal creates a financial barrier for entry for a resident seeking redress. There are application and hearing fees, expenses, and the possibility of being liable for the legal fees of the reseller if the claimant loses. The tribunal uses the MRP direction as the basis for any penalties against the reseller if found to have breached the MRP. Because of this, since the charges for breaching the MRP in the direction are so low, the cost of taking the matter to tribunal can outweigh any money awarded to the consumer if the reseller is also not ordered to repay the fees. All of this combines to make taking action when something is wrong an unattractive option for many consumers. This in turn creates a culture where resellers feel empowered to not follow the direction, and domestic consumers supplied through non-domestic contracts are denied an important protection.

#### MRP Proposals

- 4.27 The reselling powers provided by Section 44 of Electricity Act 1989 can manifest in 2 ways: 1) where a landlord resells power to a consumer who occupies the same premises as the reseller, or where the landlord is absent but is the premises bill holder; and 2) where the reseller (re)supplies electricity or gas across a distribution system (generally a licence exempt distribution network) to consumers who live in separate premises (eg park homes). The MRP provisions apply in both scenarios, but the dispute resolution and enforcement functions differ.
- 4.28 To make it easier for consumers to act where they believe the direction is being breached by the reseller, we are working with government to take action on two fronts:
- Where the reseller is a domestic landlord, we are working with the Department for Levelling Up, Housing and Communities (DLUHC) to determine whether MRP will fall under the jurisdiction of the new Private Rented Sector Ombudsman service.<sup>52</sup> This service is being proposed in the Renters (Reform)

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<sup>52</sup> [Private Rented Sector Ombudsman: Renters \(Reform\) Bill - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/bills-2021-22/private-rented-sector-ombudsman-renters-reform-bill)

Bill which was introduced to Parliament on 17 May 2023. All private landlords will need to sign up to the scheme and it will be free for tenants to seek redress. The Ombudsman will also be able to instruct landlords to pay compensation as well as take remedial action. This solution is expected to be a quicker, cheaper, less adversarial, and more proportionate route to justice than is currently available. This Bill and Ombudsman scheme will apply in England only, but we are willing to work with the Scottish and Welsh governments to explore alternative protections.

- For consumers and resellers in all other residential situations we are committing to reviewing the MRP and working with the government to make it easier for consumers to take action against resellers where they believe the MRP is not being followed, for example through an alternative enforcement mechanism. This may also look at how to increase the penalties.

### Domestic classification

- 4.29 This section provides a summary of responses to the definition of, and clarifications around, what is a domestic customer. Details of the definitions and clarifications can be found in Appendix 3.
- 4.30 There were several responses to the CfI question seeking opinions on the clarification of terms and existing definition of domestic customers in Appendix A of the CfI. The majority of respondents were in favour of the clarifications and definition.
- 4.31 On balance, stakeholders agreed that our updated guidance provided additional clarity on the definition of a domestic consumer. Although we got several responses to our question on the definition clarifications only a small number of those mentioned the actual proposed clarifications explicitly. All the respondents that specifically mentioned the new clarification of terms in their responses were positive and welcoming of them.
- 4.32 Of the responses that were critical of the definition of domestic consumers, they can be grouped into two categories: 1) criticism of the overall way in which we delineate between domestic and non-domestic consumers, and 2) criticism of certain clauses of the definition due to how they impact certain sectors. In the case of the former, an example was the suggestion that we move to business rates to define consumer status. For the latter, an example was that the 'not resold' element of condition 'B' was overly restrictive for too many domestic residents in non-standard residency structures, eg park homes.

- 4.33 Many of the respondents suggested potential protections they feel domestic consumers supplied by non-domestic contracts need, but many of these suggestions fall outside of what Ofgem has the powers to change. The amount of funding available and the design of financial support schemes for domestic consumers was often quoted. This is the responsibility of central government, even where these schemes might be administered by Ofgem on a day-to-day basis. This is an area government is already actively working on.
- 4.34 There were several responses that suggested Ofgem review the way in which the retail market is structured, such as to move all types of domestic consumers into the domestic retail market. These calls came from all types of respondents.
- 4.35 We considered the implications of this proposal. Our early analysis identified both positive and negative consequences to this proposal, that will need further work to quantify more fully. We also agree with respondents who noted ongoing work in this area and the importance of Ofgem working with government and taking account of regulatory changes. Some of the ongoing work may also deliver the benefits to this group of domestic consumers that have been called for by respondents. For example, respondents are keen that consumers in this sector receive the same governmental support that domestic customers receive. The government is exploring what is needed in terms of support for vulnerable consumers within this group. To ensure we are joined up in our actions, we are committed to working with government as they explore this and will further consider the need for any changes as that work progresses. In the meantime, we publish our updated clarifications on the terms and existing definitions of domestic customers in Appendix 3.

## **Extending Micro Business protections**

### **Updated Micro Business Consumer Definition**

#### **Our findings**

- 4.36 We define a Micro Business Consumer as one which meets the following criteria<sup>53</sup>:
- uses less than 100,000 kWh of electricity

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<sup>53</sup> [Licences and licence conditions | Ofgem](#)

- uses less than 293,000 kWh of gas a year, or
  - have fewer than 10 employees (or their full-time equivalent) and an annual turnover total not exceeding 2 million Euros.
- 4.37 Prior to our CfI we had received a number of comments from a variety of groups expressing the desire for greater protection for SMEs. In our CfI we asked for greater feedback on this point and asked stakeholders if they had “views that we should extend our Micro Business Consumer definition to include other groups of customers or put in place new rules for specific groups of customers, please provide evidence and suggestions of how these could be defined.” We received a number of responses on these questions, often with quite differing views.
- 4.38 The responses to our CfI clearly showed there were only a small number of protections afforded to Micro Business Consumers that other businesses felt they needed. The feedback we received was in the majority against the idea of expanding the Micro Business Consumer definition itself. The responses clearly indicated this would have a number of unintended consequences such as confusion for consumers if the Micro Business definition varied across industries and significant knock-on effects for other policies the Micro Business Consumer definition effects, such as changes to smart meter rollout targets. All stakeholder groups expressed concern around the impact and cost of some of these indirect consequences.
- 4.39 However, we do note that some feedback we received stated the annual turnover figure of 2 million EUR in the definition was confusing for some businesses and they would prefer this to be in GBP. Applying it is difficult when there are fluctuating exchange rates.
- 4.40 One more aspect that we received representation about that currently is only applicable to Micro Business Consumers but where stakeholders felt there was merit in expanding, is the requirement for suppliers to disclose TPI commissions or fees to Micro Businesses to cover all businesses. In the CfI we received a number of responses which raised this issue and requested greater transparency around commission fees for all non-domestic customers. Respondents felt that this will allow consumers to make a more informed decision on their energy contract due to being aware of all the costs involved. Some suppliers stated that they would support the expansion of this regulation to all non-domestic customers. They stated this would be low cost for many suppliers to implement given they already would have the systems and processes in place for Micro Business Consumer contracts.

## **Our views and proposals**

- 4.41 With regard to the turnover figure being in Euros, we note that this part of the definition comes from legislation<sup>54</sup> so falls outside of our power to amend. Therefore, we have presented this issue to government who may choose to progress this issue and seek to change the definition from Euros to GBP.
- 4.42 The strong feedback for us to not amend the Micro Business Consumer definition, has led us to conclude that we should not pursue changes to the Micro Business Consumer definition in our licence at this time.
- 4.43 Whilst we are not pursuing significant change to the Micro Business Consumer definition, we do recognise the responses in favour of expanding the definition called for greater protection in specific areas. We have chosen to seek a proportional response to the issues raised and are progressing with targeted support for non-domestic consumers as opposed to expanding the definition of Micro Business Consumer.
- 4.44 We noted earlier in this document the calls for wider complaints and redress support and have set out proposals to address those. In addition, we agree with respondents that it is important that customers have good visibility of any commission fees paid to TPIs. Whilst we are not pursuing significant change to the Micro Business Consumer definition, we do recognise the responses in favour of expanding the definition called for greater protection. We are therefore proposing to extend licence condition SLC7A.10C, that requires TPI commission transparency for Micro Business Consumers, to all non-domestic customers. An alternative to this proposal would be to only extend it to a sub-set of business consumers, in line with any threshold decided upon in other proposals. One supplier responded to the CfI and stated that they would support the expansion of this regulation to all non-domestic customers. They stated this would be low cost for suppliers to implement given they already have the systems and processes in place due to already having this requirement for Micro Business contracts. We have outlined our proposal in more detail below.

