

**DCP 209**

**Advice on Disconnecting Unregistered Customers**

**1     Background**

- 1.1     References to "unregistered customers" are to individuals who are consuming electricity at premises for which there is no registered supplier and therefore no electricity supply contract (deemed or otherwise).
- 1.2     The working group is considering measures to require these customers to agree to the terms of a supply contract or face disconnection as a last resort.
- 1.3     The working group is looking to produce standard industry letters or standard letter content (and supporting processes) similar to the letter content presently used in gas.

**2     Advice required**

- 2.1     The working group has asked for advice on the content of such a letter.
- 2.2     In this context, the working group has asked us to consider the relevant legislation, including:
  - (a)     section 17 of the Electricity Act 1989 (the **Act**);
  - (b)     schedule 6 of the Act;
  - (c)     standard electricity distribution licences;
  - (d)     the DCUSA;
  - (e)     the National Terms of Connection;
  - (f)     the Electricity Supply Quality Continuity Regulations 2002 (the **ESQCRs**); and
  - (g)     section 13 of the Theft Act 1968.
- 2.3     This note represents legal advice to DCUSA Limited, and sets out our views on the questions raised. This note does not necessarily represent the views of any or all of the parties to the DCUSA, and cannot be relied upon by anyone other than DCUSA Limited.

### **3     Executive Summary**

- 3.1     Distributors are not under a duty to maintain a connection at all costs and in all circumstances. In some circumstances, distributors will be justified in disconnecting premises.
- 3.2     However, there is (as one would expect) a balance to be struck between a distributor's duty to maintain a connection and its right to disconnect where it is reasonable to do so.
- 3.3     Unfortunately, there is not an obvious and straightforward provision within the regulatory regime that expressly permits disconnection in the case of an unregistered customer (in the absence of safety issues). Rather, a distributor will need to rely upon the general right to disconnect under section 17 of the Act (on the basis that it is not reasonable for the distributor to be required to maintain the connection).
- 3.4     Nevertheless, given each distributor's statutory duty to maintain an efficient and economical distribution system (and also more generally that the GB electricity industry is dependent upon the principle that there is a supplier registered in respect of each supply point) we do consider that distributors are entitled to disconnect unregistered customers (provided that they have been given sufficient warning).

### **4     Section 17 of the Act**

- 4.1     Section 16 of the Act imposes a statutory duty on distribution licensees to make and maintain connections.
- 4.2     However, section 17(1)(c) of the Act provides that a connection need not be made or maintained where it is not reasonable in all the circumstances for the distributor to be required to do so.
- 4.3     Section 17(2) of the Act refers expressly to the ESQCRs – see paragraph 9 below.
- 4.4     Where safety is not relevant, a distributor can rely upon the general wording of section 17(1)(c) – i.e. reasonableness. In this regard, distributors can seek to rely upon the following arguments:
  - (a)     where a criminal offence is being committed this would present a relatively straightforward argument that it was not reasonable to maintain the connection – see paragraph 10 below in respect of theft;
  - (b)     section 9 of the Act sets out a distributor's statutory duty to develop and maintain an

efficient, co-ordinated and economical system of electricity distribution - allowing the continued connection of unregistered customers would appear inconsistent with this statutory duty;

- (c) distributors are entitled to require persons requesting a connection to enter into connection terms (for which purpose distributors normally apply the National Terms of connection, as to which see paragraph 8 below), pursuant to which distributors could argue that the requirement for customers to have a supply contract is a reasonable connection term;
- (d) as the unregistered customer has not entered into a supply contract it could be argued that they do not need a supply (which seems to be the argument on which the gas letters are based); and
- (e) more generally, the GB electricity industry is dependent upon the principle that there is a supplier registered in respect of each supply point, and the fact that this is not the case is in itself a reason to disconnect.

4.5 It is important to note that section 17(3) of the Act requires that at least 7 days' advance notice is given of a distributor's intention to disconnect a premises.

## **5 Schedule 6 to the Act**

5.1 Although the following may not be relevant to unregistered customers, it is also worth noting that schedule 6 to the Act allows for disconnection where a person:

- (a) intentionally or by culpable negligence damages (or allows to be damaged) any electric line or plant of the distributor or a meter of a supplier; or
- (b) restores a connection that has been disconnected by the supplier or distributor (otherwise than in reliance on the ESQCRs).

5.2 Schedule 6 also permits disconnection where a person takes electricity in the course of its conveyance, but this would not seem relevant to unregistered customers (as they are taking a supply at a premises).

