

**ICoSS response to Non-domestic market review Statutory consultation on licence**

The Industrial and Commercial Shippers and Suppliers (ICoSS) group is the trade body representing non-domestic industrial and commercial (I&C) suppliers in the GB energy market<sup>1</sup>.

**1. Alongside this consultation document we have published a draft impact assessment. Do you have any comments on the draft impact assessment published alongside this document, including the costs and benefits, competition impacts, and unintended consequences?**

**2. Is there anything that has not been included in the impact assessment that you believe should be included?**

We have not reviewed the impact assessment.

**3. Do you agree with our proposal to expand the Standards of Conduct to all Non-Domestic Consumers? Please provide a reason for your view.**

We are still of the view that extending standards of conduct to all market sectors will represent a cost to all suppliers, even if they currently adhere to them, owing to the need to monitor and track their customer-facing activities. We do not see that the cost of such enhanced activities is outweighed by their value as I&C customers are able to use market pressure to ensure appropriate engagement from their suppliers in this most competitive sphere of the market.

**4. Do you have any comments on our proposed draft licence text for SLC 0A?**

We have not undertaken a detailed review of the proposed licence drafting.

**5. Do you agree with our proposal to implement the SoC as soon as the updated licence condition takes effect? Please provide a reason for your view.**

No. Whilst we acknowledge the view from Ofgem that SoC should be already embedded in supplier processes, we believe it will take time for suppliers to put in place verification and monitoring processes to demonstrate that the SoC principles are being followed. We think realistically that six months should be given to suppliers to put in place such verification processes.

**6. Do you have any views on the updated draft Standards of Conduct Guidance?**

We note that the Standards of Conduct references examples which are extension of obligations in other areas have been deemed not applicable to larger non-domestic customers, for example regarding complaints handling. We believe that the guidance needs to be clarified to avoid any unintended policy creep.

**7. Do you agree with our proposal to align with government proposals and expand the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (CHS) to apply to Small Business Consumers? Please provide a reason for your view.**

We have a number of comments regarding the impact of expanding the current eligibility threshold. The size and complexity of the contracts that the new definition will cover will increase significantly and will require a much higher level of expertise when assessing the most appropriate course of action. We do not believe that the Energy Ombudsman currently has the expertise to address such complex cases. To ensure that a high-quality service provided, and to avoid the perception that the Energy Ombudsman is being given exclusive rights for Small Business Customers, we believe that that Ofgem's approval process should easily allow for arbitration organisations that currently service the Small Business sector to continue to operate in this sector.

More generally, we have concerns over the provision of ombudsman services. The Energy Ombudsman is not regulated or underpinned by any formal legislation, and is a private, non-for-profit, company. Any ombudsman for the market should be appointed by a tender process run by Ofgem or Government.

#### **8. Do you have any further comments on the proposed drafting of the CHS Statutory Instrument text?**

There are a number of challenges associated with interpreting the existing drafting which it would be beneficial to address.

The use of balance sheet and turnover has been extremely challenging and problematic for energy suppliers to operate to in practice. These can vary on a daily basis and are very difficult to check. In practice suppliers have operated a declaration process where customers inform the supplier if they meet the criteria. We believe it would be beneficial if the revised regulations recognised these difficulties, either creating an "all reasonable steps" for suppliers to obtain this information or requiring the customer to provide it at point of contract.

It is also currently unclear to suppliers on whether a customer should be assessed as being a microbusiness customer by referring to any fuels they do not supply. The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I.2008/2268) currently states that a Microbusiness customer is:

*(b) a person supplied or requiring to be supplied with gas or electricity at premises other than domestic premises, with—*

*(i) an annual consumption of—*

*(aa) electricity of not more than 100,000 kWh [amended from 55,000kWh by S.I. 2014/2378];; or*

*bb) gas of not more than 293,000 kWh [amended from 200,000kWh by S.I. 2014/2378]; or*

*(ii) (aa) fewer than 10 employees (or their full time equivalent); and*

*(bb) an annual turnover or annual balance sheet total not exceeding Euros 2 million.*

The Order makes this specific exclusion for any dual-fuel customers *where a person who is a relevant consumer under paragraph(b)(i) of the definition of "relevant consumer" receives gas and electricity supplied by the same regulated provider, the relevant consumer's annual*

*consumption of gas and electricity shall be treated separately for the purpose of determining their capacity as a relevant consumer to make a consumer complaint in respect of gas or electricity supply as the case may be.*

The order does not clarify whether an electricity supplier is required to take into account the gas consumption and vice versa. Ofgem currently does not provide a consistent view. In its current microbusiness factsheet it states that supplier should only assess the fuel they supply<sup>1</sup>. Ofgem however implies elsewhere that satisfying any of the criteria in the Order make a non-domestic customer a Microbusiness Customer<sup>2</sup>. These inconsistencies imply that further clarity is needed.

