

**CONSUMER REDRESS SCHEMES IN
GAS AND ELECTRICITY**

A consultation on clarification
of the existing arrangements

March 2010

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Background

The Consumers, Estate Agents and Redress Act 2007 includes provisions for consumers to have access to statutory redress schemes to resolve problems with their gas, electricity, or postal services providers.

The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008, which came into force on 1 October 2008, set out the requirement for certain licensed suppliers of gas and electricity, and licensed gas transporters and electricity distributors to join a qualifying redress scheme in respect of certain kinds of consumer complaint. The Order specified the types of consumer complaint to be covered by redress scheme, and the description of relevant gas and electricity consumers who should have access to redress under the scheme.

The relevant consumers are domestic consumers and consumers of energy at non-domestic premises.

This consultation is about an amending Order, which will provide that additional detail will be set out in the redress scheme by way of specifying factors in order to assess the eligibility of consumers of energy at non-domestic premises (micro-enterprise consumers) to access the scheme. The amending Order will be laid before Parliament. It is not proposed that the amending Order should vary any other aspect of the existing Order.

The Department invites comments on the proposed clarification from interested parties. The consultation will be of interest to gas and electricity service providers; consumer representation and advice bodies; redress scheme operators; and trade associations.

Issued	25 March 2010
Respond by	6 May 2010
Enquiries to	Ed Blades
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Telephone	020 7215 2121
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1. Introduction

- 1.1 The Consumers, Estate Agents and Redress Act 2007 set out a new framework for consumer advocacy, including the establishment of new, statutory, redress schemes to resolve consumer complaints in - initially – the gas, electricity and postal services sectors. This consultation concerns only the gas and electricity sectors. The issues do not arise in relation to postal services consumers, who are covered by a separate scheme.
- 1.2 Sections 47(1) to (3) of the Act provides power for the Secretary of State to make an Order:
 - (a) requiring certain regulated providers of gas and electricity services to belong to a redress scheme;
 - (b) providing that the requirement applies only to certain kinds of complaints specified, for example by reference to:
 - i. the subject matter of the complaint or
 - ii. the description of the person making the complaint.
- 1.3 Following consultation from 5 July 2007 to 27 September 2007, the Secretary of State made The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008¹, which came into force on 1 October 2008.
- 1.4 Further to points made during the Parliamentary process for the Order², it is now proposed that the specifying factors used to assess a relevant micro-enterprise consumer of energy's eligibility for redress by meeting the relevant criteria at the time of the incident giving rise to the complaint should be set out in the redress scheme. It is not proposed that the basis of the definition, or any other aspect of the Order, should be changed. The reference to the existence of specifying factors likely to achieve a reasonable degree of accuracy in the redress scheme will be made in an amending Order.
- 1.5 This consultation is in accordance with the requirements set out under section 47(4) of the Consumers, Estate Agents and Redress Act 2007.

¹ SI 2008/2268

² www.publications.parliament.uk/pa/jt200708/jtselect/jtstatin/196/19603.htm#a3

- 1.6 The key options to address the points made during the Parliamentary process would be to:
- (a) do nothing.
 - (b) put the criteria for establishing eligibility in the amending Order;
 - (c) put the criteria for establishing eligibility in the redress scheme;
- 1.7 The Government is committed to addressing the points raised during the Parliamentary process, so the “do nothing” option is not viable.
- 1.8 Specifying in the amending Order the criteria to be used by the Redress Scheme to establish eligibility would be relatively rigid and inflexible. The criteria need to be subject to the discretion of the Redress Scheme operator, and to be capable of revision to meet evolving practice in the light of experience.
- 1.9 The option of having the criteria set out in the Redress Scheme meets the need to provide clarity with the prospect of flexibility in future. That is the option pursued in this consultation.

2. Summary of consultation questions

Question 1:

Do you agree that it is helpful to have the factors used to determine compliance with the eligibility criteria set out more clearly in the redress scheme?

Question 2:

Are there additional factors which should be used to determine compliance with the eligibility criteria?

Question 3:

Do you foresee any unintended consequences or other implications of our proposals? If so, please let us know what you believe these may be.

