

# **GUIDANCE: PROVISION OF THIRD PARTY ACCESS TO LICENCE EXEMPT ELECTRICITY AND GAS NETWORKS**

REVISED VERSION

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## PROVISION OF THIRD PARTY ACCESS TO LICENCE EXEMPT ELECTRICITY AND GAS NETWORKS

### FORWARD

The Electricity and Gas (Internal Markets) Regulations 2011<sup>1</sup> introduce new obligations on licence exempt distribution and supply undertakings (irrespective of size) including a duty to facilitate third party access to their electricity and gas networks. The Regulations set out separate obligations for exempt distributors and suppliers. In many (and probably most) cases the same undertaking will be carrying out distribution and supply activities simultaneously on behalf of a customer. There may be some occasions where e.g. an affiliate or managing agent carries out the supply function separately from the ownership of the distribution network.

Third party access gives electricity and gas customers (both domestic and commercial) the right to choose from whom they receive a supply of electricity and/or gas and therefore enhances competition. For such a supply to be given, electricity and/or gas must be conveyed across networks (in this case networks owned by licence exempt companies) to enable a supply to customers from third party suppliers. The right to choose a supplier of electricity and/or gas is a fundamental component of a competitive energy market. Customers of licensed suppliers have been able to choose a supplier since the introduction of competition in the early 1990s.

The provision of third party access can be broken down into a number of stages with distinct responsibilities and timings for each party (exempt network owner, customer and third party supplier). These are outlined in detail in Regulations and summarised in the text in italics below. This policy guidance is intended to help network owners, customers and potential third party suppliers assess what steps they need to take in order to ensure compliance with legislation, including circumstances under which third party access may not need to be provided. **The document does not constitute legal advice and cannot cover every technical or administrative issue that may be relevant. It is therefore important that interested parties refer to the detailed legal requirements on exempt network operators set out in The Electricity and Gas (Internal Markets) Regulations 2011 and seek legal advice if unsure of their legal position.**

Department of Energy and Climate Change

*February 2012*

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2011/2704/contents/made>

## CONTEXT

### Licence Exempt Networks

1. Under the Electricity Act 1989, it is a criminal offence to generate, transmit, distribute or supply electricity without either a licence or an exemption from the requirement to hold a licence. A system of class exemptions in Great Britain was formalised by the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (the “Class Order 2001”). 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 through or taken out of a pipe-line system. Exemptions from the requirement to hold a licence are contained in various 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.

2. Unlike industry licences, there is currently no obligation in the exemption/exception regime for network owners to provide third party network access. As a consequence, consumers’ whose premises are attached to networks owned by licence-exempt entities have not, to date, always been able to choose their energy supplier.

### Citiworks Ruling

3. In May 2008, the European Court of Justice’s (ECJ) ruling in *Citiworks AG*<sup>2</sup> (‘Citiworks’) clarified that the requirement to provide for third party access applied in respect of all transmission and distribution systems, irrespective of size, and that it was not open to Member States to exempt certain types of transmission or distribution systems from the requirement.

4. 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 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.

5. Although the *Citiworks* case concerned an electricity distribution network the principle of third party access can be read across to both electricity and gas distribution networks. It should also be noted that although the *Citiworks* case related to third party access provisions of the Directives under the Second EU Energy Package the same provisions are present in Directives under the Third EU Energy Package.

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<sup>2</sup> *Citiworks AG v Sachsisches Staatsministerium fur Wirtschaft und Arbeit als Landesregulierungsbehörde* (Case C-439/06)

### Third Party Access

6. The requirement to provide for third party access to electricity or gas networks is set out at Article 32 of the EU Directive concerning common rules for the internal market in electricity<sup>i</sup> (the “Electricity Directive”), and Article 32 of the EU Directive concerning common rules for the internal market in natural gas<sup>3</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 regulatory authority for GB. In addition, tariffs and methodologies are required to be published.

### DECC Consultation and Response

7. Arrangements in Great Britain are not compliant with the Electricity or Gas Directives (as clarified by the Citiworks ruling) and DECC therefore consulted on the provision of third party access to licence exempt electricity and gas networks in October 2010.<sup>4</sup>

8. DECC’s objective at all points has been to introduce a system of third party access that is compliant with the Electricity and Gas Directives, whilst striking a balance between the interests of network owners, customers and suppliers.

9. In January 2011, DECC published a response to this consultation (‘Government Response: Implementation of the Third Internal EU Energy Package’) which confirmed that it would bring forward legislation to ensure compliance with the provisions of the EU Third Energy Package.<sup>5</sup>

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<sup>3</sup> 2009/73/EC. This Directive replaced Directive 2003/55/EC, which contained a similar requirement.

<sup>4</sup> [http://www.decc.gov.uk/en/content/cms/consultations/license\\_exempt/license\\_exempt.aspx](http://www.decc.gov.uk/en/content/cms/consultations/license_exempt/license_exempt.aspx)

<sup>5</sup> [http://www.decc.gov.uk/en/content/cms/consultations/resp\\_3rd\\_pack/resp\\_3rd\\_pack.aspx](http://www.decc.gov.uk/en/content/cms/consultations/resp_3rd_pack/resp_3rd_pack.aspx)

## GUIDANCE

### 1. INTRODUCTION

1.1 The Government is only imposing third party access obligations on distribution exemption holders in circumstances where a customer has expressed an interest in being supplied by an alternative supplier or has signed a contract with a third party supplier. We do not therefore expect distribution exemption holders to prepare to provide third party access before an expression of interest is received. Distribution exemption holders are expected to act at all times in a way that does not obstruct or unreasonably delay third party access.

1.2 The provision of third party access can be broken down into a number of stages with distinct responsibilities and timings for each party (distribution exemption holder, customer and third party supplier). These are outlined in detail in the Regulations. What follows is a brief run through of these obligations to enable parties to gain an initial understanding of what is required from them and when. Each chapter begins with a summary of the relevant section of the Regulations (in italics) followed by guidance on related issues.

**1.3 Before considering the detailed guidance on the new requirements, we suggest that gas or electricity system owners first consider whether they are in fact obliged to provide third party access.**

#### Do Third Party Access Requirements Apply?

1.4 In the majority of cases, there will be a clear obligation on a network owner to provide third party access to its network. This will be by virtue of obligations laid down by licence or, in the case of licence exempt distributors ('distribution exemption holders'), by virtue of Regulations.

