By email only
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Dear Ljuban

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

Thank you for the opportunity to provide views 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.

2. Amend some of the conditions within Part B of the conditions, which apply to a supplier supplying to domestic customers.

The Energy Retail Association (ERA) represents the six main energy suppliers in the UK. This response represents their views. They will also be responding individually with more detailed comments.

Our view in summary is that:

1. Any entity acting on behalf of residents for the provision of gas or heat should be classified as a non-domestic customer.

2. A domestic customer should have a direct contractual relationship with the supplier that would not exist when an entity is purchasing gas on behalf of residents.

3. The gas supply licence envisages circumstances where the context requires that an entity be classified as non-domestic and Ofgem advice from 2002 correctly states that entities supplying gas to residents in connection with services - irrespective of commercial status – should be defined as non-domestic.

4. Where the entity is selling on heat and not gas the residents are consumers of heat and not gas, and cannot therefore be considered domestic gas customers for the purposes of the gas supply licence.

5. If an entity purchasing gas on behalf of residents were to be classified as a domestic customer this would make it impracticable for Suppliers to ensure compliance with the requirements of Part B of the Licence, and would render many of the provisions in that section meaningless.

6. Classifying such contracts as domestic would require a bespoke contract to be formulated for each individual entity which would entail extra cost for that customer.

7. Creating a different classification for non-profit entities acting on behalf of residents would introduce a duty for energy suppliers to determine whether a customer is a not-for-profit or for-profit entity.

Any entity purchasing gas on behalf of residential customers should be classified as non-domestic

We feel that the situation as explained in an Ofgem advice note of 2002 in relation to the classification of domestic premises is correct: It is not relevant whether an organisation seeking to represent groups of domestic customers and contract for gas on their behalf is a for-profit or not-for-profit organisation.

The correct interpretation of the Utilities Act and therefore the Standard Licence Conditions is that a domestic customer should be treated as an individual who directly uses the energy wholly or mainly for domestic purposes where the supply contract is made between the two parties; the individual customer and the supplier.

Given that there is no such direct contract relationship where an entity is purchasing gas to power a central boiler that distributes heat to residents – or indeed where there is an onward supply of gas – the contracting entity should not be classified as a domestic customer.

Licence condition 6 provides for not-for-profit entities supplying residents with heat or gas to be non-domestic

Licence condition 6.1 states that 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. In then going on to define a "Non-Domestic Premises", Licence Condition 6.2 envisages a flexible approach.

Licence Condition 6.2 (a) identifies circumstances where a premises is to be defined as "Non-Domestic" as "***including***" where a person has entered into a contract with a supplier and has or will enter into a commercial agreement for the provision of residential or other services at the premises. However, it is clear that licence condition 6.2 clearly envisages that this circumstance is not exhaustive and that where "the context otherwise requires" other premises can be defined as non-domestic.

Where an entity is engaged in the onward supply of gas or heat to residents, for the reasons stated below, this is clearly a case where "the context otherwise requires" that the customer be defined as non-domestic.

Classifying not-for-profit entities purchasing gas or heat on behalf of residential customers as domestic would make part B of the licence not fit-for-purpose

If it is decided that an entity acting on behalf of a group of domestic customers is to be regarded as a domestic customer and seeks the protections afforded under the SLCs for individual customers, then Part B of the Supply Licence would require a comprehensive revision. It is currently designed for individual customers with their own supply, particularly in relation to:

a) disconnection
b) billing
c) provision of safety and energy efficiency advice

While the implications for Part B are numerous we would like to highlight some of the most significant challenges posed:

SLC 26

Suppliers are required to offer specific services to those customers who are of pensionable age, disabled or chronically sick; to establish and maintain a Priority Services Register listing all of the relevant domestic customers; and to send information relating to those customers to the Relevant Gas Transporter.

In cases where a legal entity is acting on behalf of a number of tenants via a single metering point, suppliers would not have a direct relationship with the occupants of these dwellings and therefore would have little opportunity to identify and offer appropriate services. If the definition of domestic premises was extended to legal entities supplying gas or heat on to residents, this would place an obligation on suppliers to identify whether any of the customers of the legal entity would qualify for these specific services. We do not believe this is a workable scenario as the supplier has no relationship with the end user.

