

# **DECC – Department of Energy and Climate Change**

## **Consultation on the provision of third party access to licence exempt electricity and gas networks**

**URN: 10D/818**

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# Executive Summary

## Introduction

In this consultation, we explain how we propose to provide for the EU requirement to provide third party access to licence exempt distribution systems.

A range of businesses distribute and supply energy as an associated part of their core activities. In many cases, these businesses are exempt from the requirement to hold and comply with a licence. The exempt energy sector is, however, still required to comply with certain obligations of EU law. This consultation document seeks views on the proposed legal changes to ensure that licence exempt electricity and gas distribution networks offer third party access as required under the Electricity Directive<sup>1</sup> and the Gas Directive<sup>2</sup>.

This consultation also addresses the other requirements that licence exempt entities will need to meet in order to achieve compliance with the European Union’s Third Energy Package (‘the Third Package’). This builds on the reference in the Transmission and Distribution Chapter of the current DECC Consultation on the Implementation of The EU Third Internal Energy Package.

## Chapter 1 – Stakeholder Engagement

There is a range of relatively small electricity and gas distribution networks that benefit from the exemption from the requirement to have a licence. This exemption was established to ensure this sector was not over-burdened by regulation and to keep regulatory costs to a minimum. Many of these networks supply and distribute energy to their customers on a “private wire” basis and do not currently offer third party access. This prevents another supplier from providing energy to customers located on their network.

The Government’s objective in providing for third party access to licence exempt networks is to ensure that all gas and electricity consumers are able to benefit from a competitive market by being able to choose their energy suppliers. In doing so we are also seeking to ensure that GB is compliant with EU law. In order to achieve compliance, the Government must implement the requirements through a mechanism that is proportionate; i.e. that does not place unnecessary regulatory burdens on undertakings that bring other benefits to the electricity and gas markets.

In order to achieve this The Department for Energy and Climate Change (DECC) has been liaising closely with stakeholders and their representatives across the licence exempt distribution network sector. This included issuing an informal call for evidence in July 2010 to establish the scale of the sector affected and the practicality

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<sup>1</sup> Directive 2009/72/EC, which replaces Directive 2003/54/EC.

<sup>2</sup> Directive 2009/73/EC, which replaces Directive 2003/55/EC.

of a number of suggested solutions to providing third party access and how those solutions relate to the wider market.

## Chapter 2 – Preferred Solution

This consultation outlines our proposal for providing for third party access to licence exempt networks. We have decided that there are good policy reasons to retain the self-certified class exemption regime for licence exempt electricity and gas distribution networks. The original policy goal of removing regulatory burdens and associated costs from small electricity and gas networks, to encourage investment, is still a valid one and discussions with stakeholders have confirmed this.

Our main proposals are:

- To set out in legislation the third party access requirements in relation to licence exempt distribution networks.
- To provide (non statutory) guidance describing further what this may mean in practice. We believe that there are a number of ways in which third party access could be provided to licence exempt distribution networks when energy customers wish to choose an alternative supplier.

## Chapter 3 – Treatment of other Requirements on Licence Exempt Undertakings arising from the Third Energy Package

A number of other provisions in the Third Package apply to licence exempt undertakings, primarily in relation to distribution networks and suppliers. These are discussed in Chapter 3 and listed at Annex B. They range from a requirement that customers must be able to switch suppliers within 3 weeks (subject to contract) to the provision of certain consumer information.

As set out above, DECC considers that there are good reasons for retaining the self-certified class exemption regime. We therefore propose to make specific provision in legislation applying these requirements to licence exempt entities.

## Consultation Questions

- **Do you have any views or concerns on how Government intends to apply third party access requirements to licence exempt distribution networks?**
- **Do you have any views or concerns on how Government intends to apply these Third Package requirements to licence exempt undertakings?**

## Consultation Process

Once consultation responses have been considered, the Government will issue a response along with a final Impact Assessment. It is intended that the required legislation will be made in time to enter into force by the implementation date for the Third Energy Package of 3<sup>rd</sup> March 2011.

## How to respond

**This Consultation was issued on 19 October 2010 and will close on 23 November 2010.** When responding, please state whether you are responding as an individual or representing the views of an organisation. Please make it clear in your response who the organisation represents, and where applicable, how the views of members were assembled.

