Deemed Contracts in Electricity and Natural Gas Retail Markets

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Decision – Deemed Contracts in the Electricity and Natural Gas Retail Markets CER/14/779

CER Information Page

Abstract: The CER has consulted on the regulation of certain aspects pertaining to deemed contracts in the electricity and natural gas retail markets. The proposed regulations take into account legislative requirements as detailed in the Energy Miscellaneous Act 2012 and were published for comment in CER/14/135. Following full consideration of the comments received, the CER is presenting the regulations made, which will come into effect at the date stated in the statutory instrument enacting the regulations made by the CER. This decision paper specifies the treatment of deemed contracts, including definition, duration, applicable tariffs and rights and obligations of customers supplied under deemed contracts.

Target audience: This paper is for the attention of members of the public, energy industry and all interested parties.

Relevant legislation:

- Energy (Miscellaneous Provisions) Act 2012 (the Act)
- Gas (Interim) (Regulation) Act 2002
- Electricity Regulation Act 1999
- Electricity and Natural Gas Suppliers’ Handbook (CER 12/081) (Supplier’s Handbook)
- SI 60 2005

Related Documents:
- Consultation Paper CER/14/135 Deemed Contracts in the Electricity and Natural Gas Retail Markets

For further information on this Decision Paper, please contact Dana Paraschiv (dparaschiv@cer.ie) at the CER.
Executive summary

The Energy Miscellaneous Provisions Act 2012 establishes the legislative framework for the regulation of deemed contracts in gas and electricity retail markets and gives the CER the power to make regulatory provisions in respect of such contracts. The objective of the regulatory decisions made by the CER is to provide protection for both customers and suppliers by ensuring that customers can avail of uninterrupted supply of gas or electricity when moving premises and also provides suppliers with a consistent and legal basis upon which they can supply gas or electricity to a premises where a contract of supply has not yet been agreed and subsequently charge for this supply.

In consultation paper CER/14/135 the CER sought stakeholders’ views on regulatory proposals made in respect of such contracts.

The key proposals put forward in the consultation paper are set out below.

In view of the comments received, the CER has decided to adopt the following definition for deemed contracts.

“A deemed contract is a legally enforceable agreement considered to have been made between the licensed supplier of electricity or gas and the owner or occupier of the premises. A deemed contract is considered to have come into existence because the owner or occupier (after receiving notice from the licenced supplier and where the premises continue to be supplied with gas or electricity by that supplier) did not inform that licenced supplier that he or she continued to use the electricity or gas supplied to the premises concerned after the previous contract for supply to the premises concerned had expired, or was not cancelled when a previous owner or occupied vacated the premises or the new owner or occupied did not enter into a new contract of supply”.

Highlighting the importance of free and easy access to clear information on all aspects pertaining to energy supply, the CER proposed that suppliers’ standard Terms and Conditions of Supply would include a separate section dealing with deemed contracts, together with an explanation/definition for the term ‘deemed contract’ and a statement of customers’ rights and obligations. Noting the respondents’ general agreement, the CER has decided to proceed with these proposals. The CER gave due consideration to respondents' comments on the
proposed explanation for deemed contracts and is minded to adopt a definition that would not include a reference to legislation.

Taking into account the default nature of deemed contracts, the CER further proposed that suppliers charge standard tariffs applicable to the relevant category of customers at the time of consumption. In addition, the CER proposed that the method employed to estimate the quantity of energy supplied under a deemed contract be no different than that employed to estimate the quantity of energy consumed by customers supplied under contracts other than deemed contracts. A further proposal was made in relation to the duration of a deemed contract, where the CER contended that a deemed contract begins when the supplier’s notice, as detailed in legislation, is delivered and ends when the customer either enters into a contract of supply with the current supplier or switches to another supplier. The CER highlighted that, according to the Act, customers supplied under deemed contracts are free to switch to another supplier at any time during the course of a deemed contract, subject to debt flagging procedures set out by the CER. Having reviewed respondents’ comments, the CER has decided to proceed with the proposals as detailed in the consultation paper.