1.5 There are exceptions, however:

- a. A person may be providing electricity or gas to its customers coincidentally, as part of another service, in circumstances where it is not actually conveying/supplying energy to energy customers within the meaning of the Gas Act 1986 and the Electricity Act 1989 (and ultimately the Gas and Electricity Directives). In these circumstances, the person will not be a 'distribution exemption holder' and the activities will therefore fall outside the scope of the third party access requirements in the Regulations (more detail is provided on this point below).
- b. Even if a person *is* distributing/supplying electricity or gas, within the meaning of the Acts, the duty to give third party access will not apply if it can be demonstrated that the distribution exemption holder would need to increase the capacity of its distribution system in order to give access to a third party supplier and that either—
  - it is not technically feasible to provide the increase in capacity; *or*
  - providing the necessary increase would have a significant and adverse effect impact on the distribution exemption holder or any other person.

1.6 This is discussed in more detail below (paragraph 3.1 onwards).

## **The person is not a distribution exemption holder**

1.7 In certain circumstances, whilst the provision of energy is an integral component of the product/service being purchased, it may not be a product being purchased in its own right and it might not be possible to meaningfully separate the energy aspect from the product or service in its entirety. In such circumstances, the end purchaser is probably not the energy “customer” for the purposes of the Regulations, since the definition of “customer” requires that they purchase electricity/natural gas. For example, in the case of a hotel, or leisure centre, the energy customer would seem to be the person who owns or runs the hotel or leisure centre (ie the ‘premises’, within the meaning of the Acts) and pays the energy bills – not the person who purchases the services provided by those facilities.

1.8 Identifying the correct ‘customer’ and ‘premises’ becomes less clear in situations such as caravan sites. In any given case, a caravan could be static and fixed to the ground for years at a time, or constantly moving. Similarly, people could stay in the caravan for a few days at a time or, at the other end of the scale, they could be permanent residents. In our view, whether or not caravans themselves are being used as ‘premises’ and whether their residents are energy ‘customers’ (and therefore whether the new rules apply) will depend on the context. The same principles are likely to apply in respect of other places that could potentially be used as a living quarters or a place of business, such as boats, cabins, huts and trailers.

1.9 Often a common sense approach can be taken as to whether or not a particular situation is covered by the regulations. Most of the time, end users will only feel the need/want to go to the trouble of switching supplier where they are indeed energy customers. Where unsure, any person providing a service that includes an ‘energy’ aspect should seek independent legal advice in respect of their specific situation. However, in our view, the following contextual factors are likely to be relevant:

- The length of the relationship between the end user and the place the energy is provided – a short-term or temporary arrangement is may be less likely to lead to an obligation to provide third party access – eg a short stay caravan or camp site. If anyone works or resides there for a significant period of time, this would point to the place being used as premises and the user being an energy customer with a right to switch.
- Whether the provision of energy can be meaningfully separated from the other aspects of a service, as opposed to being an incidental or integral part of a package of services - eg a person staying in a hotel overnight is not, by virtue of paying for the accommodation, an energy customer. The more significant the energy cost is in relation to the cost of the overall service, the more likely the person paying for the service will want to have the ability to switch, subject to the other contextual factors.
- Whether the service is provided in order to power something that is able to re-locate (e.g. an electric vehicle or cruise ship) and/or another user may use the supply point – in these cases, the customer can ‘switch supplier’ by simply going to another energy service provider if they do not like the price they are being offered by the incumbent supplier. By contrast, where the entity being powered is permanently fixed to, or built up from the ground, the customer will not be able to switch unless third party suppliers can access the local network.

- Whether the energy is or could be separately billed or separately identified on the bill for the service. This is a factor that might indicate energy supply, but it is not conclusive – a landlord cannot deprive tenants of the right to switch by simply rolling electricity and gas charges into a general service charge.
- Whether or not a profit is made from the sale of electricity or gas is not determinative. It is possible to “sell” or “purchase” something without a profit being made. For example, Ofgem’s guidelines on payment by tenants to landlords for resale of electricity proceed on the assumption that there is a customer relationship.

## 2. 'SWITCHING'

**This section details which factors (eg costs) customers should consider before taking action to switch electricity/gas supplier.**

### **Consumer wishes to Switch**

*A distribution exemption holder's third party access obligations begin when a customer expresses an interest in being supplied by an alternative supplier. The expression of interest must be conveyed to the distribution exemption holder in writing and with evidence that at least one third party supplier is willing to supply the customer. This expression of interest may include confirmation that a customer has already entered into a contract with a third party supplier (or such confirmation may come later).*

2.1 Under the Regulations a new supplier (licensed or exempt) will be required to start supplying a premises within 21 calendar days of the day after the contract with a new supplier was entered into (or after the cooling off period of up to 14 calendar days has expired). The Regulations specify exceptions to this rule, which include the following:

- exempt suppliers may be able to prevent a customer from switching within the 21 calendar day period if the customer has a fixed term contract which has not expired, or has not paid all outstanding debts in relation to their energy supply;
- where the customer is taking supply through an exempt distribution system and the supply exemption holder is unable to start supplying because a connection or metering arrangement is required and has not yet been made, the obligation on suppliers to switch customers within 21 calendar days will be subject to this being resolved.

### **Considering a Third Party Supply**

2.2 Before taking action to initiate a switch of supplier and in particular before entering into a new supply contract, customers should be aware of the possible costs associated with such a switch. These will differ from case to case but may include:

- Metering costs
- Costs associated with the early termination of existing energy contracts between the customer and their current supplier. In some circumstances the exempt supplier may object to a transfer where a fixed-term contract is in place
- Connection costs reasonably incurred
- Other costs – e.g. use of system charges which may be added to the overall bill or any costs associated with providing information requested by the customer about the steps that would need to be taken to increase capacity on the network. Information about use of system charges are indicative only, until charging methodology approval has been given by Ofgem.

2.3 Under the Regulations, the distribution exemption holder can require the customer to meet all these costs (although third party suppliers may agree to meet some or all of these costs). Customers contemplating switching may therefore wish to obtain confirmation of these costs from the distribution exemption holder and potential third party supplier (s) (and who will be responsible for meeting them) before agreeing a contract with the new supplier.

2.4 Customers of distribution exemption holders wishing to consider obtaining a supply from a licensed third party supplier can find a list of licensed suppliers on the Ofgem website.<sup>6</sup>

2.5 Comparison websites also exist which list potential third party suppliers and these can be easily found via internet search engines. Prices quoted on these sites may not, however, be wholly applicable for a supply to an exempt network as they are unlikely to reflect the use of system charge that will apply to a supply over a distribution exemption holder's network or other costs that may apply in relation to third party supply to a licence exempt network.

