

To all with an interest in CERT
and CESP

*Promoting choice and value for
all gas and electricity customers*

Date: 20 December 2012

Dear Colleague

Administrative processes for the delivery of mitigation actions associated with the Government's Carbon Emissions Reduction Target (CERT) and Community Energy Saving Programme (CESP)

This letter sets out the administrative arrangements that Ofgem will use to process the mitigation actions delivered by companies with obligations under the Government's Carbon Emissions Reduction Target ("CERT") and Community Energy Saving Programme ("CESP").

On 21 September 2012, we published an open letter¹ which set out our expectation that companies with obligations under CERT and/or CESP ("obligated parties") should continue to make every effort to achieve their obligations by 31 December 2012, including making consumers aware of the measures available. We take compliance with all obligations very seriously. Any company which does not deliver all the required measures by 31 December will be in breach of their legal obligations.

Our September open letter noted that, in considering whether to open an investigation, to continue an investigation, to impose a penalty and in considering the level of the penalty, Ofgem and/or the Gas and Electricity Markets Authority² (as appropriate) will take account of a number of factors, including mitigation action taken by the parties.

The Authority's principal objective is to protect the interests of existing and future consumers. Their interests specifically include the reduction of targeted greenhouse gases and mitigation action will, in principle, achieve this aim as well as addressing any other harm that may arise. Ofgem and the Authority's approach to the mitigation of harm associated with alleged breaches of CERT/CESP derives from its published guidelines³.

¹<http://www.ofgem.gov.uk/Sustainability/Environment/EnergyEff/InfProjMngrs/Documents1/Open%20letter%20CERT%20CESP%20210912.pdf>

² Ofgem supports the work of the Gas and Electricity Markets Authority in its role as regulator of the gas and electricity industries in Great Britain. This includes supporting the Authority in its enforcement work.

³ Paragraph 3.5 of Ofgem's *Enforcement Guidelines on Complaints and Investigations (June 2012)* explains that when deciding whether to open an investigation (and by implication a decision on whether to continue an investigation), Ofgem will consider the seriousness of the alleged breach. Harm to consumers is an important factor by which seriousness is assessed. Paragraph 4.3 of the *Utilities Act 2003 Statement of Policy with respect to financial penalties* explains that when deciding whether to impose a financial penalty, the Authority will consider the extent to which the alleged breach has damaged the interests of consumers. Paragraph 5.2 further explains that when considering the general level of a financial penalty, the Authority will consider the degree of harm caused to consumers after taking into account measures to address the harm.

We reiterate the point raised in our September open letter that some obligated parties will shortly have new obligations starting under the Energy Company Obligation (ECO). Work to mitigate any under-delivery against CERT and CESP targets should not detract from delivery against these new obligations.

The annex to this letter provides further detail on Ofgem's administrative arrangements associated with these mitigation actions. We intend to publish further information relating to the application of bonuses, caps and uplifts to mitigation activity before the end of February 2013.

Should obligated parties have any specific questions about Ofgem's administration of mitigation activity, they should contact Steve McBurney (steve.mcburney@ofgem.gov.uk) in the first instance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stuart Cook', with a long horizontal line extending from the end of the signature.

Stuart Cook
Managing Director - E-Serve

ANNEX: OFGEM'S ADMINISTRATIVE PROCESSES FOR THE DELIVERY OF CERT AND CESP MITIGATION ACTIONS

This annex sets out Ofgem's processes for the administration of mitigation actions delivered by companies with obligations under the Government's Carbon Emissions Reduction Target ("CERT") and Community Energy Saving Programme ("CESP").

Mitigation actions: timing

Any activity completed after 31 December 2012 (the end of the CERT and CESP obligation period) cannot be used for CERT or CESP compliance, or be transferred into ECO as 'excess action'⁴. Any CERT or CESP related activity completed after 31 December 2012 may not be counted as compliance action and may only be counted as mitigation action.

Obligated parties may also undertake mitigation action prior to the end of the CERT and CESP obligation period in accordance with the administrative procedures outlined below.

Mitigation actions: administration

It is essential that there is clear differentiation between activity which an obligated party is seeking to claim towards its CERT and CESP obligation (i.e. completed by 31 December 2012 and submitted to Ofgem by 31 January 2013) and activity which the obligated party is seeking to claim as a mitigation action (i.e. completed before or after 31 December 2012 and submitted to Ofgem after 31 December 2012).

All schemes completed by 31 December 2012 and submitted to Ofgem by 31 January 2013 will be considered as CERT or CESP scheme submissions unless the obligated party indicates that they want them to be considered as mitigation action. Any schemes submitted after that date can only be considered as mitigation action schemes. Any CERT or CESP schemes that obligated parties wish to continue into 2013 and use for mitigation action will need to be closed and submitted again as 'continuation schemes' (see below). Further details on continuation schemes are provided below.