### TPI commission disclosure requirements

- 4.45 On 1 October 2022, SLC 7A.10C came into effect. This licence condition was brought into place as a result of the Micro Business Strategic Review.<sup>55</sup>

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<sup>54</sup> [The Gas and Electricity Regulated Providers \(Redress Scheme\) Order 2008 \(legislation.gov.uk\)](#)

<sup>55</sup> [Microbusiness Strategic Review: Decision to modify the SLCs of all gas and electricity supply licences | Ofgem](#)

- 4.46 This condition was introduced for Micro Business Consumers to aid transparency when working with TPIs. Research done as part of the Micro Business strategic review found low transparency of TPI commission payments with Micro Business Consumers paying thousands in commissions without being aware. As a result, we wanted to raise awareness for Micro Business Consumers by ensuring they were informed of the commissions they were paying. We have received feedback that this has been beneficial to Micro Business Consumers.
- 4.47 We would, though, like to hear feedback on how commissions disclosure is best presented in order to be understood by businesses. One stakeholder has suggested that it would be better to represent it as a cost per unit of energy, instead of presenting a lump sum on an annual basis, which could be open to gaming of expected annual quantities.
- 4.48 We are keen to get information from stakeholders about whether this change should apply to all non-domestic customers or a sub-set, as described in earlier proposals. We also wish to know the costs and benefits of implementing the preferred change. As noted, some suppliers felt that given this licence condition is already in place for all suppliers with Micro Business Consumers, it should be fairly low cost for suppliers to implement. But we are mindful that not all non-domestic suppliers currently supply Micro Business Consumers. We would welcome feedback if any suppliers would deem the introduction of this licence condition to impose unreasonable cost that outweigh the benefits of improved transparency to their customers, particularly from suppliers who do not currently have Micro Business Consumers. We also want to hear views from suppliers on how long it would take to make any changes.
- 4.49 To support stakeholder understanding of how the policy could be implemented we have outlined potential changes to the licence condition in Appendix 2. Our suggested text applies to expanding to all non-domestic customers, as this is our preferred option. However, if there is a preference to only expand up to a sub-set of customers, similar drafting would apply.
- 4.50 We note that given our other proposed introduction of a licence condition requiring suppliers to work only with TPIs who are signed up to a QDSS, we propose grouping the two proposed licence condition changes. This is because both conditions are related to working with TPIs including brokers and would apply to business larger than Micro Business Consumers. Therefore, by bringing out SLC7A.10C into a new section we hope it will aid in understanding the scope of the licence conditions. We do not think it is logical to amend SLC7A.10C to

cover all non-domestic customers (or a sub-set) whilst the rest of SLC 7A applies only to Micro Business Consumers, as it will likely lead to confusion in application.

Other matters noted: Cooling off period

- 4.51 Two customer representative groups raised the matter of the lack of a cooling off period for Micro Business Consumers when they enter into contracts with energy suppliers. For domestic energy customers there is a 14 day cooling off period. This is a 14 day period after you switch where you can change your mind around the contract and cancel with no consequences. In the Micro Business Strategic Review<sup>56</sup> this was raised as a potential option. However, this was not progressed due to work happening at the time on the faster switching period. We noted in that document that we may review the idea of a cooling off period in the future, once faster switching went live, which it now has. These two stakeholders have requested that we look into this again as it is something they wish to see implemented, to protect Micro Business Consumers. We will engage with stakeholders in order to determine when the appropriate time to review this may be, given our other proposals.

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<sup>56</sup> [Microbusiness Strategic Review: Decision to modify the SLCs of all gas and electricity supply licences | Ofgem](#)

## 5. Next steps

### Policy Consultation

- 5.1 We will consult on our proposals for six weeks. Please send any responses to [NonDomesticRetailPolicy@ofgem.gov.uk](mailto:NonDomesticRetailPolicy@ofgem.gov.uk) by 6 September 2023. Unless described as confidential, we intend to publish consultation responses on our website.
- 5.2 Following closure of the consultation, we will review all responses fully, considering all the feedback and evidence we have received in response to our proposals. We aim to publish our decision on our proposals in Autumn 2023.

### Statutory consultation

- 5.3 If we decide to implement proposed licence changes after considering responses to this consultation, we plan to publish a statutory consultation in Autumn 2023 on our proposed licence changes. We expect changes to be implemented in winter 2023 after allowing for the required statutory processes.<sup>57</sup>
- 5.4 Responses to this consultation together with other evidence-gathering over the coming months will inform impact assessments for any proposed licence changes. Our evidence gathering will include further requests for information from suppliers. Also, we are currently undertaking quantitative and qualitative consumer research to inform our views.

### Voluntary actions

- 5.5 We will continue to work with customer representatives and suppliers to find resolutions to issues which could be implemented through industry initiatives or non-licence support. As set out in this document, future initiatives will include improved billing transparency.
- 5.6 In the meantime, we want suppliers to take note of the findings in this document and to actively re-evaluate their internal governance, oversight and culture, with full board member and chair input, to ensure they are delivering the right outcomes for their customers.

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<sup>57</sup> We will follow the mandatory timescales which allow a minimum of 28 days for responses to a statutory consultation and 58 days minimum for a licence condition change to take effect from the date of publication of a decision document.



## **Further work**

- 5.7 We have identified some issues in our consultation where further discussions will need to take place with stakeholders to progress work:
- **Improved monitoring of suppliers.** We intend to work with suppliers over the summer to develop and refine a regular RFI, with broader scope than our existing regular Micro Business Consumer RFI, to deepen our monitoring of the non-domestic market on an ongoing basis.
  - **Compliance of existing licence conditions.** We will consider whether and where deeper compliance reviews are needed to ensure existing Micro Business Consumer licence conditions are being adhered to, following stakeholder reports of potential issues. These are in addition to the ongoing compliance and enforcement work related to potential breaches of our deemed contract and EBR5 rules.
  - **Cooling off period for non-domestic contracts.** We intend to engage with stakeholders in due course to determine an appropriate time to review whether changes to the cooling off period are needed.
  - **Working with government.** We have noted a number of areas in this document where government, not Ofgem, have the vires to enact changes. We look forward to continuing to work with government to achieve improved outcomes for energy consumers.
  - We expect that responses to this consultation may also propose other areas of work. We will consider these proposals in light of any evidence we receive on the new proposals and our existing ones.
- 5.8 We thank our stakeholders for the productive engagement we have had to date. We look forward to receiving your responses to this consultation and our future engagement.

## Appendices

Index

<b>Appendix</b>	<b>Name of Appendix</b>	<b>Page number</b>
1	Draft Guidance on Deemed Contract Rates	75
2	Draft Standard Licence Conditions	90
3	Updated guidance on domestic classification	98
4	Summary of Questions	100
5	Glossary	102
6	Privacy notice on consultations	108

## **Appendix 1 – Draft Guidance on Deemed Contracts**

### **Guidance on Deemed Contracts**

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Publication date:

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Contact: Louise van Rensburg, Kate Addiscott

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Team: Non-domestic retail policy

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Email: [nondomesticretailpolicy@ofgem.gov.uk](mailto:nondomesticretailpolicy@ofgem.gov.uk)

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This document provides guidance on Standard Licence Condition 7.3 and 7.4 of the Electricity and Gas supply licences (the “deemed rates licence condition”), for all suppliers in Great Britain. This guidance applies both to domestic and non-domestic suppliers. We will clarify in the guidance where there are differences between the requirements for domestic customers and non-domestic customers. We will periodically review this guidance to ensure that it remains fit for purpose and consult stakeholders prior to making any changes which might result from our review. As such, we welcome any comments you may have on it.