2.6 The industry regulator, Ofgem, publishes advice for consumers on the right to switch.<sup>7</sup>

2.7 Customers of distribution exemption holders who do switch supply may choose to make further changes of supplier. This could include a switch back to a supply from the licence exempt supplier from whom the consumer received their original supply of gas or electricity (although there is no obligation on exemption holders to resume a supply).

2.8 If a customer decides that, taking all of these factors into account, they do wish to switch supplier, they must register that intention with a distribution exemption holder by means of a written expression of interest that includes evidence that at least one third party supplier is willing to offer a supply.

## Complaints

2.9 Complaints or enquiries relating to a licensed energy supplier or network operator should be directed to that company directly in the first instance. All licensed energy suppliers and electricity and gas network operators are required through strict complaints handling standards to deal proactively with complaints from domestic customers and micro-businesses. The Energy Ombudsman can also investigate complaints by consumers that the licensed energy supplier or network operator cannot resolve.

2.10 Disputes relating to supply exemption holders are resolved by Ofgem. Ofgem's role in relation to distribution exemption holders is discussed further in sections 4 and 5.

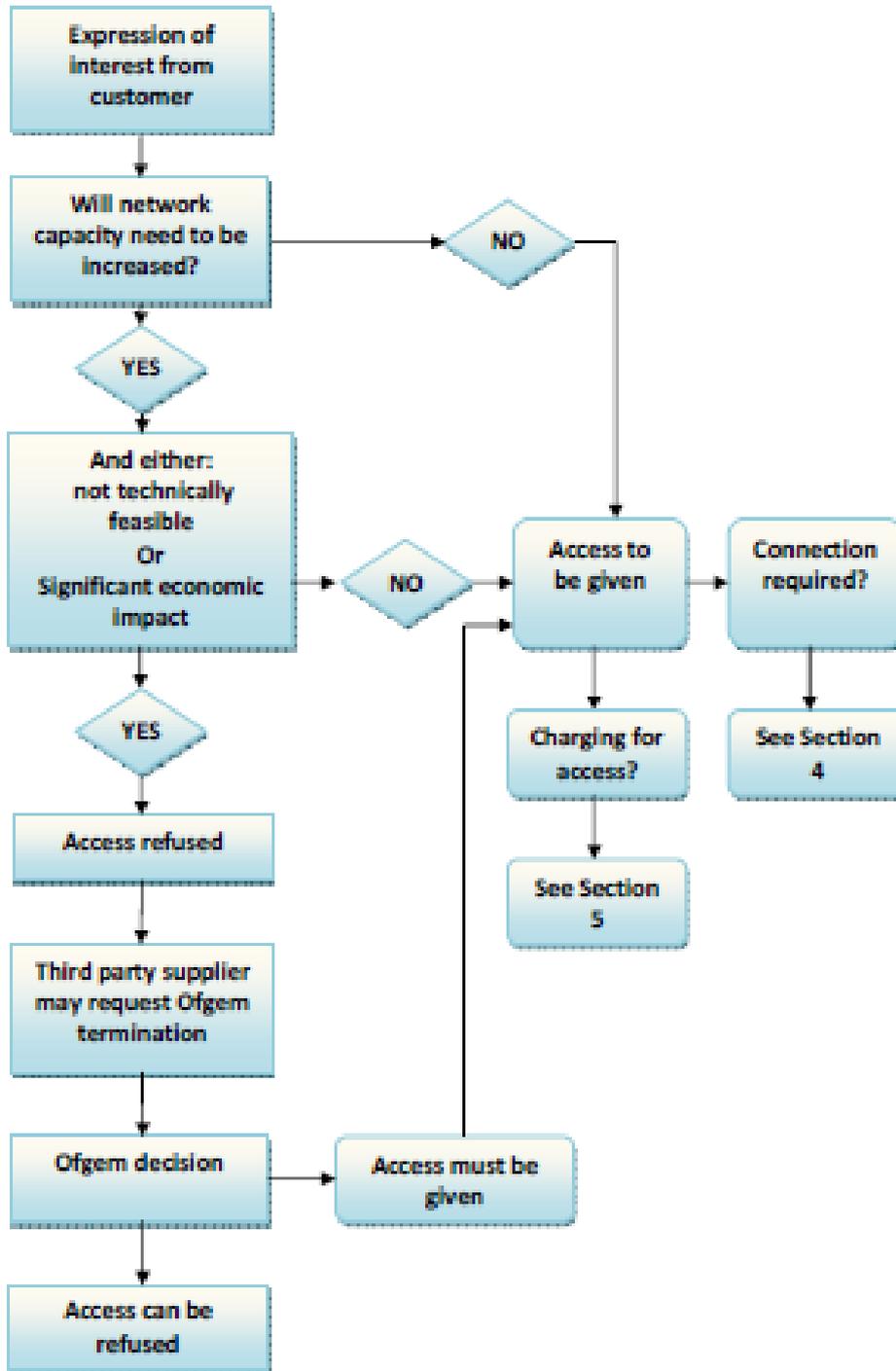
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<sup>6</sup> <http://www.ofgem.gov.uk/Licensing/Work/Pages/Work.aspx>

<sup>7</sup> <http://www.ofgem.gov.uk/Consumers/Pages/Consumer.aspx>

### 3. PROVIDING FOR THIRD PARTY ACCESS

This section outlines third party access obligations on distribution exemption holders, the circumstances under which third party access may be refused and customers' right to challenge.



### **Obligation to Provide Third Party Access?**

Regulations provide that the duty to provide third party access applies where:

- a customer owns or occupies premises connected to an exempt distribution system
- the customer is taking a supply of electricity/gas through that system from the distribution exemption holder that operates or has control of that system (or a related person); and

the customer:

- has served on the distribution exemption holder a notice expressing the customer's interest in taking a supply of electricity/gas for a third party supplier through that system; and
- has provided with the notice evidence that at least one third party supplier would be willing to supply the customer with electricity/gas through that system and has identified any such third party supplier in the notice.

Once a distribution exemption holder receives an expression of interest, they must consider whether they are in fact obliged to provide third party access and, **within 10 working days from receipt of the expression of interest**, write to the customer :

- Stating its view to the customer that the distribution exemption holder is refusing access because it would need to increase the capacity of the network in order to give third party access and either it is not technically feasible to do so or to do so would have a significant and adverse economic impact on the distribution exemption holder or any other person.