Noting the legislative provisions described in the Act, the CER made further proposals on classes of licence holders, types of premises and categories of customers. Noting the respondents’ general agreement, the CER has decided to apply the regulations made to all licence holders granted with a licence to supply electricity or gas under Section 14 of the Electricity Regulation Act 1999 and Section 16 of the Gas (Interim) (Regulation) Act 2002, respectively. The CER has further decided that these regulations would apply to all categories of customers and types of premises.

Finally, the CER put forward a set of proposals related to advising and informing customers with regard to deemed contracts, including customer notification prior to the expiration of a fixed contract, minimum standards in commercial advertisements and customer information for moving in and out of premises. The CER has given careful consideration to comments received in relation to these proposals and noted the respondents view with regard to the intent of the Energy Miscellaneous Act 2012. The CER agrees with the view expressed by the majority of respondents that the review of the Electricity and Gas Supplier’s Handbook is a more appropriate means for consulting on customer protection measures. The CER also acknowledges that
suppliers are already subject to some requirements regarding fix term contracts and commercial advertisements under the Supplier’s Handbook. The CER has reviewed all comments received and is proceeding with the next step to implement rge decisions detailed in this paper. Following the publication of the decision paper, the CER will engage with the DCENR with a view to drafting legislation (i.e. statutory instrument) to reflect the decisions made. The Act requires that these regulations are laid before the Houses of the Oireachtas “as soon as it may be after it is made”. After submission, the Houses of the Oireachtas will have 21 days to pass a resolution annulling the regulations submitted. If no such resolution is tabled / passed, the commencement date will be as stated in the statutory instrument.
1.0 Introduction

1.1 Commission for Energy Regulation

1.2 Purpose of this paper

1.3 Comments received

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2.0 Review of responses to consultation

2.1 Introduction

2.2. Regulatory Decisions

3.0 Conclusion and Next Steps

3.1 Conclusion

3.2 Next Steps

Annex1: Summary of Decisions
1.1 The Commission for Energy Regulation

The Commission for Energy Regulation (CER) is Ireland’s independent energy and water regulator. The CER was established in 1999 and now has a wide range of economic, customer protection and safety responsibilities in energy. The CER is also the regulator of Ireland’s public water and wastewater system.

The CER’s primary economic responsibilities in energy cover electricity generation, electricity and gas networks, and electricity and gas supply activities. As part of its role, the CER jointly regulates the all-island wholesale Single Electricity Market (SEM) with the Utility Regulator in Belfast. The SEM is governed by a decision-making body known as the SEM Committee, consisting of the CER, the Utility Regulator and an independent member. The overall aim of the CER’s economic role is to protect the interests of energy customers. The CER has an important related function in customer protection by resolving complaints that customers have with energy companies.

The CER’s core focus in safety is to protect lives and property across a range of areas in the energy sector. This includes safety regulation of electrical contractors, gas installers and gas pipelines. In addition the CER is the safety regulator of upstream petroleum safety extraction and exploration activities, including on-shore and off-shore gas and oil.

In 2014 the CER was appointed as Ireland’s economic regulator of the Irish public water and wastewater sector.

Further information on the CER’s role and relevant legislation can be found on the CER’s website at www.cer.ie.
The Energy Miscellaneous Act 2012 establishes the legislative framework for the regulation of deemed contracts in the electricity and natural gas retail markets and gives the CER the power to make regulatory provisions in respect of certain aspects pertaining to such contracts.

In consultation paper CER/14/135 the CER sought stakeholders’ views on regulatory proposals made on certain aspects of deemed contracts. The purpose of this paper is to set out the regulations made by the CER in respect of deemed contracts in gas and electricity retail markets.