This document explains what we expect suppliers to do in setting their deemed contract rates for all customers. Suppliers are responsible for keeping up to date with the latest version of the rules on deemed rates.

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10 South Colonnade, Canary Wharf, London, E14 4PU.

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**Contents**

**Draft Guidance on Deemed Contracts ..... 79**

**Executive Summary.....79**

**Introduction.....80**

    Context and related publications.....80

    Your feedback.....81

**Deemed rates – Key principles and definitions.....82**

    Key principles and definitions.....82

        Issuance of guidance.....82

        Compliance and enforcement.....82

        Standard Licence Condition 7.3.....83

        The General principles of when a deemed contract is likely to exist.....84

        Standard Licence Condition 7.4.....85

        Significantly exceeds.....85

        Setting of deemed rates.....86

        Relevant classes of customers.....87

        Regular evaluation of rates.....88

        Information for customers.....88

## **Executive Summary**

This document provides guidance on Standard Licence Conditions (SLC) 7.3 and 7.4 of the Electricity and Gas Standard Licence Conditions for Supply, in accordance with SLC 7.14 which sets out that following consultation, the Authority may issue guidance on standard condition 7; and may from time to time revise the guidance following further consultation. The licensee must have regard to any guidance on standard condition 7.

The guidance considers Ofgem's approach to compliance and enforcement of SLC 7.3 and 7.4. It focusses on guidance for suppliers when setting deemed contract rates. It lays out key principles of deemed contract rates and how they are defined for the purpose of the SLC. It provides examples of when a deemed contract may exist. It confirms that this guidance does not apply to 'Out-of-Contract' rates.

This document outlines the definition and interpretation of the term "significantly exceeds" for the purpose of SLC 7.4(a). It explains what Ofgem considers to be good practices for suppliers in relation to setting their deemed rates and elements of how we interpret unduly onerous. This includes the frequency of update, reasons for updating, relevant classes of consumers, pricing policies and methodologies.

## Introduction

### Context and related publications

- A1.1 Ofgem's principal objective is to protect the interests of existing and future electricity and gas consumers.<sup>58</sup> We consider whether any regulatory requirement we are proposing to introduce is the best way to protect consumers, including having regard to their interests in terms of fair prices, quality and standards, the reduction of greenhouse gases and in the security of the supply of gas and electricity to them.
- A1.2 SLC 7 (Terms of Contracts and Deemed Contracts) was subject to review in 2006/7, during the supply licence review:  
<https://www.ofgem.gov.uk/publications/12807-supply-licence-review-final-proposals>
- A1.3 Further information about the changes that were made to the Deemed Rates Licence condition, including changing its numbering from SLC 28 to SLC 7, can be found in the following memo:  
<https://www.ofgem.gov.uk/sites/default/files/docs/2006/06/14319-deemed-contracts.pdf>
- A1.4 For further Guidance on Deemed Contract relationships, please see the following note: [Guidance on deemed contracts as per Standard Licence Condition 7.3 of the Gas and Electricity Supply Licences.pdf \(ofgem.gov.uk\)](#)
- A1.5 We recently invited stakeholders to give their views on the state of the non-domestic retail energy market in our Call for Input (CfI) on the Non-Domestic gas and electricity market, which closed on 31 March 2023: [Call for input on the Non-Domestic gas and electricity market | Ofgem](#)
- A1.6 Standard Conditions of Gas Supply Licence:  
<https://www.ofgem.gov.uk/sites/default/files/2023-03/Gas%20Supply%20Standard%20Consolidated%20Licence%20Conditions%20-%20Current.pdf>
- A1.7 Standard Conditions of Electricity Supply Licence:  
[ofgem.gov.uk/sites/default/files/2023-03/Electricity Supply Standard Consolidated Licence Conditions - Current.pdf](https://www.ofgem.gov.uk/sites/default/files/2023-03/Electricity%20Supply%20Standard%20Consolidated%20Licence%20Conditions%20-%20Current.pdf)

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<sup>58</sup> Section 3A Electricity Act 1989; Section 4AA Gas Act 1986.



A1.8 Schedule 2B to the Gas Act 1986 (as amended):

<https://www.legislation.gov.uk/ukpga/1986/44/contents#sch4>

A1.9 Schedule 6 to the Electricity Act 1989 (as amended):

<https://www.legislation.gov.uk/ukpga/1989/29/contents#sch6>

## Your feedback

### General feedback

A1.10 We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this guidance. We'd also like to get your answers to these questions:

- i. Do you have any comments about the overall quality of this guidance?
- ii. Do you have any comments about its tone and content?
- iii. Was it easy to read and understand? Or could it have been better written?
- iv. Any further comments?

Please send any general feedback comments to [NonDomesticRetailPolicy@ofgem.gov.uk](mailto:NonDomesticRetailPolicy@ofgem.gov.uk).

## Deemed rates – Key principles and definitions

### Section summary

This section sets out the basis for Ofgem issuing Guidance on SLC 7.3 and 7.4. It lays out Ofgem’s approach to Compliance and Enforcement with respect to SLC 7.3 and 7.4. It also sets out the key principles and definitions with respect to SLC 7.3 and 7.4, including how “significantly exceeds” is defined. It sets out the behaviours Ofgem expects to see from suppliers when setting their deemed rates and complying with SLC 7.3 and 7.4.

### Key principles & definitions

#### Issuance of guidance

- A1.11 SLC 7.14 sets out that the licensee must have regard to any guidance Ofgem issues on standard condition 7, after consulting on the guidance.
- A1.12 Once finalised, this guidance will be both binding and enforceable for Domestic and Non-domestic suppliers.

#### Compliance and enforcement

- A1.13 We may carry out investigations into the activities of suppliers we believe may have breached one or more conditions of their licence or relevant requirements under the Gas Act 1986 and the Electricity Act 1989.<sup>59</sup> Ofgem may investigate any potential breaches of SLC 7.3 and 7.4. If a breach is found, Ofgem may engage in compliance and enforcement action.
- A1.14 Our Enforcement Guidelines<sup>60</sup> set out the approach we take to enforcing against all licence conditions, including the Standards of Conduct.<sup>61</sup> The guidelines also set out a number of enforcement tools we may use as an alternative to exercising our statutory enforcement powers. Enforcement action may include issuing directions, making orders, or infringement decisions to bring an end to a breach; remedy the loss or harm caused by a breach; imposing financial penalties; or obtaining voluntary redress payments. It can also include accepting commitments or undertakings relating to future conduct or arrangements.

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<sup>59</sup> For further information, please see: Compliance and Enforcement <https://www.ofgem.gov.uk/energy-policy-and-regulation/compliance-and-enforcement>

<sup>60</sup> The Enforcement Guidelines <https://www.ofgem.gov.uk/publications/enforcement-guidelines>

<sup>61</sup> The domestic and non-domestic Standards of Conduct are set out in SLC 0 and 0A respectively.

A1.15 Generally, the Authority has the discretion to impose a financial penalty where it is satisfied that a licensee has contravened or is contravening any condition of its licence. We can impose financial penalties of up to 10% of a regulated person's turnover. We may also issue consumer redress orders and issue provisional/final orders, where appropriate, for breaches of relevant licence conditions and other relevant requirements under the Gas Act 1986 and the Electricity Act 1989.

### **Standard Licence Condition 7.3**

A1.16 Standard Licence Condition 7.3 requires that suppliers must take all reasonable steps to ensure that the terms of each of its Deemed Contracts are not unduly onerous.