The obligation to provide relevant information to the Distributor is currently delivered using standard industry data-flows based on MPRN's. In cases where there is more than one dwelling supplied by one MPRN, we do not believe the current industry process could support sending multiple customer information attached to a single MPRN, and would create significant issues around identification of the correct customer should a hazardous situation arise (e.g. loss of supply).

SLC 27

Suppliers are required to offer a wide choice of payment methods; to take all reasonable steps to ascertain the Domestic Customers ability to pay when calculating installments; and must not disconnect, in winter, a Domestic Premises at which a person of pensionable age, disabled or chronically sick resides.

We are unclear how this obligation would apply to legal entities acting on behalf of a number of dwellings, and whether the requirement would extend to arranging individual payment methods and arrangements with each dwelling should they encounter difficulties in paying. We do not have a direct relationship with the customer of each dwelling, and would therefore experience difficulties in delivering our obligation to ascertain and take into account these individual customer's circumstances.

The ERA Safety Net already applies to the type of dwelling identified in the Ofgem letter, and already provides protection against the disconnection of vulnerable customers at this type of dwelling.

SLC 29

Suppliers are required to provide a free gas safety check where the domestic customer meets the given criteria (lives with others, at least one of whom is under 5 years old; or is of pensionable age, disabled or chronically sick and either: lives alone; or lives with others who are all of pensionable age, disabled, chronically sick or under 18).

The above obligation does not apply if the customer occupies premises in relation to which a landlord is responsible for arranging a gas safety check. We believe that the legal entity could be considered as acting as a landlord in these cases, and therefore the gas safety check obligation would not apply. However, if this is changed and they are to be considered a Domestic Customer, then suppliers be responsible for fulfilling this obligation.

We do not believe that this obligation is workable in cases where a legal entity is in effect representing a number of dwellings. Firstly, suppliers would have difficulty in identifying the criteria of each individual dwelling as no direct relationship exists between the supplier and the resident. Secondly, we are not clear whether the obligation would apply to all dwellings if one of the residents meets the criteria, for example, if one of the dwellings contains a child under 5, would suppliers be required to perform a gas safety check on all dwellings within the premises?

Classifying not-for-profit entities purchasing gas for residents as domestic would require bespoke contracts to be formulated that would prove more costly for the customer

If it was deemed that a non-profit entity engaged in the supply of heat or gas to residents was to be regarded as a domestic customer then some form of bespoke contract would be required.

Such a bespoke contract would likely incorporate individual and specific pricing which may be viewed as discriminatory; as such a domestic customer would be priced according to their specific usage rather than via published tariffs. The pricing considerations would include:

a) the energy consumption volume and profile
b) the necessary enhanced service requirements
c) specialist sales training
d) risk premium to cover

In commercial terms we would envisage that the pricing of a bespoke contract would need to take account for contractual risk associated with any elements of Part B whether revised or otherwise. For example the provision of safety checks on commercial type plant and equipment – such as large boilers - would be far more costly than on domestic appliances.

One other aspect that should be noted is that the pricing and servicing of this type of bespoke contract would be more complex than for a standard domestic contract and the cost to the domestic supplier of this additional resource would need to be incorporated into the contract price.

A different definition for not-for-profit entities would create a burdensome and complex need for suppliers to determine the entity's status

The task of determining whether an entity was a for-profit or not-for-profit entity would be unduly burdensome on suppliers adding an unnecessary layer of complexity into the relationship between supplier and customer. There we need to be a system for resolving disputes over "for-profit" and "not-for-profit" status.

In light of the above considerations we believe that current provisions of the licence remain adequate and that the level of complexity in bringing about a change across the licence and suppliers' processes is disproportionately high relative to the scale of the challenge that Ofgem is seeking to address.

Should you wish to discuss the points made in this letter in further detail please contact Stuart Brady on 020 7104 4157 or stuart.brady@energy-retail.org.uk.

Yours sincerely,

Stuart Brady
Policy and External Relations Adviser