A response can also be submitted by letter, fax or email to:

**Chris Chown**  
**Department of Energy and Climate Change**  
**Area 4C**  
**3 Whitehall Place**  
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## Additional copies

You may make copies of this document without seeking permission. Further printed copies of the consultation document can be requested by e-mailing [chris.chown@decc.gsi.gov.uk](mailto:chris.chown@decc.gsi.gov.uk)

Other versions of the document in Braille or audiocassette are available on request. This also includes a Welsh version.

## Confidentiality and Data Protection

Information provided in response to this Consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including any personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give

an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the Department.

### **Help with queries**

**Questions about the policy issues raised in this document, and completed response forms, can be addressed to:**

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**Department of Energy and Climate Change**  
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### **Quality assurance:**

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

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# Introduction

- I. This consultation document seeks views on the way in which the Government proposes to provide for third party access to licence exempt gas and electricity networks. Third party access can be described as:
  - customers being able to use a system that they do not own or control in order to transport electricity purchased for their own use or for resale;
  - suppliers being able to use a system that they do not own or control in order to transport electricity for sale to customers.
  
- II. The requirement to provide for third party access to systems is set out at article 32 of the EU Directive concerning common rules for the internal market in electricity<sup>3</sup> (the “Electricity Directive”), and article 32 of the EU Directive concerning common rules for the internal market in natural gas<sup>4</sup> (the “Gas Directive”). These provisions require Member States to ensure the implementation of a system of third party access to gas and electricity transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. Tariffs, or the methodologies underlying them, are required to be approved prior to their entry into force by Ofgem, as the national regulatory authority. In addition, tariffs and methodologies are required to be published.
  
- III. In May 2008, the European Court of Justice’s ruling in *Citiworks AG*<sup>5</sup> clarified that the requirement to provide for third party access applied in respect of all transmission and distribution systems (as defined in the Directives), and that it was not open to Member States to exempt certain types of transmission or distribution systems from the requirement. The complaint in *Citiworks* had been brought by an electricity supplier seeking to compete with a monopoly supplier at Leipzig airport. The ECJ ruled that the German law which exempted the owners of certain systems from the requirement to provide third party access contravened the requirement to provide for third party access to

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<sup>3</sup> Directive 2009/72/EC. This Directive must be implemented into domestic law by 3 March 2011 and replaces Directive 2003/54/EC, which contained a similar requirement.

<sup>4</sup> Directive 2009/73/EC. This Directive must be implemented into domestic law by 3 March 2011 and replaces Directive 2003/55/EC, which contained a similar requirement.

<sup>5</sup> Case C-439/06



distribution systems. The judgment made it clear that, unless a specific derogation had been granted under the Directive, all distribution networks must be open to third party access so that customers connected to those networks have the option to choose their own electricity and gas suppliers.

- IV. The objective of the Directives is to promote consumer choice and fair competition.
- V. Under the Electricity Act 1989, it is illegal to generate, transmit, distribute or supply electricity without a licence or an exemption from the requirement to have a licence. A system of exemptions in Great Britain was formalised by the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (the “Class Order 2001”). Amongst other things, an entity which operates under a distribution exemption is currently exempt from the requirement (present in distribution licences) to provide third party access to the system.
- VI. Similarly, under the Gas Act 1986, a licence is required to convey gas through pipes to premises or to a pipe-line system operated by a gas transporter, to supply gas which is conveyed to premises through pipes, or to arrange for gas to be put into, conveyed on or taken out of a pipe-line system. Exemptions from the requirement to hold a licence are contained in various exemptions orders made under s.6 Gas Act 1986 and a number of exceptions from the prohibition on the carrying out of activities without a licence are contained in schedule 2A to that Act. Under the current arrangements an entity which distributes gas under an exemption or exception from the requirement to hold a gas transporter’s licence is, like an exempt electricity distributor, exempt from the requirement to provide third party access to the system.
- VII. In light of the *Citiworks* ruling, the Government needs to make provision for third party access to licence exempt systems.
- VIII. In addition, the Third Package contains other requirements which must be applied to licence exempt undertakings. The Government proposes to deal with third party access and these other requirements at the same time.
- IX. As part of its deliberations DECC has held a series of bilateral meetings with key stakeholders and their representatives as well as a wider workshop in February 2010. DECC also held an informal call for evidence seeking detailed views on both the impact of the ruling on affected undertakings and the practicality of a range of solutions.