3. The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008

- 3.1 This Order is currently in force, and will remain in force until amended further by an Order, which will refer to specifying factors on the basis of which relevant criteria can be calculated in the redress scheme. The current Order includes the following text, defining the “relevant customer” who is to have access to the redress scheme required to be operated by providers of gas and electricity services under the Order:

“relevant consumer” means a consumer who is—

- (a) a natural person supplied or requiring to be supplied with gas or electricity at domestic premises (but excluding such person insofar as they are supplied or require to be supplied with gas or electricity at premises other than domestic premises); or
- (b) a person supplied or requiring to be supplied with gas or electricity at premises other than

domestic premises, with—

- a. an annual consumption of -
 - i. electricity of not more than 55,000 kWh; or
 - ii. gas of not more than 200,000 kWh; or
 - b. fewer than 10 employees (or their full time equivalent);
- and
- c. an annual turnover or annual balance sheet total not exceeding Euros 2 million.

4. Proposed clarification

- 4.1 The eligibility of micro-enterprise consumers for redress is based on their annual energy consumption or size of enterprise. The proposed clarification in the redress scheme will focus on the factors which typically will be used to determine energy consumption, staff numbers, turnover, and balance sheet total for micro-enterprise consumers and which are likely to achieve a reasonable degree of accuracy.
- 4.2 The proposals will enable relevant consumers to substantiate compliance with the thresholds, and will clarify the range of methods which can be used to demonstrate compliance. In practice, compliance with the thresholds might be demonstrated in a number of ways, according to individual circumstances. It is essential to preserve the discretion of the redress scheme operator to accept cases. The examples of evidence given in paragraph 6.2 below are not therefore intended to be exclusive or exhaustive.

5. The Proposed Revised Order

- 5.1 It is proposed that the existing Order will be revised to include references to:
- (a) “average” usage of electricity and gas. Although an incident which gives rise to a complaint will occur on a specific day, the determination of consumption will, in practice, need to have regard to the consumption over a period;
 - (b) the thresholds of energy consumption and size of business being calculated on the basis of factors specified in the redress scheme which are likely to achieve a reasonable degree of accuracy.
- 5.2 A draft of the proposed Order is attached at annex D.

6. Amendment to the Redress Scheme

- 6.1 Amendments to the Gas and Electricity Redress Scheme are a matter for the Scheme (not Government), subject to overall approval of the scheme by the Office of Gas and Electricity Markets (Ofgem).
- 6.2 It has been confirmed to us that the Scheme will be amended to include the necessary factors which are “likely to achieve a reasonable degree of accuracy” when determining the eligibility of micro-enterprise consumers to have their complaints investigated by the Scheme. Examples of the general criteria which might be included in the Scheme are:
- (a) how to deal with groups of companies. This could be approached on the basis of the degree of independence of subsidiaries, for example, with groups considered as one entity where the gas and electricity bills are paid centrally, or subsidiaries could be considered individually where the bills are paid by the individual member of the group;
 - (b) how to establish the date of the incident which occasions the complaint to the scheme. If the incident extends to more than one date, the earliest date could count as the relevant date. In some instances, the Redress Scheme would need to use discretion to avoid rejecting as “out of time” some cases with multiple incidents;
 - (c) how to calculate average consumption of electricity or gas: it may be necessary to consider a range of measures according to individual circumstances. Examples of possible factors to take into account are:
 - (i) if electricity or gas bills have been submitted to the complainant for a period of at least twelve months before the date of the incident, the total consumption reflected in these bills could be taken as the average; or