A1.17 Whilst the general principles<sup>62</sup> are intended to reflect Ofgem's views on when a Deemed Contract relationship exists with a supplier, we acknowledge that the precise legal position will depend on the individual circumstances of each case.<sup>63</sup> On this basis, Ofgem recognises that it may be necessary to carry out a case-by-case assessment of whether a Deemed Contract exists before any potential enforcement action could be taken in relation to a breach of Standard Licence Condition 7.3.

A1.18 Any terms of a contract which deals with what will happen in the event of termination and/or expiry will constitute principal terms for the purposes of the standard conditions of the gas and electricity supply licences.<sup>64</sup> For example, this means that suppliers will need to bring such terms to the attention of domestic customers<sup>65</sup> and Micro Business consumers<sup>66</sup> before they enter into a supply contract.

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<sup>62</sup> Please also see: Guidance on deemed contract relationship

<https://www.ofgem.gov.uk/sites/default/files/2021-11/Guidance%20on%20deemed%20contracts%20as%20per%20Standard%20Licence%20Condition%207.3%20of%20the%20Gas%20and%20Electricity%20Supply%20Licences.pdf>

<sup>63</sup> This may include the construction and effect of terms in the original contract and the conduct of the parties.

<sup>64</sup> This is because the definition of 'Principal Terms' contained in standard condition 1 of the gas and electricity supply licences covers terms that relate to "the duration of the Contract" and "any other term that may reasonably be considered to significantly affect the evaluation by the Customer of the Contract".

<sup>65</sup> Standard condition 23.1 of the gas and electricity supply licences provides that "[b]efore it enters into a Domestic Supply Contract with a Domestic Customer, the [supplier] must take all reasonable steps to bring the Principal Terms of that contract to the attention of that customer."

<sup>66</sup> Standard condition 7A of the gas and electricity supply licences provides that "[b]efore the [supplier] enters into a Micro Business Consumer Contract, it must take all reasonable steps to bring the following information to the attention of the Micro Business Consumer and ensure that

A1.19 A Deemed Contract relationship will normally exist in circumstances where any type of customer moves into new premises, and starts to consume gas and/or electricity, without agreeing a contract with a supplier. However, a Deemed Contract relationship may also arise in some circumstances where an existing contract comes to an end and the customer continues to consume gas and/or electricity.

A1.20 'Out of Contract' (OoC) rates (terminologies may vary by supplier and customer) are the rates customers are put onto, as defined by the terms of their contract, when their current contract continues to apply after the fixed term period of a contract has expired. By our definition of deemed rates, these rates are not 'deemed' and therefore are not captured by SLC 7. It is important to note that this guidance does not cover OoC rates, within the definition of such rates provided above.

A1.21 However, in the case that the contract does not continue to apply, and the customers are moved onto deemed rates, this guidance does apply.

A1.22 A Deemed Contract within the meaning of this guidance is only intended to cover the relationship between a supplier and customer created by paragraph 8 of Schedule 2B to the Gas Act 1986 and/or paragraph 3 of Schedule 6 to the Electricity Act 1989.

### **The General principles of when a deemed contract is likely to exist**

A1.23 Where a contract is terminated (by either the supplier or the customer) and the supplier continues to supply the same customer, a deemed contract is likely to exist if the following circumstances apply:

- the original contract does not expressly provide for what will happen after termination (eg the original contract does not provide that the original terms will continue to apply); and
- the existing customer continues to consume gas and/or electricity at the premises.

A1.24 Where a contract expires by the passage of time and the supplier continues to supply the same customer, a deemed contract is likely to exist if the following circumstances apply:

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the information is communicated in plain and intelligible language: [...] (b) the Principal Terms of the proposed Contract." However, it is important to note that standard condition 7A only applies to new contracts (or extensions of existing contracts) that are entered into with Micro Business Consumers on or after 18 January 2010.

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- the original contract does not expressly provide for what will happen after expiry (eg the original contract does not contain renewal provisions or otherwise provide that the original terms will continue to apply); and
- the existing customer has made the supplier aware (expressly or implicitly) that it does not intend the original contract to continue (or vice versa); and
- the customer continues to consume gas and/or electricity at the premises

#### **Standard Licence Condition 7.4**

A1.25 One way in which the terms of a Deemed Contract will be unduly onerous for any class of Domestic Customers or for any class of Non-Domestic Customers is if the revenue derived from supplying gas/electricity to the premises of the relevant class of customers on those terms:

- (a) significantly exceeds the licensee's costs of supplying gas/electricity to such premises; and
- (b) exceeds such costs of supplying gas/electricity by significantly more than the licensee's revenue exceeds its costs of supplying gas/electricity to the premises of the generality of its Domestic Customers or, as the case may be, to the premises of the generality of its Non-Domestic Customers (in each case excluding from the calculation premises supplied in accordance with standard condition 8 (Obligations under Last Resort Supply Direction)).

A1.26 It should be noted that the test in Standard Licence Condition 7.4 is only one way in which Deemed Contracts may be considered to be unduly onerous. Each individual case will be determined on a case-by-case basis by Ofgem.

#### **Significantly exceeds**

A1.27 As noted, SLC 7.4 is one way in which deemed rates may be considered to be unduly onerous. SLC 7.4(a) refers to the situation in which the revenue derived from supplying gas or electricity to customers on those terms significantly exceeds the costs of supplying gas or electricity.

A1.28 In the context of SLC 7.4(a), we consider that 'significantly exceeds' for the purpose of determining if deemed rates are unduly onerous, means that the deemed rate is much higher than an equivalent contracted rate, and that this difference between the deemed rate and the equivalent contracted rate is not otherwise justified. An equivalent contract rate in this context means a contracted rate that is comparable to the deemed rate. For example, a contract rate for Small to Medium enterprises (SME)s and a deemed rate for SMEs, across a broadly equivalent time period (for example, comparing a contract rate taken out

on 1 Jan 2022 for a year with the deemed rates throughout 2022), where there may be similar energy usage/consumption for this SME on deemed and the equivalent contracted.

A1.29 Ofgem will consider this on a case-by-case basis, however, some of the criteria Ofgem may consider in this assessment include:

- The difference between the elements in contracted rates and deemed rates and the reasons for them, including the elements that make up standing charges, unit rates and margins, as relevant.
- The suppliers' methodology in setting the deemed rates. This may include whether there is a clear, thought-out process, with consideration given to the relevance of the deemed charge to the type of customer generally being exposed to it and where they are based. This methodology should also include a regular review to check whether the methodology could be routinely over-compensating expected costs, resulting in higher deemed charges than are necessary.

A1.30 We would not usually consider it to be unduly onerous for increased charges associated with the costs of supplying deemed rates customers to be reflected in the deemed charges. For example, non-domestic customers supplied on a deemed contract may attract higher wholesale costs due to the reduced ability a supplier has to predict future use and manage their risk exposure through hedging. In the following sections, we define further how we determine deemed rates to be unduly onerous.

A1.31 However, it should be noted that this will be assessed on a case-by-case basis by Ofgem. Suppliers must make their own assessment as to whether they are in compliance with the Licence condition.

### **Setting of deemed rates**

A1.32 There are certain behaviours which Ofgem expects to see suppliers undertaking with respect to the setting of their deemed rates. These are laid out in the respective headings below.

A1.33 It should be noted that the below does not encompass all examples of how suppliers should behave with respect to their deemed rates. This guidance is not a substitute for any regulation or law and should not be taken as legal advice. We will consider each case on its merits and will apply the guidance as is appropriate to do so.

- A1.34 We do not set pricing methodologies or hedging strategies for non-domestic deemed rates. While deemed rates should not be unduly onerous, each supplier will have their own hedging and pricing strategies.
- A1.35 This guidance does not replace any of the additional protections provided to Micro Business Consumers<sup>67</sup> nor those provided to domestic customers. Any references to licence conditions which apply exclusively to domestic consumers are not applicable to non-domestic consumers or their supply contracts
- A1.36 Without prejudice to SLC 22A, the individual pricing of deemed rates is a matter for suppliers. Please note that if you are a non-domestic supplier supplying non-domestic customers, you are not required to apply the additional protections for domestic consumers to your non-domestic customer base.
- A1.37 However, there are certain principles which Ofgem views as necessary in respect of pricing for suppliers to ensure their deemed rates are not unduly onerous.

