



Suppliers, consumer groups and other interested parties

Promoting choice and value for all customers

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Dear Colleague,

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

This letter seeks comments from interested parties on whether it is necessary to:

1. amend the definition of "Domestic Customer" and/or "Domestic Premises" within the standard conditions of the gas supply licence; and
2. amend some of the conditions within Part B of those conditions, which apply to suppliers supplying gas to domestic customers

in order to clarify the licensing regime applicable to energy suppliers which supply gas to a legal entity which purchases gas on behalf of a number of individual residents.

We are seeking initial views at this stage and may consult further in the event that we propose to change the relevant licence conditions.

Background

The Standard Conditions of the Gas Supply Licence ("SLCs") define the meaning of the terms Domestic Customer and Domestic Premises.

In summary, SLC 1¹ defines a Domestic Customer as a customer supplied or requiring to be supplied at Domestic Premises. SLC 1 read together with SLC 6 defines a Domestic Premises as a premises at which a supply of gas is taken wholly or mainly for a domestic purpose except where the premises is a non-domestic premises and unless the context otherwise requires.

SLC 22.2 in turn requires a licensee to offer to enter into a domestic supply contract with a domestic customer when it receives a request from a Domestic Customer to supply to a Domestic Premises. Relevant extracts from SLC 1 together with a copy of SLC 6 and SLC 22 are attached at Appendix 1.

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

¹ For the full licence condition, please see Ofgem's electronic public register at <http://epr.ofgem.gov.uk/>.

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

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

Definition of a Domestic Customer and Domestic Premises

How should the definitions of a Domestic Customer and/or Domestic Premises be amended within the SLCs to clarify the position that in certain circumstances, a supply of gas to legal entity acting on behalf of individual residents is a supply to Domestic Premises and to a Domestic Customer?

As noted above, Part B of the SLCs generally envisages that a Domestic Customer will be a specific individual and there will be a direct contractual relationship between the energy supplier and the individual. With this in mind, we would be interested to hear comments on how the definitions of Domestic Customer and Domestic Premises should be amended in light of the fact that it is possible, in the circumstances highlighted in the section above, for a legal entity acting for and on behalf of individual residents within a residential apartment block to fall within the current definition of a Domestic Customer.

Where a gas supplier is required, in accordance with SLC 22, to offer to enter into a domestic contract with a Domestic Customer for a supply to Domestic Premises, Ofgem does not consider that this obligation requires that gas suppliers must offer exactly the same contractual terms to all Domestic Customers although the terms must not be discriminatory. It would appear that a bespoke contract may be required where a gas supply has been requested to a legal entity acting for and on behalf of residents within an apartment block. The terms of the bespoke contract appropriate for the circumstances and characteristics of the customer's supply including the volume of gas to be supplied may be materially different, including as to pricing, from those of a standard contract. We would be interested to hear whether specific amendments to the licence conditions are desirable in order to clarify this.

Alternatively, we would be interested to hear whether amendments should be made to the definitions of Domestic Customer and/or Domestic Premises in order to clarify that where a gas supply is requested for the purposes of generating heat for use by individual residents, in future, this should lie outside the scope of a supply to Domestic Premises and to a Domestic Customer. Ofgem does not regulate the provision of heat and there is no sector-specific regulation governing the provision of heat although it is Ofgem's understanding that as part of its wider work on district heating DECC is currently considering the need for consumer protection in this area.

Part B of the SLCs, standard conditions for domestic suppliers

How should the obligations placed on suppliers in SLCs 22-32 change, if at all, where a supply of gas to a legal entity acting on behalf of a number of individual residents can, in certain circumstances, be a supply to Domestic Premises and to a Domestic Customer?

Section B of the gas supply licence sets out those SLCs which apply to energy suppliers supplying gas to Domestic Customers. The protections in these SLCs generally envisage

that a domestic customer is a specific individual and there is a direct contractual relationship between an energy supplier and an individual.

Consequently, there appear to be several licence condition obligations which could be particularly problematic for suppliers to meet where an entity acting on behalf of a number of individual residents is a Domestic Customer:

- SLC 26 (Services for specific Domestic Customer groups) sets out the services which suppliers must provide to Domestic Customers who fall into different categories: Domestic Customers who are of pensionable age, disabled or chronically sick, blind, partially sighted, deaf or hearing impaired;
- SLC 27 (Payments, Security Deposits and Disconnections) requires the supplier to take all reasonable steps to avoid disconnecting, in winter, a Domestic Premises at which the Domestic Customer has not paid the charges; and
- SLC 29 (Gas safety) sets out the arrangements for gas safety checks and the provision of gas safety information.

For example, SLC 27 is intended to prevent the disconnection of vulnerable customers for debt reasons. In the situation of an apartment block, under the current licence drafting, if a gas bill was to remain unpaid the supplier would be unable to disconnect the supply if only one resident met the definition. We welcome views on the effect of these obligations in these circumstances.

Next Steps

Responses to this open letter are invited by 31 January 2011 and should be sent to:

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We are happy to accept responses by post or email.

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

Yours faithfully,

Emma Kelso

**Associate Partner
Retail & Market Processes**

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

Condition 1. Definitions for standard conditions

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

Condition 6. Classification of premises

Domestic Premises

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

Non-Domestic Premises

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

(a) a premises where:

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

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

Changes in use of gas

6.3 This paragraph applies if:

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

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

Multi-Site Contracts

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

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

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

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

Licensee's obligations

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

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

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

22.4 A Domestic Supply Contract must:

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

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

Exceptions to licensee's obligations

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

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

Provision of Domestic Supply Contracts

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