- (ii) if the bills had been submitted for a period of less than twelve months, and the total consumption reflected in these bills exceeds the threshold, that could count as the average (and the consumer will fall outside the scope of the scheme on the basis of the consumption test, but may qualify on the basis of business size); or
 - (iii) where the bill history is not available (perhaps because the complainant is a relatively new micro-enterprise consumer), the complainant's statement of the average could count as the average, where the Redress Scheme considers this to be reasonable.
- (d) calculation of the number of employees must be based on full time equivalent employees, with each part time one brought into the calculation proportionately. If the number of employees appears on the annual accounts, then the calculation could be based on the figure in the most recent set of accounts;
- (e) calculation of turnover:
- (i) if the complainant has annual accounts specifying turnover, the most recent set of accounts could be used; or
 - (ii) if the complainant has accounts for a period of less than a year and turnover recoded in them exceeds the threshold, the amount is that in the most recent accounts. (In this instance, the complainant would fall outside the scope the scheme on the "business size" test, but might qualify on the basis of electricity or gas consumption); or
 - (iii) the complainant's statement of turnover could count, where the Redress Scheme considers this to be reasonable;
- (f) calculation of total assets could be based on:
- (i) the amount in the most recent accounts, if the complainant has accounts which includes this information; or
 - (ii) the complainant's statement of the amount, where the Redress Scheme considers this to be reasonable;
- (g) calculation of the euros equivalent of sterling (for the purposes of the turnover and total assets thresholds above) in respect of any document where an amount of sterling is specified (but the same amount in euros is not) could be based on:
- (i) the exchange rate prevailing on the date, if the document is prepared in relation to a specific date; or
 - (ii) the exchange rate prevailing at the date of the incident.

(h) a complainant's statement of compliance with relevant criteria must be accompanied by supporting facts to demonstrate that compliance.

- 6.3 In all cases, the Redress Scheme will need to reserve discretion to deal with cases.
- 6.4 It must be emphasised that the examples given above are indications of the factors which will be included in the redress scheme, and are not intended to represent final drafting. The scheme is a matter for the members, under the supervision of Ofgem.

Question 1

Do you agree that it is helpful to have specifying factors used to determine compliance with the thresholds set out more clearly in the redress scheme?

Question 2

Are there additional factors which you would suggest to the Redress Scheme which should be used to determine compliance with the eligibility thresholds?

Question 3

Do you foresee any unintended consequences or implications of our proposals? If so, please let us know what you believe these may be.

- 6.5 Any comments on these proposals will be welcomed by the Department.

7. Monitoring and enforcement

- 7.1 There are no additional monitoring or enforcement costs to Ofgem or to the Redress Scheme.
- 7.2 Ofgem already conducts regular reviews of the operation of the Redress Scheme.

8. Next steps

- 8.1 The Government Response, together with a Final Stage Impact Assessment, will be published within three months of the consultation closing date. If the preferred option is taken forward, the Department will prepare an amending Order to lay before Parliament. The draft Order will be published on the website at www.bis.gov.uk.

9. How to Respond

- 9.1 The Department for Business, Innovation and Skills invites views on any aspect raised in this document and, in particular, where views have been specifically requested.

- 9.2 This consultation opened on 25 March 2010. The last date for responses is 6 May 2010. The consultation period is shortened because this is essentially a technical amendment to the regulations. Ministerial derogation has been obtained.
- 9.3 When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
- 9.4 Written responses can be submitted by letter or (preferably) e-mail to:
- Ed Blades
Department for Business, Innovation and Skills
Bay 425
1 Victoria Street
London
SW1H 0ET
email: energyredress@bis.gsi.gov.uk
- 9.5 A list of those organisations and individuals consulted is at Annex B. We would welcome suggestions for others who you think may wish to be involved in this consultation process.

10. Confidentiality & Data Protection

- 10.1 Information provided in response to this consultation, including personal information, may be subject to publication or 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 other information 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.
- 10.2 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, of itself, be regarded as binding on the Department.
- 10.3 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

11. Additional copies

- 11.1 You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

BIS Publications Orderline
ADMAIL 528
London
SW1W 8YT

Tel: 0845-015 0010
Fax: 0845-015 0020
Minicom: 0845-015 0030
www.bis.gov.uk/publications

- 11.2 An electronic version can be found at www.bis.gov.uk/consultations.
- 11.3 Other versions of the document in Braille, other languages or audio-cassette are available on request.