# CHAPTER 1 – STAKEHOLDER ENGAGEMENT

1.1 DECC has held bi-lateral meetings with a wide range of stakeholders and other interested parties. A workshop was also held in February 2010 to discuss stakeholder concerns and establish initial views on possible solutions. Most recently, a call for evidence was issued by DECC seeking the views of a range of stakeholders who would be directly impacted by the Citiworks judgment. Broadly, these stakeholders fall into the following groups:

- Large Commercial – e.g. ports and airports
- Small Commercial – e.g. office/commercial/shopping developments
- Minor networks – e.g. caravan sites and marinas
- Others – e.g. developers/ground landlords/domestic developments

1.2 Views were also sought from other interested parties who were able to offer informed views on the interaction between proposed solutions and the wider electricity and gas markets, such as Elexon<sup>6</sup> and Gemserv<sup>7</sup>.

1.3 The informal call for evidence asked for any available information on the scale of the licence exempt sector, whether there was any evidence on the prices charged by licence exempt network operators relative to suppliers' commercial tariffs and what the revenue levels and profitability of licence exempt electricity networks were likely to be.

1.4 DECC also asked for views from stakeholders on the extent to which third party access was already available on licence exempt networks, whether undertakings had any feel for the number of customers who may wish to take advantage of third party access and what, if any, the potential cost savings for such customers would be. Any evidence received to these questions would help to construct an impact assessment.

1.5 The informal call for evidence stated that it should continue to be possible for customers on a licence exempt network to voluntarily decide to purchase energy via a bulk purchase agreement in a way that is consistent with the right to switch energy supplier. We also set out some examples of situations where the Government considers that the network might not be a "distribution system" within the meaning of the Directives, meaning that third party access would not be required. In general stakeholders agreed with these suggestions.

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<sup>6</sup> <http://www.elexon.co.uk/>

<sup>7</sup> <http://www.gemserv.com/>

1.6 The informal call for evidence then set out four possible market scenarios under which third party access could be provided to a licence exempt network. These scenarios are outlined at Annex A.

1.7 These were drawn up in discussion with Elexon and Gemserv to ensure that they could work with the wider energy market structures. Stakeholders were asked whether any of these scenarios would fit with their business operations and what impact and costs they would impose and whether there were particular barriers associated with each scenario.

### **Responses to the Call for Evidence**

1.8 Responses to the Call for Evidence highlighted a number of considerations, in particular:

- Many stakeholders were concerned at the possible cost implications of providing third party access.
- That the licence exempt sector was diverse and this emphasised the need to be flexible, rather than adopt a ‘one size fits all’ approach.
- There was continued support from stakeholders for the retention of a system of licence exemptions.

1.9 Responses also highlighted that third party access was currently being provided by only a relatively small number of respondents.

1.10 In adopting an approach whereby third party access for energy suppliers is implemented through a mechanism that is proportionate and does not place significant new regulatory burdens on undertakings, we believe our proposals meet concerns over costs. We are also proposing a flexible approach to providing third party access, meeting concerns over diversity. Finally we are not proposing to revoke the self-certified class exemption regime in the course of imposing third party access requirements.

# CHAPTER 2 – GOVERNMENT PROPOSAL

## Legal Changes

2.1 The Government is planning to implement the legislative changes required by the Third Energy Package largely by amending primary legislation through regulations under section 2(2) of the European Communities Act 1972. It is intended that the necessary changes to provide for third party access to licence exempt networks will use the same process.

2.2 The requirement to allow third party access to licence exempt networks will be set out in legislation, and will be enforceable by Ofgem as the national regulatory authority. To achieve this, the legislative provisions which set out the requirement to provide third party access will be named as “relevant requirements” under section 25 of the Electricity Act 1989 and section 28 of the Gas Act 1986, and the subsequent provisions which give Ofgem powers of enforcement. In addition, the Electricity Act 1989 and Gas Act 1986 will be amended so that Ofgem’s enforcement powers apply in respect of anyone operating under an exemption from the requirement to hold a gas or electricity licence, as well as in respect of licensees. Ofgem will then, within this legislative framework, be provided with the relevant powers to gather information from licence exempt entities and enforce the requirements placed on them as required.