1.3 Comments received

The CER received 9 submissions to the Consultation Paper (CER/14/135). Submissions were received from the following organisations or individuals:

- Bord Gáis Energy
- SSE Airtricity
- Flogas
- Energia
- PrePayPower
- Electric Ireland
- ESB Networks
- Gaslink
- National Consumer Agency (NCA)

1.5 Structure of this paper

- Section 2.0 reviews the comments received and outlines the CER’s responses and decisions to same
- Section 3.0 outlines Summary of Decisions and Next Steps

2.0 Review of responses to consultation
2.1 Introduction

The following subsections summarise the respondents’ comments, outline the CER’s response to same and detail the decisions that the CER is has decided to adopt. The objective of the regulatory decisions made by the CER is to provide protection for both customers and suppliers by ensuring that customers to avail of uninterrupted supply of gas or electricity when moving premises and also provides suppliers with a consistent and legal basis upon which they can supply gas or electricity to a premises where a contract of supply has not yet been agreed and subsequently charge for this supply.

2.2. Commencement Date

The Consultation Paper on Deemed Contracts CER/14/135 proposed that the commencement date upon which the use of deemed contracts comes into effect would be as stated in the statutory instrument enacting the regulations made by the CER in relation to such contracts.

Consultation Question 1

Respondents are invited to comment on the proposal that the commencement date will be as stated in the statutory instrument enacting the regulations made by the CER in relation to deemed contracts.

Summary of respondents’ comments

All respondents were in favour of the proposal that the date upon which the use of deemed contracts regulations comes into effect will be as stated in the statutory instrument enacting the regulations made by the CER.

One respondent sought clarification as to whether the regulations made would apply to current instances of unauthorised off-take of energy. Another respondent noted that sufficient time should be given to suppliers to implement new legislative requirements stemming from the regulations made. A comment was made on the importance of laying the regulations made before the Houses of the Oireachtas as early as possible.

CER’s response to comments
In relation to current instances of unauthorised off-take of energy, the first part of Section 5 of the Act, titled Theft of Electricity and Deemed Contracts, deals with instances of theft of electricity and gas. The Act confers on the CER the power to make regulations in relation to specific aspects of deemed contracts, as outlined in Section 5 16(A) (6). The Energy Miscellaneous Act 2012 states clearly that: “(4) Where a deemed contract has effect the licence holder concerned may charge the owner or occupier of the premises concerned for the supply of electricity or gas, as the case may be, to the premises.” The Act makes specific reference to charges, which are required to be: “(I) clearly identified in relation to the usage and (II) do not contain any penalties.”

The CER acknowledges that some respondents regard the enactment of these regulations as a matter of urgency. We have engaged with the Department of Communications, Energy and Natural Resources with regard to drafting legislation to reflect the decisions made. The Energy Miscellaneous Act 2012 further requires that every regulation made by the CER be laid before the Houses of the Oireachtas “as soon as it may be after it is made”. After submission, the Houses of the Oireachtas have 21 days to pass a resolution annulling the regulations submitted. If no such resolution is tabled / passed, the commencement date will be as stated in the SI. The CER will endeavour to progress the drafting of the statutory instrument and submit same to the Houses of the Oireachtas without undue delay.

CER’s decision

Noting the respondents’ overall agreement to the proposal, the CER has decided that the date upon which the use of deemed contracts regulations comes into effect will be as stated in the statutory instrument enacting these regulations.

**Decision 1**

The commencement date upon which the regulations made in this decision paper come into effect will be as stated in the statutory instrument enacting these regulations. The CER intends to allow for a three month period of implementation by licence holders on publication of the SI.

**2.3 Terms and Conditions**

In the consultation paper, the CER proposed that licence holders should include a separate section dealing with deemed contracts in their Standard Terms and
Conditions of Supply. It was further proposed that licence holders would update their Standard Terms and Conditions of Supply to reflect requirements emanating from the newly established requirements and submit same to the CER for approval.

**Consultation Question 2**

Respondents are invited to comment on the proposal that the Standard Terms and Conditions of Supply should include a separate section dealing with deemed contracts. Outline reasons for agreement and disagreement.