**OR**

- Informing the customer that it will take the necessary steps with a view to giving providing third party access subject to agreement of such matters as connection and metering arrangements. **Within 20 working days** of receiving the expression of interest the distribution exemption holder must then provide any third party supplier identified with a notice specifying:
  - Any metering arrangements that would be required to enable access

- *Whether access could be given through contractual arrangements without the need for a new connection or for a connection to be modified*

*The distribution exemption holder must also provide any other information/documents that the third party supplier(s) might reasonably request.*

*Where the distribution exemption holder considers that they are not obliged to provide third party access as the purchaser of the electricity is not a customer for the purposes of the Regulations (for the reasons at reference above) then we recommend that the customer is notified at this early stage.*

### **Third Party Access – network capacity**

3.1 We envisage that, in the majority of cases, customers will request a third party supply for a similar demand profile to their existing profile. A refusal of access on grounds of a need to increase capacity is most likely to apply when a customer is seeking a third party supply which includes an increase in electricity or gas consumption/demand (although other circumstances may also apply).

3.2 It is important to note, however that a need to increase capacity on the network is not *in itself* a reason for refusing third party access. The need to increase capacity must be either not technically feasible or that to do so would have a significant and adverse economic impact on the distribution exemption holder or any other person. Distribution exemption holders must consider each request for third party access on its merits and be prepared to back up any claim with evidence as well as information regarding the measures that would be required to increase capacity to meet the third party access request.

3.3 Although the distribution exemption holder may be aware of potential capacity limitations upon receipt of an expression of interest, it may be the case that the need to increase capacity only becomes apparent when further technical details have been made available, for example after initial discussions between a distribution exemption holder and a potential third party supplier.

3.4 In cases where it is obvious that network capacity would need to be increased (e.g. the customer is requesting a third party supply to meet a significant increase in demand) and the costs in doing so are prohibitive, the consumer may decide to withdraw the expression of interest. Alternatively, parties may wish to discuss an alternative approach to meeting the consumer's request. This approach may appeal particularly to those consumers/third party suppliers wishing to avoid the costs attached to distribution exemption holders providing evidence to Ofgem (described further below) and the delays associated with waiting for a determination.

### **Need to increase capacity – opportunity to request Ofgem determination**

*When the distribution exemption holder has refused access on the basis of lack of capacity and the third party supplier wishes to challenge the assertion that the network lacks capacity, that it*

*is not technically feasible to provide access, and/or this would have an adverse and significant impact they must first serve a notice informing the distribution exemption holder that it will be making such an application and inviting the distribution exemption holder to provide any further evidence.*

*The application must include any evidence provided by the distribution exemption holder, a description of the nature of the access required and any evidence that the third party supplier may wish to include to show that capacity would not in fact need to be increased and that an increase in capacity is in fact technically feasible and/or it would not have a significant economic impact. The third party supplier may also provide evidence of any benefits that would be brought by an increase in capacity.*

*Any evidence to Ofgem should be copied to the distribution exemption holder and the customer. Subject to the potential for excluding commercially sensitive information, Ofgem may, at the request of the customer or third party supplier, ask the distribution exemption holder to provide an estimate of the works required to meet the request for additional capacity.*

*Ofgem will then consider the evidence provided and make a determination - either that:*

- the distribution exemption holder is entitled to refuse access on the grounds of lack of capacity; or*
- is not entitled to refuse access on these grounds and that access must be given.*

*The distribution exemption holder may recover any costs reasonably incurred in providing evidence about the works that would be needed to increase the capacity of the network from the customer requesting a supply (or the third party supplier if they agree to meet the costs).*

### **Duty to Give Access**

*Once a third party access obligation has been established and after receiving confirmation that a customer has entered into a contract with a third party supplier, the distribution exemption holder must give the third party supplier the necessary access to its network to enable a supply to be given to the customer.*

### **What 'Access' Entails**

3.5 The provision of third party access will involve a degree of interaction between the distribution exemption holder and the third party supplier (which is likely to be a licensed electricity or gas supplier). However, there is no obligation on distribution exemption holders (while they remain licence exempt) to upgrade these networks to a similar or identical standard as licensed networks. There is also no obligation that distribution exemption holders (while they remain licence exempt) become Independent Distribution Network Operators (IDNOs).

3.6 The nature of the 'access' required by third party suppliers to supply a customer will vary from case to case. At a minimum, third party suppliers will wish to ascertain:

- Whether a Grid connection is already in place, and if not, whether a connection will need to be made to enable access
- Whether use of system charges will be imposed

- Confirmation of the consumer's demand profile
- Billing and settlement information

3.7 They may wish to collect this information via a phone call, a formal written request or site survey. If an electricity or gas connection (or reinforcement or maintenance of an existing connection) is required to allow a third party supply, information requirements are described in detail below. A distribution exemption holder must not act in a manner that unreasonably prevents, delays, or restricts access and must grant the third party supplier such ancillary or incidental rights over the network to enable the supplier to meet licence conditions including in relation to metering arrangements. In all cases, parties will need to agree a switching date and reconciliation of energy charges.

## 4. CONNECTIONS

**This section outlines circumstances under which distribution exemption holders are under a duty to provide an electricity/gas connection upon receipt of an expression of interest from a customer wishing to switch supplier and the flow of information that is required to enable that connection.**

### **Duty to make a Connection**

*Under certain circumstances, the duty to provide third party access to a network may only be discharged via a new electricity or gas connection. In this context 'connection' can mean a new physical connection (e.g. a cable or pipeline linking a premises to a supply of electricity and/or gas), maintenance of an existing connection (including its upgrading or reinforcement).*

*The distribution exemption holder, if required to do so by the customer wishing to switch or the prospective third party supplier, must make a connection between its distribution system and:*

- *the customer's premises; or*
- *the distribution system of another authorised distributor/gas transporter/another distribution exemption holder*

*This includes the provision of such electric lines or electrical plant as may be necessary to enable an electricity connection. With regard to a gas connection, this includes the laying of pipes unless agreement has been reached that a person other than the distribution exemption holder will supply and lay the pipes, in which case the duty to connect begins once that pipe has been laid.*

*Access to facilitate a connection cannot be withheld on the basis that the distribution exemption holder has yet to receive approval of its charging methodology from Ofgem. In such cases, the distribution exemption holder may, once approval has been received, require a back payment calculated from the date the third party supplier began to supply the consumer, on the basis of the approved methodology.*

*The customer or third party supplier requiring the connection will need to:*

- *request that the distribution exemption holder offer terms for making the connection; and*
- *provide the distribution exemption holder with information on:*
  - *details, including location, of the premises or distribution system from which the connection is to be made*
  - *date of connection*
  - *maximum power/gas pressure to be conveyed*

- *any other requirements, including metering*
- *any other information reasonably requested by the exempt network owner.*

