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Dear Ljuban

Clarification of premises for the purposes of the standard conditions of the gas supply license

Thank you for the opportunity to provide our 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; and
2. amend some of the conditions within Part B of those conditions, which apply to suppliers supplying gas to domestic customers

Our views are detailed below and can be summarised as follows:

Summary

1. We believe that a domestic customer should be treated as an individual and the contract should be between that individual and the supplier.
2. An organisation or collective acting on behalf of a group of domestic customers cannot itself be regarded as a domestic customer regardless of the organisations status.
3. Where individual customers receive services such as heat from a central boiler plant they are not gas consumers but heat consumers and therefore cannot be regarded as domestic gas customers.

However

4. If it is decided that an organisation acting on behalf of a group of domestic customers is itself regarded as a domestic customer and seeks the protections

afforded under the SLCs for the 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 advice and energy efficiency advice
5. If it was decided that such an organisation was to be regarded as a domestic customer then we would agree that some form of bespoke contract would be appropriate.
6. 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 any Part B obligations in whatever revised form they would appear

Detailed Comments

We note the advice note on this matter issued by Ofgem in March 2002 following the introduction of the Utilities Act and the subsequent supply license conditions in October 2001. The advice clarified the view held by Ofgem that premises supplied under Industrial & Commercial contracts even where the use was wholly or mainly domestic would not be regarded as domestic premises.

“...Ofgem has been asked by suppliers and Industrial and Commercial (I&C) customers to clarify its interpretation of the terms ‘domestic customer’ and ‘domestic premises’ as they are used in the gas and electricity supply licences. In particular, we are asked how they apply to commercial businesses providing residential services, such as nursing or care homes, and to residential landlords, including local authorities. These businesses and landlords have to date benefited from the wider pricing options available to I&C customers...”

Ofgem view

Ofgem believes that changes in the definition of ‘domestic customer’ and ‘domestic premises’ were not intended to extend regulatory protection appropriate for domestic customers to I&C customers, whether or not they are in business to provide residential or accommodation services. Ofgem believes that the provision of such services should not be regarded as a ‘domestic purpose’. Consequently, where gas and electricity is supplied in connection with services on a commercial basis (including residential or accommodation services), Ofgem expects that I&C contract terms will continue to apply.

The key words (underlined) would seem to indicate that Ofgem was of the view that the legal or commercial status of the organisation acting on behalf of the residential consumers was not relevant.

Our interpretation of the intent of the Utilities Act and hence the standard licence conditions is that domestic customers should be treated as individuals and that the supply contract is made between the two parties, i.e. the individual customer and the supplier.

Any organisation that seeks to represent groups of domestic customers and contract for gas on their behalf cannot by definition be a 'domestic customer' regardless of the organisations legal status. The key relationship must be between the recipient of the services and the service provider, namely the consumer and the gas supplier.

Where gas is consumed at a central boiler plant the relationship is between the contracting entity and the supplier, there can be no relationship between the supplier and individual residents who may receive heat but not gas from the central boiler plant.

If the contracting entity is deemed to be some form of collective comprising a group of domestic consumers then Part B of the Supply Licence would be inappropriate as it would not be possible for the supplier to treat each consumer individually in terms of discharging license obligations.

Should a contracting organisation be deemed to be a 'domestic' customer then we do not see how a supplier could conceivably meet the requirements of Section B, in particular SLC 26 & 27 in order to ensure appropriate protection for certain 'vulnerable' domestic customer groupings.

The identification and interaction with individual domestic customers within the groupings would depend entirely upon the co-operation of the contracting entity and would not obviate the supplier from their obligations as licensee.

Without the maintenance of the direct contractual link between individual domestic customers and their supplier we do not see how it would be possible:

1. for the supplier to be assured that vulnerable customers had been identified
2. for suppliers to treat individual customers within defined groupings on an individual basis
3. to meet other requirements of Section B for example SLC 29 the provision of safety checks and safety advice. This would have to be appropriate for the individual premises which would likely to be defined as 'commercial' in nature under Gas Safety Regulations

4. to meet any current or future requirements for the provision of advice or services relating to energy efficiency. Such advice or services would be highly specialised for commercial type premises

In answer to the specific questions:

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?

We do not agree with Ofgem's latest view that an organisation or person acting on behalf of a group of domestic customers should be classed as a Domestic Customer. Rather we agree with Ofgem's original view as expressed in the March 2002 advice note referred to above.

Ofgem suggest that should a supplier be required to enter into a domestic contract in the circumstances described, i.e. with an organisation or party acting on behalf of a group of domestic customers, then some form of bespoke contract may be appropriate having regard to the volume of gas supplied and any pricing considerations.

This would be akin to a typical Industrial & Commercial contract and therefore would not deliver any benefits to the customer, or group of customers involved, other than the protections listed above, which for the reasons we have given could not reasonably be met by the supplier and therefore would require fundamental revision.

For example it would be unreasonable for a supplier to be unable to affect a disconnection at premises where the contracting party was unable to meet their debts but one of the residents was classed as 'vulnerable'.

Equally if the contracting party were themselves classed as vulnerable but were only receiving a proportion of the services, i.e. a proportion of the centrally provided heat, it would be unreasonable for them to use their vulnerable classification to prevent the supplier from seeking redress such as disconnection.

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 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.

Should there be a requirement for changes to be made to the definition of a Domestic Customer or Domestic Premises then we would suggest that the definition should make clear that 'Customer' means an individual customer consuming gas for their own purposes and the definition of Domestic Premises does need to be revised.

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?

On the understanding that the definition of Domestic Customer could be revised as suggested then we do not see a need to revise Part B.

If you have any queries or wish to discuss any part of this response please contact me.
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Yours sincerely

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Regulation & Energy Policy (by email)