



Department
of Energy &
Climate Change

The Gas and Electricity Regulated Providers (Redress Scheme)

Order 2008

Consultation Document



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Introduction

This document seeks views on a proposal to improve the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (SI 2008/2268) to help small business.

This work falls within the Red Tape Challenge (RTC), which is HM Government's flagship programme to remove and reform areas of regulation. DECC has ownership of the Energy Theme package, and the improvement of this Order is an agreed DECC RTC commitment.

Public consultation is at the heart of the initiative; regulations affecting a specific sector or industry (as well as general regulations that cut across sectors) were published online for people to suggest how they could be 'scrapped' or 'improved'. The Energy Theme received a good response with over one hundred people and organisations making suggestions. The department also ran an internal challenge process and proactively wrote to stakeholders to further determine which measures could be scrapped or improved.

This document seeks views on a proposal which will improve the Order.

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General information

Purpose of this consultation

This consultation document seeks views on a proposal to improve the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (SI 2008/2268) (“the Order”) to help smaller businesses.

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Responses to the proposal are invited from all interested parties. The consultation closes on **14 February 2014**.

Electronic responses and enquiries should be sent to Ngaio.wallis@decc.gsi.gov.uk.

Written responses and enquiries

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Consultation reference: URN 13D/305 – Gas and Electricity Regulated Providers (Redress Scheme) Order.

Territorial extent:

This consultation applies to gas and electricity supply markets in Great Britain. Responsibility for the gas and electricity supply market in Northern Ireland lies with the Northern Ireland Executive’s Department of Enterprise, Trade and Investment.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/the-gas-and-electricity-regulated-providers-redress-scheme-order-2008>

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation

(primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. 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, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at www.decc.gov.uk/en/content/cms/consultations/. This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

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.bis.gov.uk/files/file47158.pdf>

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:

DECC Consultation Co-ordinator

3 Whitehall Place

London SW1A 2AW

Email: consultation.coordinator@decc.gsi.gov.uk

Executive Summary

This consultation document seeks views on a proposal to improve the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (SI 2008/2268) (“the Order”) to help smaller businesses.

The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (SI 2008/2268)

1. The Order requires licensed energy providers (gas and electricity suppliers, and gas transmission and electricity distribution companies) who provide a supply to domestic and micro-business customers to join a redress scheme which has been approved by the Gas and Electricity Markets Authority (which is the governing body of Ofgem). This enables domestic and micro business customers to have access to a redress scheme if they have not been able to resolve a consumer complaint with their energy provider directly.
2. The Order sets the thresholds of the size of a micro business. A micro business is one which meets any one or more of the following criteria:
 - it does not consume more than 55,000 kWh of electricity,
 - it does not consume more than 200,000 kWh of gas per year, or
 - it employs fewer than 10 staff (or their full time equivalent) and has an annual turnover or balance sheet total not exceeding €2 million.
3. The definition means that micro businesses that typically spend £5,000 on gas or electricity have access to same form of redress arrangements as domestic customers. Businesses that typically spend more than £5,000 per fuel in a year are expected to use the legal system to settle disputes with their energy providers.
4. The proposal is to change the consumption levels in the definition to:
 - a consumption of no more than 100,000 kWh of electricity per year, or,
 - a consumption of no more than 293,000 kWh of gas per year.
5. The change would allow micro businesses that typically spend up to £10,000 for gas or for electricity¹ to have the same form of redress arrangements as existing micro business consumers. It is estimated that up to 150,000 businesses could benefit from this change to improve the Order.
6. The proposed change to the consumption levels also mirrors changes being sought by the independent regulator, Ofgem, to the Standard Licence Condition 7A in the standard conditions of gas and electricity supply licences, which provides a range of safeguards for micro businesses. Standard Licence Condition 7A currently uses the same definition for

¹ Excluding VAT and other charges

micro businesses as in the Order. However, as a result of a recent in-depth review of the energy retail market Ofgem has decided to extend the coverage of the safeguards to more micro businesses.

7. If the proposal to improve the Order in this consultation is not adopted there will be a two-tier definition of a micro business customer when Ofgem's changes come into force on 31 March 2014. This is likely to cause confusion amongst consumers, suppliers and other organisations providing advice to micro-businesses.
8. We consider that the Order should be improved by changing the current definition of a micro business and those changes should mirror those being made by Ofgem.

