

## Ofgem Heat Network Authorisation Conditions

Submitted on behalf of: The Berkeley Group

The Berkeley Group welcomes the opportunity to respond to Ofgem's consultation on the draft Heat Network Authorisation Conditions.

Berkeley owns and develops residential-led mixed-use schemes across the UK. We currently have 58 developments served by heat networks, supplying heat and hot water to approximately 36,000 completed homes. Of these, 8 networks are operated under ESCO concession arrangements, with the remaining networks managed on Berkeley's behalf by 13 separate Managing Agents. Given our scale and the diverse operational models across our portfolio, clarity and proportionality in the final authorisation conditions will be critical to enabling a smooth transition into the new regulatory regime.

### **Timing of the Consultation**

Whilst recognising that there have been multiple government consultations on Heat Network Regulation, we are concerned that consultation on the authorisation conditions, intended to take legal effect on 27 January 2026, is taking place at a late stage in the transition period. Authorised suppliers and operators will have very limited time to interpret the final requirements, align to existing contractual and Landlord and Tenant Act 1985 arrangements, update billing and customer processes, and ensure all internal systems meet the new regulatory standard.

A phased implementation may be required to avoid significant operational disruption.

### **Responses to Specific Authorisation Conditions**

#### **Section A – Conditions applicable to Heat Suppliers and Heat Operators**

##### **A6 – Fair Pricing**

A6.1 requires that charges are “fair and not disproportionate”. However, the draft Fair Pricing and Cost Allocation guidance does not adequately address the conflict between:

- Ofgem’s “fair and not disproportionate” standard; and
- the statutory requirement for service charges to be “reasonable” under section 19 of the Landlord and Tenant Act 1985 (LTA 1985).

The draft guidance states: “We expect heat networks charges that are bundled to be reasonable (as required by the Landlord and Tenant Act) and follow our fair pricing principles and cost allocation guidance as best as possible. This factor will be considered in any future compliance/enforcement action that may be taken”

This does not resolve the underlying conflict. In addition:

- It is unclear when Ofgem will consider heat charges to be “bundled into rent or service charges”.
- There is no explanation of how landlords should navigate competing requirements where fair-pricing principles diverge from LTA 1985 reasonableness tests.

We understand Ofgem is engaging with MHCLG and DESNZ on this issue, but clearer guidance is required to avoid regulatory uncertainty for both suppliers and consumers.

## **A9 – Provision of Information to the Authority**

A9.1 states that where the Authority requests information, “the authorised person must give that information to the Authority”. “That information” is defined as any information that the Authority “considers may be necessary or expedient for the performance of any of its functions”. This is a very wide definition. It is not clear that all the information that the Authority could require would fall within the GDPR exemption of legitimate interest. Therefore, to supply it, new consents under the GDPR may have to be obtained before the information could be given, if at all.

This provision needs to be reviewed in light of GDPR obligations imposed on authorised persons.

## **A12 – Operational Arrangements and Material Assets**

### **A12.2–A12.4 – Transfer of Material Assets**

These provisions require Material Assets to be capable of legal transfer to any successor. Such a requirement appears incompatible with typical ESCO concession structures. Under most ESCO agreements:

- The Employer retains control over any change in ESCO operator, and
- Consent rights are essential to ensuring continuity, performance, and commercial viability.

A12.3 requires that any third-party consent “must be reasonable in all the circumstances”. This wording limits the discretion traditionally afforded to the Employer and may undermine the ability to:

- reject unsuitable operators;
- enforce concession contract standards; or
- ensure appropriate financial and technical capability.

We recommend amending A12.3 to recognise contractual governance frameworks within concession agreements.

### **A12.7 – Disposal of Material Assets**

A12.7 restricts the disposal of Material Assets except where required by law, by way of a Permitted Security Interest or as part of a transfer of authorisation with Ofgem's consent under regulation 24 of the Regulations. It is unclear whether a landlord, currently deemed authorised, would require Ofgem's prior approval to appoint a replacement ESCO operator. Clarity is required because the current drafting risks delaying routine operational changes or preventing timely intervention.

We therefore suggest explicit confirmation that landlords do not require Ofgem consent when appointing or replacing an ESCO operator under an existing concession agreement.

A12.9 Local Authorities are not bound by the requirements of authorisation condition 12. There is no justifiable reason for this exemption. Local Authorities are now frequently requiring connection to their own operated heat networks in their s106, Town & Country Planning Act agreements ie planning consent for a development will not be given unless the developer agrees to both connection to the Local Authority's network and the Local Authority's terms and conditions for its operation. These terms and conditions are often unfair and not in accordance with the guiding principle of "fairness" that Ofgem sets out in its proposed regulations. Given the monopolistic position that Local Authorities have through the s106 process, there should be no exemptions for Local Authority networks whatsoever.

## **Section B – Conditions applicable to authorised suppliers**

### **B2.11 – Terms and Conditions in Leases or Equivalent Contracts**

The list of mandatory information to be included in each Relevant Supply Contract, Relevant Lease or Deemed Contract includes:

- detailed billing information
- Key Performance Indicators
- complaints handling procedures
- third-party service provider details
- standing charges, variable tariffs, VAT etc.

