

DCP 124 Legal Issue log

Section	Issue	Question	Legal Adviser's comments	WG Comments
Section 1 G	Customers who are not licensed.	Where do we stand in regards to customers who should be licensed but are not?		<p>Place wording in the terms, how would Ofgem respond to a Party requesting a license is out of scope of the CP.</p> <p>These NTC, would be automatically binding, on an exempt Distributor.</p> <p>Should this continue to apply they become a licensed Distributor; or they restore their position to a state where they can</p>

				<p>remain an exempt Distributor; Or finally make a transition to becoming a customer covered by section 3?</p> <p>Complete.</p>
Definition	Settlements	Add defined term.		<p>Copy across the definition of Settlements as outlined in the DCUSA into the NTC clause.</p> <p>Then update legal text so that Settlements was capitalised.</p> <p>Complete.</p>
Definition	De-energisation" means the deliberate movement of any switch or the removal	Is there a right for the Company to de-energise at the embedded metering		<p>Legal advice still required, due to diverse views in the</p>

	of any fuse or the taking of any other step whereby no electrical current can flow between the Company's Distribution System and the Exempt Distributor's Distribution System through the Connection Point or through an Embedded Metering Point (and "De-energise(d)" shall be construed accordingly);	point or do only the appointed supplier and the licence exempt distributor have that right?		<p>consultation responses.</p> <p>The issue here is whether the LDNO, Supplier or EDNO does the de-energisation?</p> <p>Agreed to leave definition as is. The instances of embedded network points needing de-energised is covered by Supplier rights or by a License Distributor having processes in place.</p>
Definition	National Terms of Connection" means these National Terms of Connection, of which this Section 5 forms part, as amended from	Should this clause refer to a clause within section 5 or within the DCUSA. Is it clause 22 of this section 5?		Complete.

	time to time in accordance with Clause 22;			
3.3	The right to be (and remain) Connected is conditional upon settlement metering being in operation at the Connection Point or arrangements in place for all usage of electricity within the Exempt Distribution System to be measured and entered into settlements in accordance with the requirements of the BSC.	<ol style="list-style-type: none"> 1. Is usage too narrow, or does it need to be more clear. 2. Does "usage" also cover export? 3. What would count as full measurement , with no Connection Point meter, but electrical losses in the exempt network that are not being measured as usage. 4. What is the acceptable amount of losses in a 	Usage seems imprecise. There needs to be consumption, generation and line losses. These either need to be measured or calculated on an agreed basis.	<p>Need to see if there is a headline clause in relation to the obligation to all usage of electricity subject to settlement metering.</p> <p>Have amended the drafting removing the reference to usage and update to ensure clarity.</p>

		<p>licenced exempt network subject to non settlements metering of the Connection Point that is legitimate for the LDNO to not be able to measure as usage?</p>		
4.1.3.2 (B)	With regards to access embedded metering points.	Is the drafting sufficient?		Complete. See comment below.
4.1.3.2 (B)	<p>A consultation respondent did not think that the private network operator has statutory rights of access to its network.</p> <p>They believe that the licensed distributors rights only apply where the licensee is an electricity distributor as defined by the Act in respect of their</p>	<p>Does an authorised electricity Distributor who does not hold a license have statutory rights of access to premises of users who are directly connected to its licence exempt distribution system?</p> <p>If the authorised</p>	There are no statutory rights. However, the presumption is that these private network operators will have reserved access rights in the leases by which the connectees lease the premises connected to the network.	<p>Complete.</p> <p>Update the drafting to cover off procurement and access rights and remove any reference to statutory.</p>

	<p>electricity distribution system. The Electricity Act does not give electricity distributors rights in respect of other parties distribution systems. Private networks are not covered by Schedules 3,4 and 6 of the Act. Also many of the other provision of the Act do not apply to unlicensed distributors (eg §16 to §23 of the Act)</p>	<p>electricity Distributor does not hold a license and does not hold statutory rights of access, the WG requires advice on what clauses would be appropriate to procure rights of access to the users premises, from the exempt distributor at no cost, where the licenced distributor is wholly reliant on the completeness of Fulls Settlements metering (no settlements metering of the Connection Point).</p>	<p>The private network operator should grant access rights to the licensed distributor in respect of all premises within the private network. These rights can be based on the rights granted in other parts of the NTC.</p>	
4.3.3	<p>use the Company's Distribution System for the purposes of providing a supply of electricity (or to otherwise have electricity transported through the Company's</p>	<p>To confirm if this is sufficient to cover export as well.</p> <p>Applies to section 2, 3 and 4.</p>		<p>Could be dealt with under a separate change.</p>