*The distribution exemption holder must then provide the person requesting a connection with a notice:*

- *raising any concerns regarding the information provided*
- *proposing arrangements for any security that will need to be paid*
- *proposing arrangements for any payment that will need to be made*
- *proposing any terms restricting the exempt network owner's liability*
- *stating any terms for indemnity that the person requiring a connection will be required to accept (gas only)*
- *specifying any other terms on which it will make the connection*

*The distribution exemption holder must then make the connection as soon as is reasonably practicable, including provision of any apparatus (wires, pipes etc) needed.*

*Costs associated with the connection will be paid by the person requesting the connection and distribution exemption holders may request reasonable security for the payment of these costs. Distribution exemption holders are under no obligation to ensure connection if such security is not provided (or proves to be inadequate) or the necessary approvals and information are not forthcoming.*

*The Regulations allow a distribution exemption holder to enter into an agreement with the person requesting a connection on terms that differ from those related above, as long as they are agreeable to both parties. In such case the Ofgem dispute resolution provisions do not apply.*

## **Circumstances in Which a Connection May be Refused**

4.1 The Regulations are quite clear that a distribution exemption holder may not be required to make a connection between its distribution system and any premises or other distribution system when:

- The distribution exemption holder is prevented from doing so by circumstances outside its control
- The connection might involve danger to the public
- It is not reasonable for the distribution exemption holder to do so

- The supply of gas to the premises or pipe-line system is likely to exceed 75,000 therms over a 12 month period

## **Connections Process**

4.2 In the majority of cases, we envisage that third party access will be provided via an existing electricity/gas Grid connection with the distribution exemption holder. However, regulations do allow for third party access to be provided via a new connection between the customer requesting third party access and the distribution exemption holder or the local distribution network (to which the third party supplier is likely to have access).

## **What is a Connection?**

4.3 Under the regulations, connection incorporates the concept of reinforcement (installation of new line/pipe or modification of an existing one) and ongoing maintenance.

4.4 Connection could be to an individual property, a small business or commercial property. It may involve the physical connection (via cable or pipeline) of a customer's premises to the distribution exemption holder's network or to the local Distribution Network Operator. This may involve the digging of trenches and other related works. Some elements of this work may be undertaken by the customer or a representative. 'Connection' could also include an upgrade of existing cables/pipelines to accommodate an increase in demand or, potentially, the installation of supporting infrastructure.

## **Information Required by Parties**

4.5 The information required to facilitate an offer of terms for connection will vary according to the circumstances of that connection, but (based on information required by licensed distribution companies) the information required by distribution exemption holders (subject to any restrictions under the Data Protection Act 1998) will probably include:

- Customer name and address (correspondence address), other contact details and preferred method of contact
- Plans of the customer's location including adjacent properties and streets and a site layout
- A plan clearly showing ownership and boundaries of the premises to which the connection is to be made. Please note that a connection may require third party agreements if the cables/pipes must cross land owned by a third party
- Existing / proposed new meter positions
- Maximum power required
- Details of any disturbing loads ( e.g. if the connection is for a building that contains a high number of motors or large motors for lifts, air conditioning plant, industrial machinery or electrical welding equipment)
- MPAN (Meter Point Administration Number), if applicable (found on electricity bill) or gas equivalent.

4.6 In return, the Distribution Exemption Holder should provide the person requesting a connection with a notice detailing:

- The estimated cost of the connection
- How these costs are to be met – including security and payment terms

- The consequences should payment or security not be forthcoming
- Proposed timings for each stage of the connection
- Any third party agreements that might be necessary
- Whether any part of the connection could be undertaken by the customer (or third party supplier), thus potentially reducing costs
- Any other information that appears relevant

4.7 It will then be for the customer/third party supplier to decide if they wish to proceed with the connection and advise the distribution exemption holder accordingly.

### **Independent Connections Providers**

4.8 Distribution exemption holders may wish to employ qualified connections providers to undertake connections work on their behalf. ICPs are certified by Lloyds.<sup>8</sup>

### **Ownership of Connection**

4.9 We envisage that the distribution exemption holder will normally own the connection.

### **Maintaining the Connection**

4.10 The licence exempt distributor will maintain the connection once made with costs being met by the person requesting connection.

### **Complaints**

4.11 Complaints regarding the connections process are handled under the existing connections dispute resolution procedures (s 23 Electricity Act 1989 and s 27A Gas Act 1986), except where there is a special connection agreement (in which case these procedures do not apply).

### **Further Guidance**

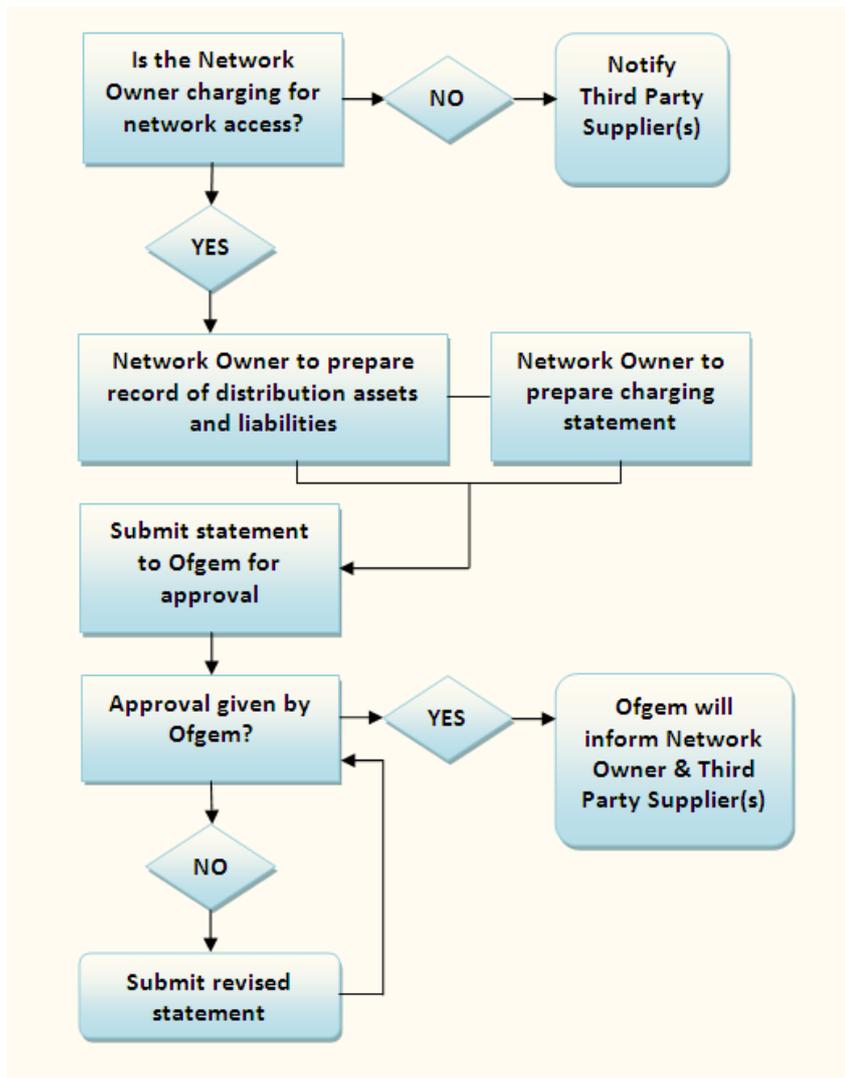
4.12 Ofgem's guidance on third party access charges for licence exempt gas and electricity distribution networks includes guidance on connections issues and provides some clarification of what would constitute connection costs (see para 5.13 below).