2.3 These changes will result in the operators of exempt distribution networks being obliged, when asked, to provide third party energy suppliers with network access in order to supply energy customers, and Ofgem having powers to take enforcement action against those in breach of this obligation. Ofgem will be required to update its current enforcement guidelines to reflect its new enforcement responsibilities. We expect the revised guidelines to be published by 3<sup>rd</sup> March 2011 and that the guidelines will explain Ofgem’s approach to enforcement with respect to exempt undertakings including the way in which the extent and nature of their energy activities are to be taken account of in a proportionate enforcement process.

## Guidance

2.4 Following consultation with stakeholders, in particular the informal call for evidence referred to in Chapter 1, The Government recognises that licence exempt entities require advice on what compliance with the third party access requirements would mean for them in practice.

2.5 As well as putting in place the relevant requirements in legislation the Government intends to provide some guidance to enable exempt undertakings to assess what steps they may need in order to ensure compliance. We anticipate that this guidance will address:

- The circumstances in which the infrastructure supplying gas or electricity is not classed as a distribution network i.e. the end user cannot be classed as an energy customer.
- The way in which the customer and network operator may voluntarily agree to vary the right to switch supplier, for example by a certain level of commitment to be supplied by the network operator. We do not however think that the right to switch can be surrendered indefinitely.
- The arrangements that may be used to provide third party access. We have set out some possible examples at Annex A. These are not intended to be definitive; the appropriate arrangements will vary from case to case.
- The administrative arrangements including those concerning the setting and approval of network tariffs

### **Networks which may not be a “distribution system” for the purposes of the Directive**

2.6 The Citiworks ruling was clear that the requirement to provide third party access applies to all distribution systems (as defined in the Electricity and Gas Directives) - there are no ‘de minimis’ circumstances where third party access need not be provided for.

2.7 The Electricity and Gas Directives define “distribution” as “the transport of electricity (natural gas) on high-voltage, medium voltage and low voltage (through local or regional pipeline networks) distribution systems with a view to its delivery to customers, but not including supply”. A similar definition is applied under the Electricity Act 1989. Accordingly, in our view, if a network is not used with a view to delivering electricity or gas to energy customers it is not a distribution system, and accordingly the requirement to provide for third party access does not apply.

2.8 We consider that this might be the case, for example, where a network is used to supply electricity as part of a package of services, provided over a short term and for which a global price has been agreed. The end user of the energy is not billed separately and individual consumption is not measured. Depending on the individual circumstances, examples of such networks could include payment for a hotel room, serviced apartment or serviced office accommodation.

2.9 Whether or not there is a requirement to provide third party access if asked will be a question of fact in each case. Such factors as the contractual basis on which the service is provided and its duration are likely to be key considerations in deciding whether or not the service user can be considered a “customer” for the purposes of energy supply, and hence whether the network is a “distribution system” for the purpose of the Directives.

2.10 Network owners will need to consider their own circumstances and where appropriate take their own legal advice.

## Providing Third Party Access

2.11 Article 32 of the Electricity and Gas Directives require Member States to establish a system of third party access to transmission and distribution systems which is based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination.

2.12 The Directives require that tariffs for the use of systems, or the methodologies underlying them, are approved by the national regulatory authority prior to their entry into force. There is however an exception from this particular requirement for systems which are classified as Closed Distribution Systems – see further below.

2.13 In addition, the Directives require that the tariffs and methodologies (if only methodologies have been approved) are published prior to their entry into force.

2.14 In order to implement these requirements, the Government is proposing that amendments to the Electricity Act 1989 and Gas Act 1986 are made in order to require that:

- exempt distribution networks, when asked, provide third party access to energy suppliers on a non-discriminatory basis, that is to say that the terms of access and tariffs applied should not favour one supplier (including the network owner) over another. Refusal will only be justified if the system lacks the necessary capacity to cope with any requested additional use;
- where separate charges for use of the network are levied against third party suppliers, a tariff is prepared in accordance with a common methodology determined by Ofgem or a methodology determined by the exempt network owner.” The tariff must be approved by Ofgem before charges can be made, unless the network is a “Closed Distribution System”.
- where no charges for use of the network are to be made no tariff needs to be put in place or approved by Ofgem.
- in all cases, parties must act in such a way as to facilitate third party access where it is required and support third party suppliers in meeting their own obligations in relation to allowing customers to switch supplier.