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**Summary of respondent's comments**

Seven respondents commented on this proposal. The responses received were broadly in favour of the proposal that suppliers’ Standard Terms and Conditions of Supply should include a separate section dealing with deemed contracts. One supplier qualified their support by stating that, depending on the size and type of customers, specific deemed contracts terms and conditions may be required and that the content of such terms and conditions are for the supplier to determine based on their contractual arrangements. Therefore, in the respondent’s opinion, it may not be appropriate for such terms and conditions to be included in the Deemed Contracts section, but stated in the actual contract.

Gaslink requested that the section on deemed contracts should include the Gaslink BGN Terms and Conditions for Gas Users at Non Daily Metered (NDM) Offtake Points¹, or any replacement thereof. Currently, these terms and conditions apply when a customer enters into a gas supply contract with a gas supplier.

The NCA’s response, while in favour of the proposal, contended that requiring suppliers to submit the Standard Terms and Conditions of Supply to the CER for approval may pose certain challenges to the CER. The NCA highlighted the impact that this may have on the CER’s role in relation to domestic customers, if the CER sought to become an authorised body under for the purposes of S.I. 27/1995 on Unfair Terms in Consumer Contracts. In addition, under Article 1(2) of the EU

¹Gaslink BGN Terms and Conditions for Gas Users at Non Daily Metered (NDM) Offtake Points
Directive 93/13/EC, contract terms that reflect mandatory, statutory or regulatory provisions are exempt from the application of the Directive and therefore, the test of fairness against which they may be compared would not apply.

Finally, the NCA agreed with the proposal that each supplier should be required to update their Standard Terms and Conditions of Supply in line with CER proposals and that CER approval of Terms and Conditions of Supply would ensure a consistent approach across suppliers.

**CER’s response to comments**

The CER welcomes the respondents’ overall agreement with the proposal that the Standard Terms and Conditions of Supply should include a separate section dealing with deemed contracts.

The CER notes the NCA’s comments and reference to legislation. The CER’s a remit in relation to customer protection measures and approval of standards and services to be included in a supply contract are set out in S.I 463 of 2011\(^2\). This S.I. specifically sets out the minimum requirements that suppliers are obligated to cover through customer charters and the CER’s role in the approval of customer charters and codes of practice. To implement the requirements of the S.I., the CER published the Electricity and Gas Supplier’s Handbook Decision Paper CER/12/081, which sets out minimum service requirements that suppliers are required to adhere to in their dealings with final customers. The Supplier Handbook comprises individual Codes of Practice covering key areas of customer-supplier interaction. In line with Section 3.1, suppliers are required to prepare and submit their Customer Charter and Codes of Practice to the CER. We consider that the regulations made in this paper are fair and transparent. The CER will review the updated Terms and Conditions of Supply to ensure that they comply with the regulations made by the CER on deemed contracts. The CER acknowledges the issues raised by the NCA and will assess the best way to address them.

In relation to suppliers’ comments, the CER acknowledges that the likelihood of a tailored contract increases with customer size and that large energy users are supplied under bespoke contracts which contain provisions covering default periods.

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\(^2\) S.I. 463 of 2011

The proposal put forward in Section 3.2 of the consultation paper CER/14/135 refers to contracts of supply where standard terms and conditions apply.

The CER agrees with Gaslink’s proposal that the terms and conditions of deemed contracts should include the Gaslink BGN Terms and Conditions for Gas Users at Non Daily Metered (NDM) Offtake Points. These terms and conditions currently apply where a customer enters into a contract of supply with a supplier. Following from this, the CER considers that the terms and conditions of supply of deemed contracts should also include the ESB Networks terms and conditions of connection to the distribution system. These terms and conditions are covered by standard connection agreements and also general conditions as follows: (a) ESB Networks General Conditions for Connection to the distribution system for customers with a connection greater than 100 kVA\(^3\) and (b) ESB Networks General Conditions for Connection to the distribution system for customers with a connection less than 100 kVA\(^4\).