The Proposal

Background

9. The Gas and Electricity Regulated Providers (Redress Scheme) Order (SI 2008/2268) (“the Order”) was made by the Secretary of State under section 47 of the Consumers, Estate Agents and Redress Act 2007 (“CEAR Act”). The Order requires licensed gas and electricity suppliers, and licensed gas transmission and electricity distribution providers, who supply gas or electricity to domestic and micro-business customers to join a redress scheme in relation to consumer complaints, which has been approved by the Gas and Electricity Markets Authority (the governing body of Ofgem, which is the regulator for gas and electricity supply providers).
10. This legislation means that domestic and small (micro) business customers of licensed energy providers have the right to take consumer complaints to an approved redress scheme if the energy provider fails to resolve the problem. Under the CEAR Act’s requirements for redress schemes, complaints may be made to, and must be investigated and determined by, an independent person. The independent person will investigate complaints impartially by gathering evidence from both parties and looking at the facts. The independent person has the power to decide what action, if any, should be taken and its final decisions are binding on the energy provider.
11. The CEAR Act requires redress schemes to be approved by the independent regulator. In the case of gas and electricity suppliers, this is Ofgem, and the Order requires redress schemes to be approved by the governing body of Ofgem. In June 2008, the Ombudsman Services Limited submitted an application to Ofgem to operate a redress scheme. The application was approved in the September for commencement of the Ombudsman Service: Energy scheme on 1 October 2008. To date, only the Ombudsman Services Limited has sought and received approval.
12. A copy of the Gas and Electricity Regulated Providers (Redress Scheme) Order (SI 2008/2268) is available via - http://www.legislation.gov.uk/ukxi/2008/2268/pdfs/ukxi_20082268_en.pdf

The Issue

13. The Order provides that a micro business customer is one which meets any one of the following criteria:
 - it does not consume more than 55,000 kWh of electricity
 - it does not consumer more than 200,000 kWh of gas per year, or
 - it employs fewer than 10 employees (or the full time equivalent) and has an annual turnover or balance sheet total not exceeding €2 million.
14. The above thresholds were set following a full consultation by the Department for Business, Enterprise and Regulatory Reform in 2007 - <http://www.yumpu.com/en/document/view/19763364/consumer-redress-schemes-in-gas->

[dti-home-page](#)). At the time there was wide agreement that businesses bigger than the micro business definition had sufficient expertise and commercial power to either resolve problems directly with the service provider or pursue the matter through the courts.

15. The definition of a micro business customer has remained unchanged since 2008.

Existing protection for Micro businesses

16. Consumer Futures, who are a statutory organisation, have a duty under section 13 of CEAR Act to investigate a complaint from a micro business consumer, who is in individual, relating to the disconnection of a gas or electricity supply to the consumer's premises.

17. The Citizens Advice consumer service is a free impartial service and can provide micro business customers with information and advice, as well as help when making a complaint about their energy supply.

18. Ofgem has placed safeguards in the standard conditions of gas and electricity supply licences issued under the Gas Act 1986 and the Electricity Act 1989 for micro business consumers. This action followed a probe by Ofgem into the energy supply market in 2008. Although the probe found that the market was working well, there were areas, such as the supply to small businesses, where the market was not working in the best interests of consumers. In particular, Ofgem found that many small businesses often did not know what tariff they were on. There were complexities identified around, the contract terms and conditions or the contract end date, and when they wanted to switch supplier, many found that they had already been rolled-over on to more expensive contract terms for another two years with their existing supplier.

19. As a result, Ofgem introduced a new standard licence condition 7A ("SLC 7A") and for consistency used the same definition for micro business consumers as in the Order (see pages 28 of: <https://www.ofgem.gov.uk/ofgem-publications/38335/retail-package-decision-document.pdf>). The aim of the licence condition, which came into force on 18 January 2010, was to help micro business consumers by ensuring that certain relevant contractual information is provided to them by suppliers, improving visibility, transparency and timeliness of this contractual information and regulating contract roll overs.