## Connection arrangements

2.15 In many cases providing third party access will require work to the distribution network. Most commonly this will include installing a full settlement or secondary meter in order to ensure that energy consumption is properly measured and that appropriate charges are made. It could also include reinforcement of the existing network infrastructure. Licensed energy suppliers will need to meet the relevant obligations of their licence in relation to such issues as metering and connection standards.

2.16 Costs associated with connection arrangements in the licensed sector are met by the customer and, on occasion, the prospective supplier. We expect the same arrangements to apply for the licence exempt sector, unless parties agree otherwise.

2.17 Exempt distribution network operators will be required to facilitate necessary connection work and provide all relevant information and physical access to support efficient access to and use of the system.

### **Ofgem approval of tariffs**

2.18 As mentioned above, all exempt distribution network owners wishing to charge tariffs for use of the network must seek approval from Ofgem for both the tariff and the methodology used to calculate it.

2.19 To ease transition to an approval based system, Ofgem will consult on and publish a common methodology for the setting of tariffs. Reference to this methodology will enable exempt distribution network owners to quickly calculate fair and workable use of system charges when requested by a customer/potential third party supplier. Exempt network operators may also choose to establish their own methodology for calculating tariffs or may already operate a methodology that they wish to continue to follow.

2.20 Reference to the common methodology does not preclude a change of methodology/tariff at a later date, although any revised tariff/methodology must again be approved by Ofgem. Exempt distribution network owners may also seek approval for tariffs and methodologies prior to a request for third party access if they so wish. This may be particularly attractive to those distribution network owners who already provide third party access to some or all of their customers.

2.21 A network operator may not delay third party access pending approval of a proposed tariff; although suppliers may not wish to agree a supply contract until all charges are established.

### **Third Party Access – Exempt distribution network obligations**

2.22 The Government is not proposing to impose any third party access obligations on exempt distribution networks unless a customer has expressed an interest in being supplied by an alternative supplier. We do not expect network owners to prepare to provide third party access (e.g. by installing meters or publishing tariffs agreed by the regulator) before there is a realistic prospect of a request for third party access although they may choose to do so.

#### *Expression of Interest*

2.23 The Government is proposing that an exempt distribution network’s third party access obligations will start when a customer informs them in writing that they wish to consider offers from named third party suppliers.

2.24 At this point, where the exempt distribution network operator considers that they are not obliged to provide third party access (e.g. because of lack of network capacity) they must notify the customer in writing with their reasons.

2.25 Where there is an obligation to provide third party access the exempt distribution network operator must:

- Prepare separate accounts for the operation of the distribution network to calculate use of system charges. Accounts may be requested by Ofgem to support tariffs or methodologies sent for approval.
- Obtain Ofgem approval for tariffs/methodologies as outlined in paragraph 2.18 above.
- Once approval has been gained, provide the prospective third party supplier with details of the use of system charge. Such charges may only be recovered when they have been approved by Ofgem.
- Provide to a prospective third party supplier (or suppliers, if a customer wishes to consider offers from multiple suppliers) all relevant technical and commercial information reasonably required by the supplier to make an offer of supply to the customer.
- Agree with the supplier any arrangements regarding physical connection such as the installation of a meter.
- Act at all times in a way so as not to obstruct or unreasonably delay third party access.

*Customer wishes to change supplier*

2.26 After receiving a quote from a third party supplier following the process outlined above, if a customer confirms in writing their intention to switch to a named supplier, the exempt distribution network operator must:

- Act in such a way so as not to prevent third party access within three weeks of the customer's contract agreement with a new supplier e.g. in relation to access to carry out works.
- Agree a switching date and reconciliation of energy charges.

*When Third Party Access has been provided*

2.27 When a customer that was previously a customer of the exempt network owner has switched to a new supplier:

- To only introduce or amend a use of system charge with the approval of Ofgem



- To provide all reasonable access and assistance to the third party supplier e.g. for meter reading
- To maintain separate accounts for the exempt distribution network where network charges are to be made.