### **Relevant classes of customers**

- A1.38 Suppliers should ensure that they have deemed rates which are applicable to relevant classes of customers. We consider that this does not refer to simply domestic or non-domestic customers, but instead refers to sub-categories of customers such as Micro Business, SME and I&C, or HH and non-HH, for example. Given that there is significant range in the pricing across customers, it would not be suitable to assume one price for, for example, all non-domestic customers where a suppliers contracted prices ranges across their non-domestic customers. As such, relevant classes of customers in this context may refer to the groups of customers that have similar contract pricing based on consumption rates, meter classifications and/or location, as appropriate.
- A1.39 Suppliers must ensure that their deemed contract pricing considers the customer base which they serve. For example, if the highest band in a network charge across all regions is chosen for their deemed contract charges and no review is done to consider the spread of their customers across regions and to select a cost accordingly, we would not consider this to be compliant with SLC 7.3 and 7.4, as you would in all likelihood be over-compensating your costs. Unless you could show that most of your deemed customers are historically in the highest price band/meter type/region.

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<sup>67</sup> Guidance for Micro Businesses <https://www.ofgem.gov.uk/information-consumers/energy-advice-businesses/guidance-microbusinesses>

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### **Regular evaluation of rates**

- A1.40 Suppliers must have a process in place to review their deemed rates on a regular basis. This refers specifically to a review of the deemed rate, not the methodology for setting the deemed rate. For example, the deemed rate standing charge and unit prices (or their underlying elements such as bad debt, margin, etc) may be updated following each review depending on a number of factors as outlined by the methodology (such as an increase in wholesale prices). Whilst it may also be useful for the supplier to review their methodology from time to time to ensure they are satisfied with how and when they update their deemed rates, this is not likely to need to be reviewed as regularly.
- A1.41 Deemed rates must be reviewed regularly enough to ensure that prices are appropriate and that the revenue suppliers are receiving from their deemed contract customers is not unduly onerous, and at the least in line with SLC 7.4. While circumstances may differ across suppliers, we consider that a review at least once a quarter of the rate is likely to be appropriate in most cases.
- A1.42 Ofgem may request suppliers provide proof that they are reviewing their deemed rates, including the criteria which suppliers have considered and the reasons for any change or decision to not change their rates.
- A1.43 Suppliers must consider their reasons for their deemed rates pricing decisions when reviewing their deemed rates and consider if they should be updated. Suppliers must be conscious of their supply licence conditions and ensure that they are not overcompensating any costs.
- A1.44 Suppliers comparing their deemed contract rates to other suppliers' deemed contract rates is not a valid measure of compliance with SLC 7.
- A1.45 Similarly, setting deemed contract rates at a higher level to incentivise customers to move onto contracted rates is not considered to be a justification for the level of deemed contract rates and may not be compliant with SLC 7.3 and 7.4.

### **Information for customers**

- A1.46 We expect suppliers to have up-to-date information about their deemed contract rates readily available for customers. This information should be easily accessible, for example easy to find on the supplier's website.
- A1.47 Suppliers must ensure that they meet the terms of SLC 7.7.
- A1.48 For any domestic customers, suppliers must also ensure that they meet the conditions of SLC 31I.1 when notifying customers of updated rates. Any



references to licence conditions which apply exclusively to domestic consumers are not applicable to non-domestic consumers or their supply contracts.

## Appendix 2 – Draft Standard Licence Conditions

### Draft Supply Licence conditions

Deletions are shown in strikethrough and new text is double underlined. We have only shown those licence conditions where modifications are proposed.

### Standard Gas Supply Licence

Condition 1.2 Definitions in alphabetical order

Principal Terms means, in respect of any form of Contract or Deemed Contract, the terms that relate to:

- (a) Charges for the Supply of Gas;
  - (aa) where the licensee is relying on sub-paragraph 22C.11(a) of standard condition 22C or sub-paragraph 23.8(a) of standard condition 23, the method by which Charges for the Supply of Gas fluctuate automatically;
  - (ab) where the licensee is relying on sub-paragraph 22C.11(b) of standard condition 22C or sub-paragraph 23.8(b) of standard condition 23, the precise variations to the Charges for the Supply of Gas;
  - (ac) Where the licensee is relying on paragraph 22C.11A of standard condition 22C and paragraph 23.8A of standard condition 23:
    - (i) moving a Domestic Customer from one payment method to another and the precise circumstances when that will occur; and
    - (ii) the precise variations to the Charges for the Supply of Gas and other terms and conditions which would occur as a result of the Domestic Customer being moved from one payment method to another;
  - (ad) Where the licensee is relying on paragraph 22C.11A of standard condition 22C but not paragraph 23.8A of standard condition 23, moving a Domestic Customer from one payment method to another and the precise circumstances when that will occur;
- (b) any requirement to pay Charges for the Supply of Gas through a Prepayment Meter;

(ba) in relation to a Domestic Supply Contract, any Credit Limiting which applies, including the Credit Limit;

(c) any requirement for a Security Deposit;

(d) the duration of the Contract or Deemed Contract (including, but not limited to, the duration of any fixed term periods and any arrangements for renewing or extending the duration of the Contract or any fixed term periods);

(e) the rights to end the Contract (including any obligation to pay a Termination Fee) or the circumstances in which a Deemed Contract will end,

and any other term that may reasonably be considered to significantly affect the evaluation by the Customer of the Contract under which gas may be supplied to his premises including for the avoidance of doubt, in relation to Micro Business Consumers any Third Party Costs, required to be paid or due to be paid in respect of the full duration of a ~~Microbusiness Consumer~~ Non-Domestic Consumer Contract and to be presented as (whether actual or where that is not possible, estimated amounts).

#### ~~Information on Third Party Costs~~

~~7A.10C.1 In addition to the requirement in condition 7A.9, where the licensee has entered into a Micro Business Consumer Contract, the licensee must provide to the Micro Business Consumer on request, information relating to any form of Third Party Costs paid or made, or due to be paid or made by the licensee, to a Third Party in respect of the full duration of that Micro Business Consumer Contract;~~

~~7A.10C.2 The licensee must ensure that the information that the licensee is required to disclose by virtue of condition~~

~~7A.10C.1:~~

~~(a) is disclosed as monies, whether actual amounts or (if that is not possible) estimated amounts;~~

~~(b) enables a Micro Business Consumer to understand the amount of those sums that it is due to pay which are, or are attributable to Third Party Costs due to the Third Party, as well as any Charges (so far as they are different) or other sums; and~~

~~(c) is drafted in plain and intelligible language.~~

7A.10C- not used

Working with Third Party Intermediaries

Dispute settlement

20.6 The licensee must provide to each of its Non-Domestic Customers information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute with the licensee or, ~~in the case of a Microbusiness Consumer,~~ any Third Party by providing that information on any relevant Promotional Materials sent to the Non-Domestic Customer and on or with each Bill or statement of account sent to each Non-Domestic Customer in relation to Charges or annually if the licensee has not sent such a Bill or statement of account to them. Such information must include, but is not limited to, how the procedures under any Qualifying Dispute Settlement Scheme can be initiated.

20.6A The licensee must ensure that any Third Party is a member of a Qualifying Dispute Settlement Scheme.

20.6B The licensee must provide any information it holds or controls which, in the view of the provider of the relevant Qualifying Dispute Settlement Scheme, is relevant to a dispute between a ~~Micro-Business Consumer~~ Non-Domestic Customer and a Third Party, to the provider of the relevant Qualifying Dispute Settlement Scheme, on request.