20. Since then, Ofgem have undertaken an in-depth analysis of the market through its Retail Market Review [RMR] designed to make markets simpler, clearer and fairer. Ofgem undertook significant research to look at how to ensure business customers, and particularly smaller businesses, are able to get the best deal from the market. Following extensive consultation, Ofgem issued an open letter on 28 June 2013 (<https://www.ofgem.gov.uk/ofgem-publications/74749/implementationoftheretailmarketreviewnon-domesticproposals-decisiontomakelicencemodifications.pdf>), which set out the its final decision to amend the licence condition in order to extend the coverage of the safeguards in SLC7A to more micro businesses by widening the consumption level in the definition to no more than:

- 100,000 k Wh of electricity per year, or,
- 293,000 k Wh of gas per year.

21. Ofgem has estimated that up to an extra 150,000 businesses would benefit from the wider safeguards in SLC7A. Ofgem has not proposed to make any changes to staff numbers or annual turnover/balance sheets levels in the definition. Earlier in March 2013, in a consultation document that set out Ofgem's final proposals for non-domestic RMR proposals, Ofgem stated its intentions to seek a voluntary agreement with energy suppliers and the Ombudsman Service as a short term measure to ensure that the businesses that will be covered by the changes to SCL7A were able to access complaints redress via the same route as currently protected micro businesses. However, a voluntary agreement would no longer be needed if the proposed solution below to improve the Order was adopted.

Proposed Solution

22. We are of the view that it is important that there is consistency between the Order and Ofgem's licence conditions, for the purpose of protecting micro businesses, and that there is a common definition of what is a micro-business. This prevents a two-tier system and ensures clarity for consumers, suppliers and other organisations providing advice to micro-businesses.
23. Consumer Futures and the Citizens Advice consumer service have also stated that they intend to move to Ofgem's extended definition when it comes into effect from 31 March 2014 when dealing with micro business consumers.
24. We therefore propose an improvement to the Order, to amend the current thresholds for energy consumption, to mirror the changes proposed by Ofgem. This will mean micro businesses that typically spend up to £10,000 for gas or for electricity will in future be entitled to the same benefit from the redress arrangements as existing micro business consumers

Implications:

25. The current redress arrangements were designed to ensure licensed energy providers deal proactively with complaints from domestic and micro business customers, and to provide access to an independent adjudicator in the event that complaints cannot be resolved between consumers and the energy providers.
26. As a complementary measure, energy providers must adhere to the complaint handling standards that are set by Ofgem under the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, SI 2008/1898 ("the Regulations"). The definition of micro business consumer in the Regulations is parasitic upon the definition of micro business consumer in the Order, so a change to the Order will have a knock on effect on the scope of the Regulations, and as a consequence the Regulations will also apply to more micro businesses.
27. When a consumer is dissatisfied with their energy provider's products, services or the manner in which they have dealt with any expression of dissatisfaction, they may take up the matter by following the company's formal complaint process, which the company is required by the Regulations to have. The company may take up to 8 weeks (as agreed in the redress scheme criteria) to fully investigate the problem at which point it must write to the consumer to inform them of their right to go to the Ombudsman. It may decide to issue a 'deadlock' letter sooner if it knows it will not be able to offer a satisfactory solution. If the problem is not sorted out within eight weeks from the date that the consumer first told the company about the problem, or if the consumer is unhappy with what the company has done to sort it out, the consumer may refer the matter to the Ombudsman Service: Energy.
28. As a member of the redress scheme operated by the Ombudsman Service: Energy, energy providers are charged a fee for every complaint referral received by the Ombudsman. By changing the definition of a micro business in the Order, more small businesses will have access to the redress scheme under the Order and will be covered

by the consumer complaints handling standards in the Regulations. It is estimated that up to 150,000 micro businesses will be affected by the change in the Order.

29. We plan to issue a Validation Impact Assessment when the Government Response is published in the new year.

Consultation Questions

Consultation Question

- | | |
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| 1. | What are your views on our proposal to widen the definition of a micro business customer in the Order?

Please justify your reasons. |
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Consultation Question

- | | |
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| 2. | Do you agree that the changes to the micro business customer definition should mirror changes proposed by Ofgem to SLC 7A?

If not, please justify your reasons and explain what alternative amendment would you propose? |
|-----------|---|

Next steps

We will issue a Government response shortly after the close of the consultation. If Government decides to pursue this proposal we will then amend the Order to implement the change. We would expect the Regulations to come into force on 6 April 2014, the next common commencement date.

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