### **Closed distribution systems**

2.28 As indicated in DECC’s consultation paper on the implementation of the Third Package<sup>8</sup> Article 28 of the new Electricity and Gas Directives enable Member States to provide for the national regulatory authority to classify certain non-domestic distribution systems as Closed Distribution Systems. A Closed Distribution System can then be exempted from the requirement under article 32 that the tariffs for third party access to a system, or the methodologies underlying their calculation, are approved by the authority prior to their entry into force; and the obligation (relating to electricity only) to procure the energy it uses to cover energy losses and reserve capacity in its system according to transparent, non-discriminatory and market based procedures.

2.29 Where the Members State so provides, the regulatory authority may classify individual sites as Closed Distribution Systems when certain conditions are met. These conditions include that these are systems which do not supply household customers. In order to be classified as a Closed Distribution System, a network must be used to distribute electricity or gas in a geographically confined industrial, commercial or shared services site and either (i) the operations or production processes of the users must be integrated for technical or safety reasons, or (ii) the system must distribute electricity primarily to the owner or operator of the system or their related undertakings.

2.30 Although an operator of a Closed Distribution System is exempted from the automatic requirement for use of system tariffs or methodologies to be approved by the regulatory authority prior to their entry into force, the Directive requires that a user of the system can nevertheless ask the authority to review those tariffs or methodologies. The Directive therefore makes provision for some element of regulatory control over the use of system charges levied by an operator of a Closed Distribution System.

2.31 DECC believes that some distribution system operators would find the limited exemptions available to helpful and the Closed Distribution System option should be available in the UK. Accordingly we will make provision in legislation which enables Ofgem to classify systems as Closed Distribution Systems.

2.32 It is important to recognise that the obligation to grant third party access to Closed Distribution Systems will nevertheless apply.

### **Consultation Question**

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<sup>8</sup> [Consultation on the implementation of the Third Package](#)

**Do you have any views or concerns on how Government intends to apply third party access requirements to licence exempt distribution networks?**

## CHAPTER 3 – TREATMENT OF OTHER REQUIREMENTS ON LICENCE EXEMPT UNDERTAKINGS

3.1 There are also a number of other requirements contained in the Third Energy Package which apply to licence exempt gas and electricity undertakings, including electricity distributors and suppliers, gas storage operators and gas suppliers as well as distribution system operators.

3.2 These requirements are listed at annex B and include a requirement for exempt suppliers to allow customers to switch to another supplier within three weeks of their request. This provision is subject to any contractual terms that may have been agreed between the supplier and customer.

3.3 As set out above, DECC recognises that there are good reasons to retain the self-certified class exemption regime. Therefore, where Third Package requirements apply to licence exempt undertakings we propose the least burdensome solution that will ensure the applicable tasks bite on these companies and that Ofgem has a way of enforcing them.

3.4 The key requirements are:

For exempt suppliers:

- To allow customers to switch suppliers within three weeks
- To provide customers with information about their energy consumption in order to enable them to regulate their consumption and consider alternative suppliers.

For exempt distribution network operators:

- Where charges are made for the use of the network charges are approved by Ofgem and that there should be separate accounting arrangements in place

3.5 We are required to ensure that enforcement powers for the Regulator are in place (see article 37(1)(b) and (4)(d) of the Electricity Directive and article 41(1)(b) and (4)(d) of the Gas Directive). Accordingly, for exempt undertakings we propose to set out the requirements of the Third Package in legislation and make those legislative provisions “relevant requirements” under section 25 of the Electricity Act 1989 and section 28 of the Gas Act 1986. As described in paragraph [ ] above, we

will also amend the Electricity Act 1989 and Gas Act 1986, so that Ofgem's enforcement powers apply in respect of anyone operating under an exemption from a requirement to hold a gas or electricity licence, as well as in respect of licensees. Ofgem will then, within that legislative framework, be provided with the relevant powers to gather information from licence exempt entities and enforce the requirements placed on them as required.

### **Consultation Question**

**Do you have any views or concerns on how Government intends to apply these Third Package requirements to licence exempt undertakings?**

## **ANNEX A**

### **POSSIBLE MARKET SCENARIOS FOR PROVIDING THIRD PARTY ACCESS**

The Call for Evidence identified a number of potential options for providing third party access and ensuring energy use is properly accounted. The arrangements applicable in a particular case will depend on individual circumstances. Licensed energy suppliers will need to comply with all relevant requirements of their licence.

#### **Commercial agreement**

There may be the potential for a solution based only on a contractual relationship between a customer’s chosen supplier, the private wire owner / operator and the customer, not involving any changes to the metering.