20.6C The provisions in this Condition 20.6 insofar as they relate to dispute settlement between a Microbusiness Consumer and a Third Party shall take effect on and from 1 December 2022 for a date specified by the Authority. The provisions in this Condition 20.6 insofar as they relate to dispute settlement between a Non-Domestic Consumer and a Third Party shall take effect on and a date to be confirmed for a date specified by the Authority.

20.6D For the purposes of this Condition: **'Qualifying Dispute Settlement Scheme'** means any scheme of dispute settlement, resolution and/or redress operated by the Relevant Energy Ombudsman or such other organisation as demonstrably provides independent, fair, effective and transparent out of court dispute settlement relating to Relevant Third Party Activities and constitutes a Qualifying Dispute Settlement Scheme in accordance with any guidance issued by the Authority,

**'Relevant Third Party Activities'** means any activity undertaken by a Third Party in respect of a ~~Micro-Business~~ Non-Domestic Supply Contract including (but without prejudice to the generality of the foregoing):

(a) any written or oral communications relating to the supply of gas to a Non-Domestic ~~Micro-Business-Consumer~~ including:

- (i) any pre-sales communications;
- (ii) any communications regarding Billing or Contractual Information; and
- (iii) any matters falling within the scope of standard conditions 7A, 14, 14A and 21B (insofar as they relate to a Micro Business Consumer); and

(b) any processing of information relating to the supply of gas to a ~~Micro-Business~~ Non-Domestic Consumer, together with any other Relevant Activities as the Authority may direct from time to time, following consultation.

#### Information on Third Party Costs

20.7 The licensee must provide to the ~~Micro-Business~~ Non-Domestic Consumer on request, information relating to any form of Third Party Costs paid or made, or due to be paid or made by the licensee, to a Third Party in respect of the full duration of that ~~Micro-Business~~ Non-Domestic Consumer Contract;

20.7A The licensee must ensure that the information that the licensee is required to disclose by virtue of condition

#### 20.7B:

(a) is disclosed as monies, whether actual amounts or (if that is not possible) estimated amounts;

(b) enables a ~~Micro-Business~~ Non-Domestic Consumer to understand the amount of those sums that it is due to pay which are, or are attributable to Third Party Costs due to the Third Party, as well as any Charges (so far as they are different) or other sums; and

(c) is drafted in plain and intelligible language.

**Standard Electricity Supply licence**

Principal Terms means, in respect of any form of Contract or Deemed Contract, the terms that relate to:

(a) Charges;

(aa) where the licensee is relying on sub-paragraph 22C.11(a) of standard condition 22C or sub-paragraph 23.8(a) of standard condition 23, the method by which Charges for the Supply of Electricity fluctuate automatically;

(ab) where the licensee is relying on sub-paragraph 22C.11(b) of standard condition 22C or sub-paragraph 23.8(b) of standard condition 23, the precise variations to the Charges for the Supply of Electricity;

(ac) Where the licensee is relying on paragraph 22C.11B of standard condition 22C and paragraph 23.8A of standard condition 23:

- (i) moving a Domestic Customer from one payment method to another and the precise circumstances when that will occur; and
- (ii) the precise variations to the Charges for the Supply of Electricity and other terms and conditions which would occur as a result of the Domestic Customer being moved from one payment method to another;

(ad) Where the licensee is relying on paragraph 22C.11B of standard condition 22C but not paragraph 23.8A of standard condition 23, moving a Domestic Customer from one payment method to another and the precise circumstances when that will occur;

(b) any requirement to pay Charges through a Prepayment Meter;

(ba) in relation to a Domestic Supply Contract, any Credit Management which applies, including the Credit Limit;

(bb) in relation to a Domestic Supply Contract, any Load Limiting which applies, including the Load Limit;

(c) any requirement for a Security Deposit;

(d) the duration of the Contract or Deemed Contract (including, but not limited to, the duration of any fixed term periods and any arrangements

for renewing or extending the duration of the Contract or any fixed term periods);

(e) the rights to end the Contract (including any obligation to pay a Termination Fee) or the circumstances in which a Deemed Contract will end,

and any other term that may reasonably be considered to significantly affect the evaluation by the Customer of the Contract under which electricity may be supplied to his premises including for the avoidance of doubt, in relation to ~~Micro Business Consumers~~ Non-Domestic Consumers any Third Party Costs, required to be paid or due to be paid in respect of the full duration of a Microbusiness Consumer Contract and to be presented as monies (whether actual or where that is not possible, estimated amounts).

#### ~~Information on Third Party Costs~~

~~7A.10C.1 In addition to the requirement in condition 7A.9, where the licensee has entered into a Micro Business Consumer Contract, the licensee must provide to the Micro Business Consumer on request, information relating to any form of Third Party Costs paid or made, or due to be paid or made by the licensee, to a Third Party in respect of the full duration of that Micro Business Consumer Contract;~~

~~7A.10C.2 The licensee must ensure that the information that the licensee is required to disclose by virtue of condition~~

~~7A.10C.1:~~

~~(a) is disclosed as monies, whether actual amounts or (if that is not possible) estimated amounts;~~

~~(b) enables a Micro Business Consumer to understand the amount of those sums that it is due to pay which are, or are attributable to Third Party Costs due to the Third Party, as well as any Charges (so far as they are different) or other sums; and~~

~~(c) is drafted in plain and intelligible language.~~

7A.10C- not used

#### Working with Third Party Intermediaries

## Dispute settlement

20.5 The licensee must provide to each of its Non-Domestic Customers information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute with the licensee or, ~~in the case of a Microbusiness Consumer~~, any Third Party by providing that information on any relevant Promotional Materials sent to the Non-Domestic Customer and on or with each Bill or statement of account sent to each Non-Domestic Customer in relation to Charges or annually if the licensee has not sent such a Bill or statement of account to them. Such information must include, but is not limited to, how the procedures under any Qualifying Dispute Settlement Scheme can be initiated.

20.5A The licensee must ensure that any Third Party is a member of a Qualifying Dispute Settlement Scheme.

20.5B The licensee must provide any information it holds or controls which, in the view of the provider of the relevant Qualifying Dispute Settlement Scheme, is relevant to a dispute between a ~~Micro-Business Consumer~~ Non-Domestic Customer and a Third Party, to the provider of the relevant Qualifying Dispute Settlement Scheme, on request.

20.5C The provisions in this Condition 20.5 insofar as they relate to dispute settlement between a Microbusiness Consumer and a Third Party shall take effect on and from 1 December 2022 for a date specified by the Authority. The provisions in this Condition 20.5 insofar as they relate to dispute settlement between a Non-Domestic Consumer and a Third Party shall take effect on and a date to be confirmed for a date specified by the Authority.

20.5D For the purposes of this Condition: **'Qualifying Dispute Settlement Scheme'** means any scheme of dispute settlement, resolution and/or redress operated by the Relevant Energy Ombudsman or such other organisation as demonstrably provides independent, fair, effective and transparent out of court dispute settlement relating to Relevant Third Party Activities and constitutes a Qualifying Dispute Settlement Scheme in accordance with any guidance issued by the Authority,

**'Relevant Third Party Activities'** means any activity undertaken by a Third Party in respect of a ~~Micro-Business~~ Non-Domestic Supply Contract including (but without prejudice to the generality of the foregoing):



(a) any written or oral communications relating to the supply of gas to a Non-Domestic Micro-Business Consumer including:

- (i) any pre-sales communications;
- (ii) any communications regarding Billing or Contractual Information; and
- (iii) any matters falling within the scope of standard conditions 7A, 14, 14A and 21B (insofar as they relate to a Micro Business Consumer); and

(b) any processing of information relating to the supply of gas to a Micro-Business Non-Domestic Consumer, together with any other Relevant Activities as the Authority may direct from time to time, following consultation.