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<sup>8</sup> <http://www.ofgem.gov.uk/Consumers/ncamm/Documents1/Howdoigetconnectedtoanelectricitysupply.pdf>

## 5. NETWORK CHARGING

This section outlines the approval process for network access charges. Further guidance can be found on the Ofgem website (see para 5.1 below).



### Charging for Network Access

*Network charges reflect the costs associated with the conveyance of a third party supply of electricity or gas across the distribution exemption holder's distribution system.*

*Distribution exemption holders must seek approval from Ofgem for the methodology they propose to use as a basis for charging third party suppliers for the transport of electricity or gas across their networks. They must obtain such approval before any charges can be made. These charges recognise the day-to-day costs associated with running that network. Distribution exemption holders may, however, decide that these costs are minimal and that charging for network access is not proportionate.*

***Within 20 working days from receipt of the expression of interest, and only where there is an obligation to provide third party access, the distribution exemption holder must:***

- Prepare a record of the assets and liabilities associated with the operation of the distribution network; and
- Prepare a charging statement detailing (with evidence) the proposed methodology (either with or without reference to Ofgem's Statement) for calculating a use of system charge.

Provide Ofgem with

- The charging statement
- Evidence in support of the methodology
- Copy of the expression of interest
- Any other information Ofgem may request (within 10 working days of Ofgem's request, if Ofgem request the information at a time when there are fewer than 10 working days left in the 20 working days mentioned above)

A distribution exemption holder classified by Ofgem as a closed distribution system is exempt from the requirement for charging methodology approval (unless requested by a customer or third party supplier once the customer has served a notice expressing an interest in taking a supply from that third party supplier).

Within the 20 working days, the distribution exemption holder must send a copy of the charging statement to the prospective third party supplier along with the notice specifying any metering arrangements that might be required to facilitate access.

### **Preparation of Accounts**

Upon receipt of a request for third party access and while the distribution exemption holder imposes a use of system charge, the distribution exemption holder must prepare and maintain accounts in respect of the distribution system to which the charges relate.

### **Ofgem Approval For Charging Methodology**

On receipt of the notices outlined above, Ofgem will decide whether to approve the charging methodology. If approval cannot be given, the distribution exemption holder will be given an opportunity to submit a revised methodology for approval.

Once approval is given, Ofgem will inform the distribution exemption holder (who must inform any third party supplier) of its decision.

## **Modifications**

*If at any time a distribution exemption holder wishes to modify a methodology previously approved by Ofgem (and is still to be used to calculate a use of system charge), the distribution exemption holder must:*

- *Submit to Ofgem a charging statement containing details of the proposed revised methodology;*
- *Provide Ofgem with any other information requested; and*
- *Copy the revised charging statement to any third party supplier affected by it.*

*On receipt of these notices, Ofgem will decide whether to approve the charging methodology. If approval cannot be given, the distribution exemption holder will be given an opportunity to submit a further revised methodology for approval.*

*Once approval is given, Ofgem will inform the distribution exemption holder (who is required to inform any third party supplier) of its decision.*

## **Ofgem Guidance – Third Party Access Charges for Licence Exempt Gas and Electricity Distribution Networks**

5.1 Ofgem has produced guidance on third party access charges for licence exempt gas and electricity distribution networks<sup>9</sup>. This gives a proposed common methodology for distribution exemption holders to refer to when preparing a charging statement. Distribution exemption holders may also prepare a methodology without reference to Ofgem's statement but adhering to the principles outlined in Ofgem's guidance. Ofgem will endeavour to give a decision within a month of receipt of the charging statement.

5.2 Ofgem provides an illustrative pro-forma excel spreadsheet designed to aid charge calculation. Ofgem's Guidance also gives more detail on the identification of network costs, i.e. the costs associated solely with energy distribution activities. Ofgem intends to review its guidance in light of experience of approving charging methodologies and handling disputes.

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<http://www.ofgem.gov.uk/Networks/Policy/Documents1/TPA%20network%20charging.pdf>

## 6. CLOSED DISTRIBUTION SYSTEMS (CDS)

**This section outlines the process by which Ofgem will consider applications for classification as closed distribution systems.**

### **Closed distribution systems**

*A distribution exemption holder may apply to Ofgem for classification as a Closed Distribution System (CDS). Ofgem must agree to classify the distribution exemption holder if it considers that it meets the criteria laid down in regulations. Broadly, these criteria include that:*

- The distribution system is not used for the purpose of supplying electricity/gas to household customers (or supplies fewer than 50 employees of the exemption holder supplied from embedded generation);*
- The distribution system is used for distributing electricity/gas within a geographically self-contained industrial, commercial or shared services site and is not integrated into the national transmission or distribution network;*
- The distribution system is wholly or mainly used to supply integrated system users or the distribution exemption holder (or a person related to the distribution exemption holder).*

*Classification as a CDS brings with it exemption from, under certain circumstances, the need to seek Ofgem approval for charging methodologies prior to their entry into force. However, if a customer or Third party Supplier requests it, the CDS operator must submit methodology to Ofgem for approval.*

6.1 The legal obligation to provide third party access is still applicable to CDSs. Distribution exemption holders are advised to seek legal advice if unsure whether they meet the criteria for CDS approval.