This inconsistency means that the Order can be interpreted as requiring some customers who have very large consumptions in one fuel, but much lower consumption in the other fuel to be classified as a microbusiness. We do not believe it is the intention of these proposals to give large I&C customers the same protections as small Microbusiness customers by inadvertently counting consumptions in both fuels when dealing with non-dual fuel customers. To address this issue, a clarificatory statement that a consumer is only treated as a Microbusiness customer by a supplier with regard to the fuel they supply when assessing consumption is required in the existing Order with regard to Microbusiness customers, and for Small Business Customers if the new definition is implemented.

**9. Do you have any comments on the proposed implementation timeline of 3 months from the date of decision?**

No. We believe that this timescale is too short for suppliers to identify such customers and put in place new operational procedures and training to deliver these new obligations, particularly for those suppliers who currently do not operate any formal complaints management processes. We believe that there a more realistic approach is to require to bring these new processes into place by October 2024 at the earliest.

**10. Do you agree with our proposal to require suppliers to inform their Micro and Small Business Consumers (if this is applied) that they can access, and how to contact, Citizens Advice and Citizens Advice Scotland? Please provide a reason for your view.**

We continue to note that Ofgem currently provides details of support from Citizen's Advice on its website and we believe that Ofgem is best placed to continue to publicise the existence of this additional support as it is seen to be an impartial party.

**11. What measures would suppliers intend to take to meet the obligation to signpost Small Business Consumers to Citizens Advice, and how would this impact costs?**

Our members will respond directly to this question.

**12. Do you have any comments on our proposed daft licence text for SLC 20.5A and**

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<sup>1</sup> <https://www.ofgem.gov.uk/publications/micro-business-factsheet-its-now-easier-micro-businesses-review-their-options-end-contract>

<sup>2</sup> <https://www.ofgem.gov.uk/information-consumers/energy-advice-businesses/types-business-energy-contracts>

**20.4A in the gas and electricity supply licences respectively? This proposed definition of Small Business Consumer includes Micro Business Consumers. However, do you think it would be preferable to explicitly set out in the licence condition that suppliers should signpost Micro Business Consumers and Small Business Consumers to Citizens Advice for the avoidance of doubt?**

We have no comments on the draft licence text.

**13. Do you agree with our proposed implementation timeframe of 3 months from the date of our final decision?**

To our knowledge we do not believe that Citizen's Advice currently provides any services to such customers is likely to require additional resources to help these businesses. This support from these bodies should only be signposted when Ofgem is confident it can provide it, which may take longer than 3 months.

**14. Do you agree with our proposed change? Please provide comments to support your answer.**

We continue to believe that the current arrangement of placing oversight obligations on suppliers is sub-optimal as this prevents a central view of TPI behaviour to be developed. We would also note that a number of TPI schemes are being set up in the market which creates the potential for confusion. We continue to believe that a centralised regulatory regime with licenced TPIs is the best outcome for customers.

In addition, please see above our comments in question 8 regarding the lack of clarity over whether a customer will no or minimal use of one fuel should be treated as a Microbusiness or Small Business Customer in the other fuel though their consumption is above the supplied fuel's limit.

**15. Do you agree with the wording of the proposed licence condition changes outlined in Appendix 1?**

We have not undertaken a detailed review of the proposed licence drafting.

**16. Do you have any comments on the suggested implementation timescale of 8 months?**  
Suppliers will be able to accommodate the timescales proposed.

**17. Do you agree with our proposed expansion of Third Party Cost transparency to all Non-Domestic customers? Please explain your answer.**

We are supportive of providing this information to all customers on request as we believe this provides customers with a greater understanding of the costs they incur in utilising brokers and so help them make an informed decision.

**18. Do you agree with our proposed methodology of displaying Third Party Costs? Please explain your answer.**

We understand the desire and the benefits in having some form of standardisation for displaying this information. There may be times where the form of commission prescribed in the licence may not provide a meaningful value, however.

**19. Do you agree that our proposed timescale for implementation is achievable? Please explain your answer.**

We believe the timescales for implementation are achievable.

**20. Do you have any views on whether to retain the presentation of a lump sum for Micro Business Consumers and to have only a cost per unit for all Non-Domestic consumers?**

We understand the desire and the benefits in having some form of standardisation for displaying this information. There may be times where the form of commission prescribed in the licence may not provide a meaningful value however.

**21. Do you have any views on the proposed wording of the supply licence conditions, in relation to this policy? Note that is SLC20.6 in the electricity supply licence and SLC20.7 in the gas supply licence.**

We have no further comments on the proposed wording.

**22. Do you have any other comments on our proposals not asked specifically elsewhere in this document?**

We note in the consultation that Ofgem commits to a further review of the cooling-off concept, less than two years after the conclusion of the microbusiness strategic review which concluded that an introduction of a cooling off regime would be very expensive, create significant cost uncertainty (so higher risk premia in contracts), and create opportunities for aggressive selling practices. We do not believe that anything has significantly changed in the market to alleviate these concerns. We believe the main issue that cooling off seeks to address in the non-domestic market is mis-selling by TPIs and that this can be addressed through effective broker regulation rather than by creating a cooling-off process.

Yours sincerely



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