#### Information on Third Party Costs

20.6 The licensee must provide to the Non-Domestic Micro-Business Consumer on request, information relating to any form of Third Party Costs paid or made, or due to be paid or made by the licensee, to a Third Party in respect of the full duration of that Non-Domestic Consumer Contract;

20.6A The licensee must ensure that the information that the licensee is required to disclose by virtue of condition

#### 20.6B:

(a) is disclosed as monies, whether actual amounts or (if that is not possible) estimated amounts;

(b) enables a ~~Micro-Business~~ Non-Domestic Consumer to understand the amount of those sums that it is due to pay which are, or are attributable to Third Party Costs due to the Third Party, as well as any Charges (so far as they are different) or other sums; and

(c) is drafted in plain and intelligible language.

## Appendix 3 – Updated guidance on domestic classification

### Guidance on the classification of premises for the purposes of the standard conditions of the gas and electricity supply licences

A3.1 In our CfI we asked for views on making clarifications to some terms used in our existing guidance on the definition of a domestic consumer. The substance of our definition of when a customer is a domestic consumer has not changed from our position set out in our 2002 guidance,<sup>68</sup> reiterated in the 2012 decision,<sup>69</sup> and restated again in the 2015 guidance<sup>70</sup> regarding the classification of premises for the purposes of the standard conditions (specifically SLC 1 and 6<sup>71</sup>) of the electricity and gas supply licence conditions.

A3.2 The non-commercial collective purchase of gas and/or electricity supplied to a single meter point for wholly or mainly domestic use is classified as supply for domestic purposes if the terms between end consumers and the entity which has entered into a contract with the gas and/or electricity supplier are not Commercial in Nature. This includes non-standard residency structures, where:

- (a) Gas or electricity is supplied to the relevant premises by a single meter point;
- (b) the supply of gas or electricity to the relevant premises is for wholly or mainly domestic use on the proviso it is not resold;
- (c) the owners and/or tenants of the relevant premises have direct control over the entity that enters into a contract with the licensee for the supply of gas or electricity; and
- (d) the agreement between the entity that enters into a contract with the licensee for the supply of gas or electricity to the relevant premises and any other person for the provision of gas at that premises is not commercial in nature.

A3.3 All four of these conditions (a) through to (d) need to be met for a supply to be considered domestic.

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<sup>68</sup> [Ofgem's interpretation of the definition of the terms 'domestic customer' and 'domestic premises' as they appear in the gas and electricity supply licences. | Ofgem](#)

<sup>69</sup> <https://www.ofgem.gov.uk/ofgem-publications/38443/classofpremisesdecisionletter.pdf>

<sup>70</sup> [Guidance on the classification of premises for the purposes of the standard conditions of the gas and electricity supply licences | Ofgem](#)

<sup>71</sup> [Licences and licence conditions | Ofgem](#)

## **The clarifications**

A3.4 We provide the following clarifications of terms:

- We consider “**Commercial in Nature**” (SLC 6.2) to be an activity between businesses consisting of offering goods or services in exchange for a remuneration. An activity whereby good or services are offered on the market against remuneration would be an economic or in other words commercial activity.
- We consider “**Ancillary premises**” (SLC 6.5) to be premises in support of a main business premise (eg a flat above a pub); in other words, they exist to support the function of the main premise and the way they operate is directly dependant on the main premises’ function.
- We consider a “**Bespoke domestic contract**” to be one that is tailored to the individual needs of the customer being supplied by the licensee and is not widely available to the open market.

## Appendix 4 – Summary of Questions

### Complete list of policy consultation questions

**Q1.** Do you agree with our proposal to agree voluntary improved pricing transparency and if so, please include comments on the particular areas you would like to see made more transparent?

**Q2.** Do you agree with our proposed definition of 'significantly exceeds'? Please provide your reasons.

**Q3.** Do you agree with our proposal that suppliers should review deemed contract rates quarterly? Please provide your reasons.

**Q4.** Are there any potential implications for domestic customers that the proposed guidance on deemed contract rates may impact on?

**Q5.** Do you have any further comments on our proposals for the deemed contract guidance?

**Q6.** Do you have any other comments on the other proposals in this Pricing and contract behaviour section?

**Q7.** Which documents, or combination of documents do you believe would provide a robust evidence base to demonstrate a genuine CoT/CoO?

**Q8.** Are Micro Business Consumers aware they can contact Citizens Advice for support? Do we need to introduce a rule requiring suppliers to signpost them more specifically?

**Q9.** Is an obligation requiring efficient and timely complaints handling needed? If so what are the costs and benefits associated with introducing this?

**Q10.** Is an obligation requiring recording, handling and processing of complaints in accordance with consistent rules needed? If so, what are the costs and benefits associated with introducing this?

**Q11.** Do you have any views on what (if any) threshold should apply on business size for complaints handling requirements, or views on which requirements set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not be expanded to apply to all non-domestic customers?

**Q12.** We are seeking stakeholder views on our suggested proposals to government around increasing access to the Energy Ombudsman. Should there be a threshold on who can access the Energy Ombudsman? If so, where should this be set?

- Q13.** We are seeking stakeholder views on the proposed changes to the rules requiring suppliers work with TPIs who are members of a redress scheme. Additionally, what are your views on the costs and benefits associated with the different proposals?
- Q14.** What are views from stakeholders on how long it would take to set up and register for a wider TPI ADR scheme, one that goes beyond Micro Business Consumers?
- Q15.** What are your views on our proposal to expand SLC 0A (non-domestic Standards of Conduct)? Do you have any views on which consumers they should or should not apply to? Please provide any views on costs and benefits of making this change.
- Q16.** Do you have any further comments on the proposals in this section on Competition in the market and customer complaints?
- Q17.** What are the views of Distribution Network Operators (DNOs), Independent Distribution Network Operators (IDNOs), Gas Distribution Networks (GDNs), and Independent Gas Transporters (IGTs) on the potential issues of targeting support to vulnerable end users supplied through non-domestic contracts?
- Q18.** What changes to the Maximum Resale Price direction would improve its effectiveness and what are the potential downsides to any changes?
- Q19.** What are the costs and benefits associated with the proposal to expand TPI commissions disclosures to all non-domestic customers? How long would it take suppliers to implement this policy?
- Q20.** Are there views on how commissions disclosure is best presented to be understood by consumers?
- Q21.** Should we expand commissions disclosure to all non-domestic customers or a sub-set of customers, and if a sub-set do you have views on how to define this?
- Q22.** Do you have any further comments on the proposals in this section on focussed consumer support?

## Appendix 5 – Glossary

### A

#### **Alternative Dispute Resolution Scheme (ADR)**

Alternative dispute resolution (ADR) refers to ways of resolving disputes between consumers and traders that don't involve going to court.

### C

#### **Call for Input (CfI)**

One of the ways we seek the views of stakeholders. These range from requests for information and evidence, to opportunities to join workshops or submit views via online surveys and other methods. Calls for input have a closing date, but do not pass through the formal stages of a consultation or conclude with a regulatory decision.

#### **Change of Occupier (CoO)**

CoO or Change of Occupier means that the Consumer occupying a premises has changed (or is due to change).

#### **Change of Tenancy (CoT)**

Moving into or out of a business premises where responsibility of the energy supply changes is known as a CoT or Change of Tenancy. The CoT process is the process through which you let your supplier know you are moving out of/into a property and thus need to either end or begin a new contract for your energy supply.

#### **Commission for Regulation of Utilities (CRU)**

The Commission for Regulation of Utilities (CRU) is Ireland's independent energy and water regulator

### D

#### **Distribution Network Operator (DNO)**

The company that owns and operates the power lines and infrastructure that connect a premise to the transmission networks operated by National Grid, Scottish Power and Scottish and Southern Energy. There are fourteen electricity distribution networks, each of which covers a separate geographic region of Great Britain.

## **E**

### **Energy Bill Relief Scheme (EBRS)**

The Energy Bill Relief Scheme was a government scheme that provided energy bill relief for non-domestic customers in Great Britain and Northern Ireland between 1 October 2022 and 31 March 2023. More details about can be found at: [Energy Bill Relief Scheme: help for businesses and other non-domestic customers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/energy-bill-relief-scheme-help-for-businesses-and-other-non-domestic-customers)

### **Energy Bill Support Scheme – Alternative Funding (EBSS-AF)**

The Energy Bill Support Scheme – Alternative Funding provided £200 support for energy bills of domestic consumers in Great Britain whose household was not connected to the mains gas grid or used alternative fuels as the main form of heating. The scheme closed on 31 May 2023.