12. Help with queries

- 12.1. Questions about the policy issues raised in the document can be addressed to:

Ed Blades
Department for Business, Innovation and Skills
Bay 425
1 Victoria Street
London
SW1H 0ET
Email: energyredress@bis.gsi.gov.uk

Tel: 020 7215 2121

- 12.2. If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Tunde Idowu
Consultation Co-ordinator
Department for Business, Innovation & Skills
Better Regulation Team
1 Victoria Street
London
SW1H 0ET

Email: Babatunde.idowu@BERR.gsi.gov.uk
Tel: 020 7215 0412
Fax: 020 7215 0235

Annex A: The Consultation Code of Practice Criteria

Formal consultation should take place at a stage when there is scope to influence policy outcome.

Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The complete code is available on the Better Regulation Executive's web site, address <http://bre.berr.gov.uk/regulation/consultation/code/>

Annex B: List of Organisations Consulted

Confederation of British Industry

Federation of Small Businesses

Forum for Private Business

Office of Fair Trading

Ofgem

Consumer Focus

Citizen's Advice Bureaux

Energy Retail Association

Energy Networks Association

National Grid

British Gas

E.ON

Scottish Power

EDF Energy

Scottish and Southern Energy

NPower

Energy Supply Ombudsman

British and Irish Ombudsman Association

Annex C: Impact assessment

The Impact Assessment which follows is a summary assessment, reflecting the focused nature of this consultation.

Summary: Intervention & Options		
Department /Agency: BIS	Title: Impact Assessment of the pilot operation of civil sanction powers for consumer law enforcers	
Stage: Initial	Version: 1.0	Date: 17 March 2010
Related Publications:		

Available to view or download at:

<http://www.bis.gov.uk/consultations>

Contact for enquiries: Ed Blades

Telephone: 0207 215 2121

What is the problem under consideration? Why is government intervention necessary?

It is proposed to amend the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (SI 2008/2268). The Order established the redress scheme for gas and electricity consumers, and also set out the description of consumers who would have access to the scheme: domestic consumers and consumers of energy at non-domestic premises (micro-enterprise consumers). Micro-enterprise consumers are defined by reference to thresholds of energy consumption and business size, but no detail is provided on how the thresholds are to be calculated. The proposed amendment Order will make it clear that the factors used to calculate the thresholds will be set out in the redress scheme. Government will lay the new Order before Parliament.

What are the policy objectives and the intended effects?

The objective is to improve clarity and consistency of decisions on eligibility for access to the redress scheme, while preserving the discretion of the redress scheme to take cases which may fall outside the usual scope of the scheme.

What policy options have been considered? Please justify any preferred option.

The current Order establishes consumption and business size thresholds for micro-enterprise consumers to have access to the Redress Scheme.

To add clarity, the two practical options are to put specifying factors for establishing compliance with the relevant criteria in the Order, or in the redress scheme. The redress scheme is preferred because it is the scheme operator who needs to make the decision on eligibility, and the factors in the scheme can be changed more readily in the light of experience than can an Order. There is a need to preserve the discretion of the redress scheme operator to accept cases, because the specifying factors cannot anticipate every situation that may arise.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Ofgem conducts annual reviews of the operation of the redress scheme.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



Date: 17/03/2010

Summary: Analysis & Evidence

Policy Option: 2	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' No costs are associated with this measure.
	One-off Yr	
	£ 0	
	Average Annual Cost (excluding one-off)	
£ 0	Total Cost (PV)	£ 0
Other key non-monetised costs by 'main affected groups' Nil		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' No financial benefits are associated with this measure.
	One-off Yr	
	£ 0	
	Average Annual Benefit	
£ 0	Total Benefit (PV)	£ 0
Other key non-monetised benefits by 'main affected groups' Improved clarity and consistency of application of thresholds for those who seek to have their complaints decided by the gas and electricity redress scheme.		

Key Assumptions/Sensitivities/Risks

The key assumption is that consumers and the redress scheme for gas and electricity will benefit from greater clarity and consistency of the application of eligibility thresholds by the provision of criteria in the scheme.