Mitigation actions will be categorised in one of two ways – 'mitigation actions identical to CERT or and CESP measures'⁵ and 'alternative mitigation actions'. Mitigation actions will only be considered identical to CERT and CESP measures if the measures in question have been previously approved by Ofgem prior to 1 January 2013 as 'qualifying actions'. In this regard, no further non-standard measures will be accredited after 31 December 2012 as mitigation actions identical to CERT and CESP measures.

For mitigation actions identical to CERT and CESP measures, save that they are delivered after 31 December 2012 and which obligated parties wish to be taken into account as mitigation actions, current CERT and CESP guidance will remain relevant. As set out in our September letter, in considering mitigation action, we will give most weight to measures identical to approved qualifying actions under CERT or CESP. Companies should report measures, lifetimes and scores in the manner set out in the guidance applicable to CERT and CESP.

For alternative mitigation actions (i.e. not identical to CERT and CESP measures and in any event delivered after 31 December 2012), we ask that obligated parties provide Ofgem

⁴ For a fuller explanation of excess actions, and ECO transfer eligibility, see our letter dated 13 November 2012 <http://www.ofgem.gov.uk/Sustainability/Environment/ECO/guidance/Documents1/Energy%20Companies%20Obligation%20ECO%20-%20Excess%20actions.pdf>

⁵ We use the term 'CERT and CESP measures' to describe measures that are approved qualifying actions under CERT or CESP respectively. However, our use of this term should not be taken as implying that late completion of qualifying action will be counted towards CERT or CESP obligations.

with evidence and information regarding the extent to which the measures achieve equivalent outcomes to CERT or CESP.

Continuation Schemes: all existing, approved, CERT and CESP schemes will be closed on 31 December 2012. Any obligated party wishing to conduct activity under schemes identical to CERT/CESP (as mitigation action) will be required to inform Ofgem via the submission of a new scheme template, referencing the previously approved CERT or CESP scheme and confirming that the mitigation action will be delivered in line with the requirements previously agreed. These schemes will be allocated new scheme numbers to reflect their status as mitigation action schemes.

This will allow CERT and CESP schemes to be completed, in line with the legislative timetable, whilst facilitating notifications of mitigation action activity.

New Schemes: obligated parties may wish to register new activity which is identical to CERT or CESP measures as mitigation action. These new schemes should be submitted on the templates currently used for CERT/CESP qualifying actions, with the same relevant supporting information as specified in the guidance for the current CERT and CESP schemes.

Notification period for new schemes: obligated parties are encouraged to notify Ofgem within one-month of new activity beginning. This is to ensure that we receive timely information about mitigation activity.

Fraud, Audit and technical monitoring: Ofgem will apply the audit and technical monitoring regimes currently used for CERT/CESP qualifying actions in order to detect and deter any fraudulent activity taking place in mitigation actions. We may conduct one or more rounds of audits, across both CERT and CESP mitigation action activity.

De-duplication: Obligated parties are asked to de-duplicate activity for mitigation actions, as they do for CERT or CESP qualifying actions. Obligated parties are asked to provide evidence to Ofgem that mitigation actions have not been counted towards meeting other legal obligations.

Progress reporting: for the mitigation action period, it is proposed that obligated parties report monthly directly to Ofgem on progress in delivering CERT and/or CESP mitigation actions. This will be in the same format as the monthly reports used for CERT/CESP qualifying actions and will be used by Ofgem to monitor expected progress of mitigation.

Completed activity/banking: We ask that activity completed during the mitigation action period is reported to Ofgem using the banking/completion process that exists for CERT/CESP qualifying actions. In order to monitor the progress of mitigation activity, obligated parties are asked to bank all mitigation action activity at the end of each month i.e. by 31 January 2013, 28 February 2013 etc.

Queries: to deal with the questions and queries in relation to mitigation actions, we have set up dedicated 'mitigation' inboxes (certmitigation@ofgem.gov.uk and cespmitigation@ofgem.gov.uk). In addition, a mitigation actions processing team has been set-up and contact details will be circulated to obligated parties in the next few weeks.

Additionality: We ask parties to provide evidence that mitigation actions are 'additional' to activity that would have taken anyway, for example, through providing a declaration at director level confirming that the activity is additional. When submitting this declaration we also ask parties to give their reasons as to why they consider the mitigation action to be 'additional'. This is particularly important given the introduction of initiatives such as the Green Deal cash-back scheme. Companies may be asked to provide further evidence that mitigation actions are additional.

Transfers: We do not anticipate that Obligated Parties will be seeking to transfer measures after 31st December 2012 and so we do not propose to put in place

administrative arrangements to manage transfers. This does not prevent usual sub-contracting arrangements.