The customer’s chosen supplier enters a commercial agreement with the private network operator. The chosen supplier purchases electricity for its customer from the private wire owner/operator for an agreed price plus a distribution charge. The customer is charged for the amount they use based on meter readings (which would remain invisible to the market system), but billed by the supplier of choice not the local operator.

#### **‘Deemed’ metering**

This model operates without installing a full settlement meter for any customer wishing to switch supplier. Instead, there is a settlement meter at the boundary to the private wire networks. An administrator deems readings for each customer, ensuring that the total equals the reading on the settlement boundary meter. The deemed readings are then reported to the electricity market systems by the administrator so that each supplier can charge its customer for the appropriate amount of electricity. Similar arrangements are already used for attributing electricity flows through high voltage interconnectors.

#### **Opt in/Opt out**

Customers within the Private Network are able to switch to a supplier of their choice if they wish or default to existing arrangements if not.

For all customers opting to switch supplier, a full settlement meter is installed and their consumption is therefore accounted for in the market system. Their consumption also needs to be subtracted from the boundary meter reading in order to calculate the amount of electricity consumed by the customers who have decided to remain with the existing supply arrangements.

#### **Full Settlement Metering**

Installation of full settlement metering at all end customers within the Private Network. This means that all customers’ electricity consumption is visible to the

balancing and settlement system, and therefore all customers on the networks can switch supplier if they wish.

## ANNEX B

### THIRD PACKAGE REQUIREMENTS FOR EXEMPT ENERGY UNDERTAKINGS

As set out in the main consultation document, the Third Energy Package places a number of requirements on energy undertakings which the Government needs to ensure also apply to those undertakings which benefit from a licence exemption.

The requirements are detailed below and divided into two key areas – requirements on licence exempt suppliers and licence exempt distribution networks (where those requirements are in addition to those set out in Chapter 2).

#### Exempt Suppliers

##### **Supplier switching**

Article 3(5)(a) of the Electricity Directive and Article 3(6)(a) of the Gas Directive give electricity and gas customers the right (subject to contractual conditions ) to switch within three weeks. This three week period commences after any relevant cooling off period determined by consumer protection legislation.

##### *Proposals for regulation*

The Directives are clear that all suppliers, including those that are licence exempt must allow their customers to switch supplier within three weeks plus cooling off period subject to contract.

Currently licensed suppliers are not allowed to block switching for contractual reasons (other than outstanding debt). They may however make apply certain conditions, for example early exit charges. In the interests of limiting the burden on licence exempt suppliers, we do not propose to apply this condition to them. They may therefore be able to delay switching beyond three weeks if that has been agreed between the supplier and their customers. This exemption does not however allow licence exempt suppliers to prevent switching indefinitely. They must act reasonably and proportionately in response to any request to switch supplier and must not charge customers to change supplier. They must also send domestic customers a final closure account within 6 weeks of the change.

##### **Customer information**

Article 3(5)(b) of the Electricity Directive and Article 3(6)(b) of the Gas Directive place requirements on electricity and gas supplier to provide certain data relating to their energy consumption (details can be found in Annex 1 to the Directives).

##### *Proposals for regulation*

Licence exempt electricity and gas suppliers will be required to provide customers with consumption data free of charge. For licence exempt suppliers this does not necessarily mean metered data, but it must be in a form that will enable customers to

be properly informed of actual consumption and costs and frequently enough to enable them to regulate their own consumption (taking account of the capability of the customer's metering equipment).

In addition, customers will be able to require the exempt supplier to provide metering data (i.e. the data which is likely to be reasonably required in order to enable a new offer of supply to be made) to another supplier.

## **Transparency**

Article 3(7) of the Electricity Directive and Art 3(3) of the Gas Directive place certain requirements on suppliers to with regards to transparency (details can be found in Annex 1 of the Directives).

### *Proposals for regulation*

Licence exempt electricity and gas suppliers will be required to provide relevant terms and conditions relating to the supply of energy to domestic customers.

These terms must:

- address the matters listed in Annex 1 (1)(a);
- ensure customers are adequately informed of changes to their contractual conditions (including charges) and can withdraw if they do not accept the new conditions: Annex 1(1)(b);
- reflect requirements that payment methods are not discriminatory and are cost-reflective and ensure any prepayment systems are fair and reflect likely consumption.