### **Ofgem's Handling of CDS applications**

6.2 Applications to be classified as a Closed Distribution System should be sent to Ofgem at:

Distribution Policy Team,  
Ofgem,  
9 Millbank,  
London,  
SW1P 3GE  
Tel: 020 7901 7000  
Fax: 020 7901 7066

6.3 Ofgem will ask a series of questions to determine whether the CDS classification applies.

## 7. BILLING AND METERING

**This section outlines possible methods by which distribution exemption holders manage technical and contractual arrangements associated with providing third party access.**

### Managing Third Party Supplies

7.1 We are not prescribing in regulations how stakeholders manage the technical and contractual means of providing for third party access. Market participants (e.g. distribution exemption holders, suppliers and distribution companies) are best placed to determine this, taking account of any existing practices (particularly those already in place on those networks which already allow third party access) and the requirement in the regulations for distribution exemption holders to act at all times in a way that does not obstruct the provision of third party access.

7.2 The basic challenge for the provision of third party access to be provided is ensuring that the demand of customers opting for a third party supply can be measured and separated from those on the network who are not opting for a third party supply. Further, this information will need to be conveyed to the appropriate body so that the demand can be reflected in the overall balancing and settlement process.

7.3 There are a number of possible solutions to this. The Regulations allow for metering and contractual arrangements. Metering is likely to prove to be the most satisfactory solution in terms of ensuring consumption is accurately recorded and accounted for. One approach ('full settlement metering') is to ensure that all customers of a distribution exemption holder have settlement meters with Meter Point Administration Numbers (MPANS). MPANS are explained in more detail below.

7.4 Another approach ('difference metering') avoids the need for all customers to have settlement metering by ensuring that:

- The boundary meters to the licence exempt network remain as settlement meters;
- The individual customer meters for customers who have opted for third party supply become settlement meters with MPANS;
- Customer demand for those who have not opted for third party supply is determined by the difference between the sum of the boundary meter readings and the sum of the customer settlement meter readings.

7.5 Where they relate to licensed suppliers, both the 'full settlement metering' and the 'difference metering' approaches are to some extent supported by existing industry codes and agreements:

- The 'full settlement metering' approach is recognised in the Master Registration Agreement and in the Balancing and Settlement Code (which treats the licence exempt

network as an 'Associated Distribution System' of the Licensed Distribution System Operator providing registration and other settlement-related services);

- The 'difference metering' approach can be achieved via a Metering Dispensation, whereby a licensed supplier seeks dispensation from the BSC Panel to allow it to interact with non-standard metering. In this example, the licensed Supplier for the network as a whole and the licensed Supplier for the customer requiring third party supply would cooperate to request a Metering Dispensation allowing metering that was non-standard in the following respects:
  - Metering for the network as a whole would be based on difference metering i.e. the meter readings would be measured at the network boundary, but would have the meter readings for the customer requiring third party access netted off them prior to submission into billing and settlement processes.
  - Metering for the customer requiring third party supply would not be at the BSC-defined Boundary Point i.e. the power flow would be measured at the point of connection to the private network rather than the point of connection to the licensed DNO network.
  - Subject to the approval of the Metering Dispensation, the Supplier would request the licensed Distributor to provide an MPAN for the meter on the distribution exemption holder's network and the Meter Point Administration Services for that MPAN would remain the responsibility of the licensed Distributor.

7.6 The Metering Dispensation approach may offer greater flexibility and reduced costs in that it utilises existing metering and does not involve unduly complex administration for the licence exempt network.

7.7 Whichever option is adopted will involve the installation and registration of appropriate meters and the provision of Meter Point Administration Services and the collection of data.

7.8 It is evident that these methods depend on the cooperation of all parties to work efficiently. We would expect parties to act all times so as not to obstruct third party access and would therefore hope that parties continue to work in such a way as to allow any method to be utilised smoothly.

## **Metering**

7.9 Installation and registration of appropriate meters, where not already in place, will be the responsibility of the third party supplier.

7.10 Meters can be Half Hourly (HH), in that meters measure and record demand (from which consumption can be derived) every half-hour and these half hour readings are retrieved frequently (e.g. each day or week) or Non Half Hourly (NHH) in that meters measure and record cumulative consumption and successive readings may be retrieved less often, possibly once or twice a year.

7.11 HH metering is the most straightforward to use in conjunction with the differencing solution described above and doesn't require any special rules other than the above. NHH metering

could be more complicated and require either a common reading frequency for all meters involved in the differencing or rules for deeming meter reads on a common timescale. Mixed HH and NHH meters will be more complex, potentially involving profiling of meter reads that currently Data Collectors are not set up to do. Please contact the BSC Helpdesk ([bscservicedesk@logica.com](mailto:bscservicedesk@logica.com)) or on 0870 010 6950 for advice in this area.

## **Balancing and Settlement Code**

7.12 The Balancing and Settlement Code (BSC) contains the governance arrangements for electricity balancing and settlement in Great Britain.

7.13 The energy balancing aspect allows parties to make submissions to National Grid to either buy or sell electricity into/out of the market at close to real time in order to keep the system from moving too far out of phase.

7.14 The settlement aspect relates to monitoring and metering the actual positions of generators and suppliers (and interconnectors) against their contracted positions and settling imbalances when actual delivery or off-take does not match contractual positions.

## **Meter Point Administration Number (MPAN)**

7.15 A Metering Point Administration Number (MPAN) is a thirteen-digit code allocated to meter points to facilitate industry Change of Supplier (CoS) processes. Licensed suppliers are obliged to print it on customer's electricity bills, and use it to trigger the CoS process when requested to do so by a customer.

7.16 MPAN numbers are requested by suppliers and allocated by licensed distributors for each meter point. For a distribution exemption holder's network employing difference metering (via the Metering Dispensation route), MPANs would typically be provided by the licensed distributor to whose network the distribution exemption holder's network was connected. For a distribution exemption holder's network employing the full settlement metering approach, the BSC allows any Licensed Distributor to provide MPAN(s).

7.17 Once a meter is installed, the associated MPAN is registered by a supplier on a database to register that the supplier is responsible for those particular MPANs. The database lists key data items to allow a change of supplier to be facilitated.

## **Master Registration Agreement**

7.18 The Master Registration Agreement is the multi-party agreement between all licensed electricity Distribution Businesses and Suppliers. It sets out terms for the provision of Metering Point Administration Services (MPAS Registrations), and procedures in relation to the Change of Supplier to any premise/metering point.

## **Meter Point Administration Services.**

7.19 In order for industry processes for customer billing and settlement to function correctly, the Licensed Distribution System Operator (LDSO) providing the MPAN must provide a number of services, including:

- Provision of the registration service that allows Suppliers to register changes to the data items associated with the MPAN;
- Submission of Line Loss Factor (LLF) data to settlement;
- Invoicing of Distribution Use of System (DUoS) charges in relation to the MPAN;
- For the full settlement metering approach, provision of an Unmetered Supplier Operator (UMSO) role for any unmetered supplies on the private network; and
- For the full settlement metering approach, creation of new MPANs (upon request from Suppliers) as new metering points are created on the network.