### **Energy Bill Support Scheme – Alternative Fuel Payment (EBSS-AFP)**

The Energy Bill Support Scheme – Alternative Fuel Payment provided £400 support for energy bills of domestic consumers in Great Britain who did not have a direct relationship to a domestic electricity supplier. The scheme closed on 31 May 2023.

### **Energy Price Guarantee (EPG)**

From 1 October 2022 up until 30 June 2023 the Energy Price Guarantee provided a support rate discount to all households with a domestic gas and/or electricity contract. Bringing a typical household energy bill for dual-fuel gas and electricity down to around £2,500 per year in Great Britain. The government has issued information about who can access this support from 1 July 2023 [Energy Price Guarantee - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/energy-price-guarantee)

## **G**

### **Gas Distribution Network (GDN)**

The company that operates gas pipelines and infrastructure that connect a premise to the transmission networks operated by National Grid. There are eight gas distribution networks (GDNs), each of which covers a separate geographical region of Great Britain.

## **H**

### **Half-Hourly (HH)**

A way of metering energy use. Readings are made every half an hour via smart meters or advanced meters.

## **I**

### **Industrial and Commercial (I&C)**

Some of the largest uses of energy in the non-domestic sector, often involved in energy intensive processes.

### **Independent Distribution Network Operator (IDNO)**

Companies that operate smaller local electricity distribution systems within a wider distribution network area. The IDNOs networks are connected to DNOs network, but the same company can operate local distribution systems in any region, they are not limited to a geographic region.

### **Independent Gas Transporter (IGT)**

Companies that operate smaller local gas delivery systems within a wider gas distribution network area. The IGTs are connected to the Gas Distribution Network, but the same company can operate local distribution systems in any region, they are not limited to a geographic region.

## **K**

### **Kilowatt hour (kWh)**

Energy usage is calculated in kilowatt hours (kWh), sometimes also called 'units'. One kWh is enough to power a 100-watt lightbulb for 10 hours.

## **M**

### **Maximum Resale Price direction (MRP)**

A direction issued under section 37 of the Gas Act 1986 and section 44 of the Electricity Act 1989 by Ofgem that fixes (by amount or methodology) the maximum price at which gas and electricity may be resold. The current MRP direction states that the maximum price at which each unit of gas or electricity may be resold shall be the same as that paid to the authorised supplier by the person reselling it.

### **Micro Business Consumer**

"Micro Business Consumer" means a Non-Domestic Customer:

- a) which is a "relevant consumer" (in respect of premises other than domestic premises) for the purposes of article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268); or
- b) which has an annual consumption of not more than 293,000 kWh of gas.



- c) which has an annual consumption of not more than 100,000 kWh of electricity.

## **N**

### **Non-half Hourly (Non-HH)**

A way of metering energy use. It is based on estimates of when electricity is used, a profile of the average consumer usage and their own meter reads (taken over weeks and months).

## **O**

### **Out of Contract (OoC)**

Out of Contract rates are the rates customers are put onto, as defined by the terms of their contract, when their current contract continues to apply after the fixed term period of a contract has expired.

## **P**

### **Pence per day (p/day)**

The standing charge portion of an energy bill is usually charged in pence per day.

### **Pence per kilowatt hour (p/kWh)**

The commodity portion of an energy bill is usually charged in pence per kilowatt hour.

### **Priority Services Register (PSR)**

A Priority Services Register is a free support service for domestic consumers that makes sure extra help is available to people in vulnerable situations. A register is kept by licenced domestic energy suppliers and licenced network operators.

## **Q**

### **Qualifying Dispute Settlement Scheme (QDSS)**

'Qualifying Dispute Settlement Scheme' means any scheme of dispute settlement, resolution and/or redress operated by the Relevant Energy Ombudsman or such other organisation as demonstrably provides independent, fair, effective and transparent out of court dispute settlement relating to Relevant Third Party Activities and constitutes a Qualifying Dispute Settlement Scheme in accordance with any guidance issued by the Authority.

### **Qualifying Financially Disadvantaged Customers (QFDC)**

As set out in Part 5 of the [EBRS GB Regulations](#) and the [EBRS NI](#), Qualifying Disadvantaged Customers were a section of customers receiving energy through deemed contracts who were eligible for one of the discounts applied to their bills through the Energy Bill Relief Scheme.

## **R**

### **Retail Energy Code (REC)**

The key rules that energy suppliers must follow when selling to UK consumers.

### **Retail Energy Code Company (RECCo)**

A company established under the REC, to maintain, develop and provide oversight of the REC.

### **Request for Information (RfI)**

These are formal Requests for Information that we issue to suppliers as part of our monitoring, and to support our regulation work.

## **S**

### **Service Level Agreement (SLA)**

A contract between a service provider and its customer that outlines the standards of service the provider is obligated to meet.

### **Standard Licence Condition (SLC)**

Standard Licence Conditions are conditions that apply to all licensees of a particular licence type. These can be in and out of effect for licensees.

### **Standards of Conduct (SoC)**

The SoC are set out in SLC 0 and 0A of the gas and electricity supply licences. These are enforceable overarching rules aimed at ensuring licensees, and their representatives in the case of domestic suppliers, treat each domestic and Micro Business Consumer fairly.

## **T**

### **Targeted Charging Review (TCR)**

A review done by Ofgem to examine the 'residual charges' which recover the fixed costs of providing existing pylons and cables, and the differences in charges faced by smaller distributed generators and larger generators (known as Embedded Benefits). The final decision on TCR was that residual charges would be levied in the form of fixed charges

for all households and businesses, and that the liability for the Transmission Generation Residual for Generators would be removed and changes made to one of the 'Embedded Benefits' received by Smaller Distributed Generators in relation to balancing services charges.

**Third Party Intermediary (TPI)**

This means a third party organisation or individual that, either on its own or through arrangements with other organisations or individuals, provides information and/or advice to a Micro Business Consumer about the licensee's Charges and/or other terms and conditions and whose payment or other consideration for doing so is made or processed by the licensee.

## Appendix 6 – Privacy notice on consultations

### Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name, address, and anything that could be used to identify you personally) not the content of your response to the consultation.

#### **1. The identity of the controller and contact details of our Data Protection Officer**

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at [dpo@ofgem.gov.uk](mailto:dpo@ofgem.gov.uk)

#### **2. Why we are collecting your personal data**

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

#### **3. Our legal basis for processing your personal data**

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. ie a consultation.

#### **4. With whom we will be sharing your personal data**

We are not intending to share your personal data with other organisations. We are intending to publish non-confidential consultation responses, including any personal data that may be contained within them.

#### **5. For how long we will keep your personal data, or criteria used to determine the retention period.**

Your personal data will be held for six months after the project is closed.

#### **6. Your rights**

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- 1.1 know how we use your personal data
- 1.2 access your personal data
- 1.3 have personal data corrected if it is inaccurate or incomplete

- 1.4 ask us to delete personal data when we no longer need it
- 1.5 ask us to restrict how we process your data
- 1.6 get your data from us and re-use it across other services
- 1.7 object to certain ways we use your data
- 1.8 be safeguarded against risks where decisions based on your data are taken entirely automatically
- 1.9 tell us if we can share your information with 3<sup>rd</sup> parties
- 1.10 tell us your preferred frequency, content and format of our communications with you
- 1.11 to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**7. Your personal data will not be sent overseas.**

**8. Your personal data will not be used for any automated decision making.**

**9. Your personal data will be stored in a secure government IT system.**

**10. More information**

For more information on how Ofgem processes your data, click on the link to our "[Ofgem privacy promise](#)".