This is not appropriate for long-term leasehold arrangements, particularly 999-year leases, where:

- operational information will inevitably change over time;
- suppliers may change metering agents or O&M contractors; and
- varying leases is complex and costly.

It is not clear whether heat network suppliers can use the approach of having a separate "Customer Charter" that is provided alongside a lease, setting out key information relating to the heat supply arrangements. B2.11 refers to information being provided in separate document, *"until any existing Relevant Lease has been updated"*. Customer Charters have been used across the sector to provide information to heat network customers where there is no separate heat supply agreement. This is recognised as part of the Heat Trust Scheme rules and the Heat Trust has published separate guidance on using customer charters. We suggest:

- Formal recognition of Customer Charters as compliant documents; and
- Inclusion of a definition of "Customer Charter" within the authorisation conditions.

## **B2.18 – Transitional Arrangements and Varying Leases**

B2.18 requires suppliers to "use reasonable endeavours" to vary all existing leases to incorporate Ofgem's requirements. We consider this unworkable and strongly recommend reconsideration for the following reasons:

- Varying leases across an estate requires individual negotiation and consent (including from any lender who has a charge over the home).
- Would involve significant cost and administrative burden for landlords.
- Where leases require all leases in a development to have consistent terms, the process will be complex and often impossible where leaseholders refuse
- Good practice requires that long residential leases contain a covenant on the part of the landlord committing that all leases are in the same terms. This means that leases of properties in a block of apartments or development must be changed simultaneously to avoid placing the landlord in breach of covenant. Even if there were universal agreement from all leaseholders at the point they were consulted, all their mortgagees would also need to consent and execute the deed of variation. The mortgagees charge a fee for this. Different leaseholders and mortgagees will be working to their own time scales and all parties will need to pay for independent legal advice. During this process some leaseholders will be selling or re-financing. We have experience on a building of only 91 apartments where we need to vary the leases and all leaseholders are aligned. However, more than 10 years later and after paying in excess of £150,000 in legal fees, we have not got to the point where all deeds have been executed so we can complete all the deeds.

The draft Consumer Protection Guidance includes some provisions on "Transitional arrangements" – it is not clear whether this is the separate guidance referred to in B2.19. The draft Consumer Protection Guidance (paragraphs 5.18 – 5.21) includes that the expectation is for suppliers to make necessary changes at a time when reasonably practicable (for example, when a new resident enters the property, when meter requirements come into effect or when an existing contract term ends and a new one is needed). Paragraph 5.21 of the draft guidance includes the following:

*"We are aware that some of the routes to varying existing leases or equivalent contracts can be costly or have lengthy processes. In these cases, we would expect the heat network's relevant supplier to consider the best way to deliver the intended outcome of this authorisation condition."*

There are no suggested examples for the "*best way to deliver the intended outcome*" where heat is supplied under the terms of a Relevant Lease. Further clarity and guidance is required in order for landlords (as authorised heat network suppliers) to comply with Ofgem's authorisation condition B2.18.

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By far the better way to deal with this is by regulation that overrides the lease terms. This approach is consistent with that taken by government over ground rents.

## **Section C – Conditions applicable to authorised operators**

### **C2 – Security of Supply**

#### **C2.1.1 – Good Industry Practice / Manufacturer Recommendations**

C2.1.1 requires the heat network operator to comply with manufacturer's recommendations and good industry practice in order to minimise interruptions to supply. "Good industry practice" is not defined. It is unclear whether this is intended to align with future Heat Network Technical Assurance Scheme (HNTAS) requirements. Manufacturer's recommendations may exceed "good industry practice" so there is a risk of conflict between these obligations.

#### **C2.1.2 – Upgrades and Modifications**

C2.1.2 requires the heat network operator promptly to make upgrades or other modifications to ensure continuity of supply. It is not clear how these obligations

interact with existing obligations for landlords pursuant to section 18-20 Landlord and Tenant Act 1985. Section 20 of the Landlord and Tenant Act 1985 limits the recovery of service charges from tenants or leaseholders for Qualifying Works and works/services under a Qualifying Long Term Agreement if consultation requirements are not followed. It is not clear how this interacts with the obligation "promptly" to make upgrades or other modifications.

## **Conclusion**

Berkeley supports the principle of heat network regulation and the introduction of consistent consumer protection, performance standards and fair-pricing principles. However, several elements of the draft authorisation conditions create practical, legal and contractual challenges that require clarification before implementation. Given the limited time available before the intended go-live date of 27 January 2026, we strongly urge Ofgem to:

- provide early clarity on transitional arrangements;
- recognise the practical limits of varying long leases;
- confirm the acceptability of Customer Charters;
- clarify the interaction with LTA 1985 requirements;
- align terminology (e.g., Good Industry Practice) with forthcoming HNTAS standards; and
- review the supply of information requirements so they are not inconsistent with GDPR obligations

We would be happy to discuss these points further with Ofgem and contribute to any industry working groups to support successful implementation of the new regulatory framework.