## **Competition in Metering**

7.20 Industry arrangements support competition in metering for all settlement meters, with suppliers and/or customers able to choose their Meter Asset Provider and/or Meter Operator Agent. Once a customer on a private network acquires an MPAN they will automatically have access to competition in metering as well as choice of supplier.

## **Data Collection**

7.21 As part of the balancing and settlement process, consumption recorded on meters must be conveyed by Data Collectors to Data Aggregators (both of which are supplier's agents) and thence into the central settlement system. The Supplier's appointed Data Collector is responsible for the end-to-end data collection process, and must be qualified as a settlement Data Collector under the BSC. Note that the BSC does allow a separate Data Retriever to physically retrieve data from the meters and pass it to the Qualified Data Collector, and this provides a potential route for an existing data retrieval system to be used for settlement purposes, provided that the Data Collector is satisfied that it meets settlement requirements.

7.22 As already stated, complications arise when the demand of customers opting for a third party supply must be measured and separated from those on the network who are not opting for a third party supply. However, our understanding is that solutions are possible under the BSC if the suppliers involved voluntarily cooperate to secure a metering dispensation and appoint a common Data Collector.

## **Smart Metering**

7.23 Ofgem and DECC have set out how smart metering will be implemented and rolled out. An overview and full details can be found on the DECC website.<sup>10</sup>

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<sup>10</sup> [http://www.decc.gov.uk/en/content/cms/tackling/smart\\_meters/smart\\_meters.aspx](http://www.decc.gov.uk/en/content/cms/tackling/smart_meters/smart_meters.aspx)

## CRC

7.24 The CRC energy Efficiency Scheme is a mandatory scheme aimed at improving energy efficiency and cutting emissions in large non-energy intensive public and private sector organisations. DECC's [website](#)<sup>11</sup> has detailed guidance on applicability of CRC and compliance but, broadly, in order to qualify for the CRC an organisation will need to have at least one settled half hourly meter and be supplied with at least 6,000MWh of electricity in the qualification year (2008 for the first phase).

7.25 Under the terms of CRC, where a tenant has an agreement with a third party, and not their landlord, to supply it with electricity then that supply would become part of the qualification supply of the tenant and not that of the landlord.

7.26 Where the landlord supplies energy to a tenant, a landlord does not have to buy allowances to cover the emissions of a tenant where those emissions are covered by a Climate Change Agreement (CCA)<sup>12</sup>.

7.27 Detailed queries regarding CRC should be addressed to scheme administrators (The Environment Agency in England and Wales, The Scottish Environment Protection Agency (SEPA) in Scotland and The Northern Ireland Environment Agency (NIEA) in Northern Ireland).

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<sup>11</sup> [http://www.decc.gov.uk/en/content/cms/emissions/crc\\_efficiency/crc\\_efficiency.aspx](http://www.decc.gov.uk/en/content/cms/emissions/crc_efficiency/crc_efficiency.aspx)

<sup>12</sup> <http://publications.environment-agency.gov.uk/pdf/GEHO0311BTMD-E-E.pdf>

## 8. IMPLICATIONS FOR ENERGY CONTRACTS/AGREEMENTS

**This section outlines how third party access obligations (and rights) are to be interpreted with regard to energy supply contracts (particularly bulk-purchase agreements) and leases.**

### Energy contracts

8.1 The contractual freedom of customers and suppliers must be read in light of one of the Directive's key purposes, which is to ensure that customers are able to choose their supplier, and switch supplier. For example - Article 3(7) of the Electricity Directive and Article 3(3) of the Gas Directive oblige Member States to ensure that a customer "is in fact able easily to switch to a new supplier"<sup>13</sup>; Article 3(5)(a) of the Electricity Directive and Article 3(6)(a) of the Gas Directive, require that where a customer, while respecting contractual conditions, wishes to change supplier, that change is effected within 3 weeks.

8.2 We are aware that distribution exemption holders utilise a number of contractual arrangements to supply their customers - examples include bulk purchase agreements and supply agreements connected with lease terms. The regulations do not make existing contracts of this type invalid or prevent customers and exempt distributors/suppliers agreeing similar contracts, although other rules governing contracts could of course be relevant (for example the Unfair Terms in Consumer Contracts Regulations 1999) and parties should seek legal advice if unsure.

8.3 Such contracts cannot, however, remove the customer's right to choose an alternative energy supplier (though it may affect the exercise of that right). The early termination of an energy supply contract may lead to the customer having to meet associated costs. Such costs are determined by the terms of the contract. In addition, an exempt supplier can object to a proposed transfer if its contract with the customer prevents the customer from terminating the contract within a specified period which has not yet expired (e.g. new Schedule 2ZB Electricity Act 1989, para 2(5)(b)).

### Bulk Purchase Agreements

8.4 Bulk purchase agreements for the supply of energy could allow suppliers to access the competitive energy market and secure bulk prices, resulting in significant savings for their customers. It is possible for site owners and tenants to enter into voluntary arrangements whereby the site owner purchases electricity in bulk on behalf of the tenants (sometimes on a 'take or pay basis'), and then charges them individually for their share. However, given the importance attached to switching under the Directive, such bulk purchase arrangements should be purely voluntary, and we would expect that tenants should be able to opt out of a voluntary

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<sup>13</sup> The requirement that a customer "is in fact able to switch to a new supplier" was contained in art.3(5) of the second Electricity Directive (2003/54/EC). The requirement that a customer be able to switch "easily" is new in the third Directive.

purchase agreement if they wish to do so. Equally, they should be able to withdraw from an existing contract, paying the necessary costs (although, as related above, an exempt supplier can object to a transfer if a fixed term contract has not yet expired (e.g. new Schedule 2AB Electricity Act 1989, para 2(5)(b)).

## **Leases**

8.5 Leases sometimes require that consumers take energy from their landlord or supply company/agent appointed by a landlord. Assuming that the landlord or supply company agent is in fact required to provide third party access, it is unlikely that such agreements will be consistent with the Regulations if they seek to remove the customer's right to choose their own energy supplier as the tenant is not able to switch supplier "easily" if they have to move to different premises in order to do so. We recommend that parties seek legal advice to determine whether the landlord or supply company/agent is in fact required to provide third party access (see paras 1.3 to 1.9 above). .



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