These terms and conditions may be included in contracts for other services provided that the prices, tariffs, terms and conditions that relate to energy can be readily identified in the light of the need to provide transparency.

## **Fuel Mix Information**

Article 3(9) of the Electricity Directive requires suppliers to provide information to consumers on the mix of fuels used to generate the electricity supplied.

### *Proposals for regulation*

Licensed suppliers of electricity are already required to provide a breakdown of the sources of electricity supplied. Licence exempt electricity suppliers will also need to meet this requirement, but are likely to do so in different ways to that used by licensed electricity suppliers. In the case of licence exempt electricity suppliers that are selling on energy from a larger supplier the information will come from that supplier.

## **Consumer Checklist**



Article 3(16) of the Electricity Directive and Article 3(12) of the Gas Directive requires electricity and gas supply companies to provide a clear and concise energy consumer checklist of practical information relating to consumer rights.

*Proposals for regulation*

Licence exempt electricity and gas suppliers will need to meet this requirement and provide their customers with a copy of the energy consumer checklist and ensure that it is made publicly available.

**Consumer rights, complaints and standards of service**

Article 3(9)(c) and 3(13) of the Electricity Directive and Article 3(9) of the Gas Directive and Annex 1(1)(f) require Member States to ensure that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out of court settlements and that information concerning consumers’ rights as regards this means of dispute settlement is available to consumers.

*Proposals for regulation*

Customers of exempt suppliers need to benefit from transparent complaints procedures and the obligations in relation to standards of service. Customers cannot currently go to the energy ombudsman as this service is only available to customers of suppliers who are “members” of this redress scheme (the Consumers, Estate Agents and Redress Act 2007 requires licensed suppliers to be members). An obligation requiring exempt suppliers to become members of such a scheme is disproportionate. The Government therefore intends to treat Ofgem as the independent dispute resolution mechanism for licence exempt electricity and gas suppliers. Litigation through the courts would still be available where any breach amounted to a breach of contract.

**Record keeping**

Article 40 of the Electricity Directive and Article 44 of the Gas Directive require all electricity and gas supply undertakings to keep at the disposal of the competition authorities for at least five years, relevant data relating to all transactions in electricity and gas supply contracts and derivatives with wholesale customers and transmission operators.

*Proposals for regulation*

Licence exempt electricity and gas suppliers will need to keep records relating to supply transactions for 5 years and make these available to Ofgem.

## **Exempt Distribution Networks**

### **Designation**

Article 24 of the Electricity Directive requires that all electricity distribution networks as designated as such for an agreed period of time and having regard to considerations of efficiency and economic balance

#### *Proposals for regulation*

Whereas licensed distribution networks are designated by being licence holders, licence exempt distribution networks are currently not designated. The Government intends to ensure that by complying with the relevant exemption requirements, licence exempt distribution networks are assumed to be designated.

### **Meeting Demand**

Article 25 of the Electricity Directive requires distribution network operators to ensure the long-term ability of the system to meet reasonable demands for the distribution of electricity and for operating, maintaining and developing under economic conditions a secure, reliable and efficient network with due regard for the environment and economic efficiency.

#### *Proposals for regulation*

The commercial incentives that licence exempt electricity networks have to develop their businesses within the competitive market ensures that they will be compliant with this requirement.

### **Discrimination**

Article 25(2) and (3) of the Electricity Directive require all electricity distribution networks to treat all system users of classes of system users in a non-discriminatory fashion and provide system users with the information they need for efficient access to and use of the system.

#### *Proposals for regulation*

It will be a requirement of the licence exemption for relevant distribution networks that they do not discriminate between users over charging and access and that they provide the relevant information as required by Article 25(3).

### **Protection of commercially confidential information.**

Article 27 of the Electricity Directive places a confidentiality obligation on all distribution system operators.

*Proposals for regulation*

It will be a requirement of the licence exemption for relevant distribution networks that they provide the necessary protection of commercially confidential information as required by Article 27.

**Simultaneous supply contracts for large users.**

Article 41 of the Electricity Directive requires that large non-household customers shall have the right to contract simultaneously with several suppliers.

*Proposals for regulation*

It will be a requirement of the licence exemption that large non-household customers shall have the right to contract simultaneously with several suppliers where required.

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