Price Base Year N/A	Time Period Years	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ N/A
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What is the geographic coverage of the policy/option?	Scotland, England, Wales. (Gas and electricity in Northern Ireland are subject to separate arrangements).
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On what date will the policy be implemented?		April 2010		
Which organisation(s) will enforce the policy?		The redress scheme for gas and electricity		
What is the total annual cost of enforcement for these		£ 0		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)		(Increase -		
Increase	£ 0	Decreases	£ 0	Net £ 0
Key:	Annual costs and benefits: Constant	(Net) Present Value		

Annex D: Statutory Instrument

This Statutory Instrument has been made in consequence of a defect in SI 2008/2268 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2010 No. 0000

CONSUMER PROTECTION

ELECTRICITY GAS

The Gas and Electricity Regulated Providers (Redress Scheme) (Amendment) Order 2010

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	****

The Secretary of State makes the following Order in exercise of the power conferred by section 47(1) to (3) of the Consumers, Estate Agents and Redress Act 2007⁽³⁾.

In accordance with section 47(4) of that Act, he has consulted the Gas and Electricity Markets Authority⁽⁴⁾ and other persons appearing to him to be representative of persons who have an interest in the Order.

Citation, Commencement and Extent

1.—(1) This Order may be cited as the Gas and Electricity Regulated Providers (Redress Scheme) (Amendment) Order 2010 and shall come into force on [XXXX 2010].

(2) This Order shall not extend to Northern Ireland.

Amendment to the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008

2.—(1) The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008⁽⁵⁾ is amended as follows.

⁽³⁾ 2007 c.17.

⁽⁴⁾ The Gas and Electricity Markets Authority was established under section 1(1) of, and Schedule 1 to, the Utilities Act 2000 (c.27).

⁽⁵⁾ SI 2008/2268.

(2) For the definition of “relevant consumer” substitute—

““relevant consumer”, in relation to a complaint, means a person who, at the time of the incident giving rise to that complaint, is—

- (a) a natural person supplied or requiring to be supplied with gas or electricity at domestic premises (but excluding such persons insofar as they are supplied or require to be supplied with gas or electricity at premises other than domestic premises); or
- (b) a person supplied or requiring to be supplied with gas or electricity at premises other than domestic premises and meeting the relevant criteria.”

(3) For article 2(2) substitute—

“(2) For the purposes of this Order, the relevant criteria, in relation to a relevant consumer, are met when the person —

- (a) consumes—
 - (i) electricity at an average of not more than 55,000 kWh per year, or
 - (ii) gas at an average of not more than 200,000 kWh per year; or
- (b) has both fewer than 10 employees and either —
 - (i) a turnover at an annual average, or
 - (ii) total assets,
 - of a value not exceeding Euros 2 million,

as calculated on the basis of factors specified in the redress scheme and likely to achieve a reasonable degree of accuracy.

(3) For the purposes of this Order, where a person who is a relevant consumer by virtue of meeting the relevant criteria in paragraph (2) (a) receives gas and electricity supplied by the same regulated provider, the relevant consumer’s annual consumption of gas and electricity shall be treated separately for the purpose of determining their capacity as a relevant consumer to make a consumer complaint in respect of gas or electricity supply as the case may be.”

Kevin Brennan

Minister for Further Education, Skills, Apprenticeships and Consumer Affairs
Department for Business, Innovation and Skills

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268) (“the principal Order”) to clarify the definition of “relevant consumer” in respect of a consumer of energy at non-domestic premises (a micro-enterprise consumer). It provides that factors for meeting the relevant criteria in relation to such consumers are specified in the redress scheme. A relevant consumer is one who can bring a complaint for redress under provisions in the redress scheme. The principal Order requires regulated providers who provide services to relevant consumers to join a qualifying redress scheme.

An Impact Assessment of the effect that this Order will have on the costs to business and the voluntary sector is available from Consumer and Competition Policy Directorate, Department for Business, Innovation and Science, 1Victoria Street, London SW11 0ET or on the BIS website (www.bis.gov.uk). It is also annexed to the Explanatory Memorandum which is available alongside the Order on the OPSI website. A copy of the Impact Assessment has also been placed in the libraries of both Houses of Parliament.