	Distribution System),			
5	<p>In respect of a settlement metered boundary (Connection Point or Embedded Metering Point), the relevant electricity supplier will send instructions from time to time to MPAN registrar, i.e. the licensed Distributor, by data flow.</p> <p>The Embedded Metering Point is not on the licensed Distributors system and so the exempt Distributor should more appropriately be doing de energisation or re energisation activates.</p> <p>Should the licence Distributor ignore or reject the Supplier data flow for Embedded Metering Points or alternatively how</p>	<p>How does the licenced distributor notify the exempt Distributor that it is going to de-energise.</p> <p>What if licenced distributor de-energise the settlement metered Connection Point on behalf of the Supplier, do we need to also notify the Embedded Metering Point customers.</p> <p>What if the licenced distributor de-energises a non-settlement metered Connection Point, do we need to notify the Embedded Metering Point customers, or just notify the</p>		<p>Use of System issue.</p> <p>Should be raised under a separate DCUSA CP and a MRA Working Practice set.</p>

	should the licensed Distributor convey and manage the instruction to and from the exempt Distributor.	exempt Distributor and leave notification to the exempt distributor?		
5.2	<p>De-energisation on Request</p> <p>The Company shall De-energise the Connection Point within a reasonable time (or, in circumstances of urgency, as soon as is reasonably practicable) after being instructed to do so by either the Exempt Distributor or where applicable the Registrant. Where the instruction has been given by the Registrant, the Company shall give the Exempt Distributor such notice of the intention to De-energise as is reasonably practicable in the circumstances .</p>	<p>Wragge and Co. Where do we stand in the Electricity Supply standard performance regulations in 2010.</p> <p>If we de energise the settlement metered boundary Connection Points this has the consequence of disrupting supply to embedded exit points (DNOs MPANs) within the private network.</p>	<p>Do you mean how many 'premises' will be affected for the purposes of the Regs?</p> <p>The definition of premises for the purpose of the Act (and therefore the Regs) will not be directly changed by what we do here. Premises will still be given its natural meaning, but will still be taken to include structures and land. So the question in each case will be whether or not it 'looks like' one premises or lots.</p>	<p>Clause 15.10 addressed the issue of indemnity.</p> <p>The WG have update notices section of the drafting. So where the user fails to notify the company of changes of notice address. The company shall not be liable to the issues arising.</p> <p>Consultation question, is the current wording of the notices clause sufficient.</p>

			However, the Regs generally only create obligations on the 'relevant electricity distributor' (being the one to whose system the customer is directly connected). This would seem to mean that a private network must always be viewed as one customer, as to view them otherwise removes them from the regime of the Regs entirely. You may seek to clarify this interpretation with Ofgem.	
9.5	provided that the Exempt Distributor's liability in respect of the Company's Equipment pursuant to	Is it disproportionate in its own right. Is it also	This depends upon the size of each network, but is consistent with common	Section 5 is consistent with section 3. The NTC is a default and

	this Clause 9.5 shall not exceed £1,000,000 per incident or series of related incidents.	disproportionate in comparison to other sections of the NTC.	connection agreement terms.	does not preclude a customer seeking a bilateral appropriate to the nature of their connection. This would also apply to section 3.
10.1.1	Defined term of Property.	Does occupy include access?	There is no harm in spelling out exactly what we mean.	Definition currently includes access and the working group agreed it was sufficient.
15.10	Further guidance needed. In relation to Electricity (standards of performance) regulations 2010.	What are the licence Distributors liabilities in respect of those performance measures that would impact on a licensed Distributor. Are we liable for compensation to a	As above, most of the Regs are concerned with the relationship between customers and the distributor to whose system the customers' premises are directly connected	Clause 7.5. is sufficient. Indirectly reference MPANs need to be corrected.

		customer connected to another Distribution system, and if so what further amendments to the liability exclusion need to be made to exclude those events relating to the licence exempt distributor's distribution system?	<p>(being by reference to the 'final connection').</p> <p>The NTC cannot override the statutory scheme.</p> <p>On the above analysis it would not seem likely that distributors would have liability to the customers within the private network. However, distributors could seek to obtain compensation from the private network operator in circumstances where liability does arise and the private network operator is at fault (as per the provisions elsewhere between DNOs).</p>	
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19.3, 15.11 and 15.3	What do we do if Parties are not entitled to be a licence exempt distributor? Have set out drafting to contain that scenario.	Is what the working group have drafted correct?		Will ask Wragge & Co to confirm their view when they complete their final review of the drafting.
19.6.1	Is this clause sufficient?	Are there any other areas of the terms other than 19.6.1, where indemnities would be appropriate?		Consultation question, whether there are any further indemnities clause, as well the termination clauses, needed in the drafting.
23.1 and 23.2	Problem of identifying the Exempt Distributor.	What would constitute service of notice, for example where there is a multiple dwelling with no obvious 'landlord' or 'building network operator' on site and no known current communication address for the	This is difficult to answer generically. Service on only one tenant would not seem sufficient. I'm not sure we can deal with this issue in the NTC.	Working Group have addressed the issue. Proposal is to serve notices on Exempt Distributor and have the Exempt Distributor indemnify the

		<p>'landlord' or 'building network operator' other than the premises concerned?</p> <p>Would serving a notice on at least one embedded "customer" fulfil requirements to notify the "licence exempt distributor" such as for supply interruption or termination?</p>		<p>Company where the address for notices is not provided or not up to date.</p> <p>Consultation, how far should the drafting dictate where the notification of new or changed contacts for notices should be sent to such that receipt and confirmation and recording of the current notice details is robust.</p>
General		3rd party legislation, is it sufficient?		As part of the final review of the legal text, Wragge & Co will be asked to take this comment into

				<p>consideration.</p> <p>The drafting is similar to Section 3 of the drafting and is therefore sufficient.</p>
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