## **6 Distribution Licences**

6.1 Standard licence condition 12 of the distribution licences cross-refers to section 16 of the Act.

- 6.2 In addition to the provisions in the Act, licence condition 12.7 makes clear that a licensee need not offer to enter into a connection agreement where doing so would cause the licensee to breach section 9 of the Act.
- 6.3 Although condition 12.7 does not deal expressly with the right to disconnect, the combination of section 9 of the Act with standard licence condition 12.7 presents a persuasive argument as to why it is not reasonable for a distributor to maintain a connection (and therefore a right to disconnect under section 17 of the Act).
- 6.4 Standard licence condition 12.9A prevents disconnection of a green deal premises except where the ESQCRs or schedule 6 to the Act permit disconnection. However, it would not seem likely that an unregistered customer will have been able to enter into a green deal.
- 6.5 Although not directly applicable, standard licence condition 10 imposes certain obligations in respect of PSR Customers. These should be borne in mind when considering the manner and format of communications.

## **7 DCUSA**

- 7.1 The DCUSA does not establish a contractual relationship between distributors and customers.
- 7.2 In this context, the most relevant DCUSA relationship is that between distributors and suppliers. However, as there is no registered supplier for the premises in question, the DCUSA will not establish any distributor-supplier relationship in respect of that premises.

## **8 National Terms of Connection**

- 8.1 Suppliers are required by the DCUSA to incorporate the National Terms of Connection via supply contracts. However no supply contract exists in the present scenario.
- 8.2 As set out in the National Terms of Connection, an argument can also be made for the National Terms of Connection to have direct application.
- 8.3 However, in most cases of unregistered customers it is likely that section 2 of the National Terms of Connection apply. These do not provide an express right to disconnect – they simply refer to the distributors rights to disconnect under general law.
- 8.4 Where section 3 of the National Terms of Connection apply (which is unlikely), the customers right to be connected is conditional on a supplier being registered, and so an express disconnection right arises under the National Terms of Connection.

## **9 ESQCRs**

- 9.1 Where an unregistered customer's connection poses a danger or interferes with the distributor's network, regulation 26 of the ESQCRs permits disconnection of the premises.
- 9.2 As set out in paragraph 4, breach of the ESQCRs is also grounds for disconnection under section 17 of the Act.

## **10 Section 13 of the Theft Act**

- 10.1 Section 13 of the Theft Act 1968 provides that, "*a person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted, any electricity shall on conviction on indictment be liable to imprisonment for a term not exceeding five years.*"
- 10.2 The Theft Act 1968 does not in itself provide a distributor with a right to disconnect premises. However, as set out in paragraph 4 above, the fact that a criminal offence is being committed presents a relatively straightforward argument that it was not reasonable to maintain the connection.
- 10.3 The requirement for dishonesty may be met once letters have been sent explaining the situation. However, it does not appear straightforward to demonstrate in every case that the electricity is being wasted or diverted.

## **11 Proposed letter**

- 11.1 The working group has suggested the following form of letter (based on the form of letter used in gas):

*'A letter was recently sent to you asking for details of your electricity supplier but to date the electricity supply remains unregistered. As our records show that the above property has an electricity connection but a contract between yourself and the electricity Supplier is not in place, it is assumed that you are not using the electricity supply.*

*Arrangements are now being made for an engineer to visit your property, which may result in your connection being [discontinued], resulting in your supply being 'cut-off' (even if you are not present when we visit).*

- 11.2 We would suggest amendments as follows:

*'A letter was recently sent to you asking for details of your electricity supplier, but there is still no electricity supplier registered for the above property in the central industry systems.*

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*The laws and industry rules under which we operate permit us to cut-off the supply of electricity to properties for which there is no electricity supply contract.*

*Arrangements are now being made for an engineer to visit your property in order to cut-off the supply to the property (which we may do even if you are not present when we visit).*

- 11.3 You will note that we have not suggested going into the detail of the statutory provisions upon which you are relying. As set out in this note, there is no obvious and straightforward provision within the regulatory regime to which to point.
- 11.4 You will also note that we have used the expression "cut-off", which we chose as a readily understood expression with no particular industry connotations.
- 11.5 We have assumed that supporting literature will be sent to unregistered customers (as per the gas letters) explaining the process for contacting a supplier, and for contacting the distributor in the event of misunderstandings etc. Distributors must also, of course, allow at least 7 days' notice (to comply with section 17(3) of the Act).
- 11.6 The working group asked whether a more strongly worded letter could be used for premises connected outside of the industry processes (e.g. fake meters). This would seem to present a scenario in which the ESQCRs could be relied upon, in which case a letter expressly referring to the ESQCRs could be used.

**Wragge Lawrence Graham & Co LLP**  
**10 December 2014**