**CER’s decision**

Noting the respondents’ overall agreement to the proposal that suppliers’ Standard Terms and Conditions of Supply should include a separate section specifically dealing with deemed contracts, the CER is to adopt this decision. In addition, suppliers are required to ensure that this section includes BGN Gaslink and ESB Networks terms and conditions stated above.

Suppliers are required to amend their Standard Terms and Conditions of Supply to reflect this decision and submit same to the CER for approval upon the enactment of the relevant statutory instrument.

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ensure that this section includes the following BGN Gaslink and ESB Networks terms and conditions of supply:

* Gaslink BGN Terms and Conditions for Gas Users at Non Daily Metered (NDM) Offtake Points

* ESB Networks General Conditions for Connection to the distribution system for customers with a connection greater than 100 kVA

* ESB Networks General Conditions for Connection to the distribution system for customers with a connection less than 100kVA

### 2.4 Explanation of the term “deemed contract”

In the consultation paper, the CER proposed that licence holders would include an explanation for the term “deemed contract” in their Standard Terms and Conditions of Supply and gave the following guidelines: “a deemed contract is, in plain language, a legally enforceable agreement considered to have been made between the licensed supplier of electricity or gas and customer because the circumstances set out in Section 5 of the Energy Miscellaneous Provisions Act 2012 exist. A deemed contract has the effect that liability for the gas or electricity supplied is created in the absence of a formal agreement.”

### Consultation Question 3

Respondents are invited to comment on the guidelines proposed by the CER and suggest alternative explanations. Outline reasons for agreement or disagreement.

### Summary of respondents’ comments

Seven respondents commented on this proposal. With the exception of one supplier who agreed with the guidelines proposed by the CER, the respondents supported the adoption of a common definition of a deemed contract and stated that the proposed definition merited further consideration, as they required customers to familiarise themselves with legislation in order to understand what a deemed
contract was. Similarly, the NCA stated a definition which included reference to legislation may not be the most appropriate approach.

**CER’s response to comments**

The CER has given full consideration to comments received and agrees with respondents’ suggestions that adopting a common definition would ensure a higher level of consistency across suppliers. We particularly note that the majority of respondents were in favour of a definition that did not require users to familiarise themselves with legislation.

**CER’s decision**

In view of the comments received, the CER has decided to adopt the following definition for deemed contracts.

“A deemed contract is a legally enforceable agreement considered to have been made between the licensed supplier of electricity or gas and the owner or occupier of the premises. A deemed contract is considered to have come into existence because the owner or occupier (after receiving notice from the licenced supplier and where the premises continue to be supplied with gas or electricity by that supplier) did not inform that licenced supplier that he or she continued to use the electricity or gas supplied to the premises concerned after the previous contract for supply to the premises concerned had expired, or was not cancelled when a previous owner or occupied vacated the premises or the new owner or occupied did not enter into a new contract of supply”.

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**Decision 3**
**Definition of deemed contract**

A deemed contract is a legally enforceable agreement considered to have been made between the licensed supplier of electricity or gas and the owner or occupier of the premises. A deemed contract is considered to have come into existence because the owner or occupier (after receiving notice from the licenced supplier and where the premises continue to be supplied with gas or electricity) did not inform the licenced supplier that he or she continued to use the electricity or gas supplied to the premises concerned after the previous contract for supply to the premises concerned had expired, or was not cancelled when a previous owner or occupier vacated the premises or the new owner or occupier did not enter into a new contract of supply.

**2.5 Rights and Obligations of customers supplied under deemed contracts**

The CER’s proposal saw a statement of rights and obligations of customers supplied under deemed contracts being included in the deemed contracts section mentioned at 2.3 above.

**Consultation Question 4**

In order to provide protection for customers in key areas, the CER considers that the ‘Deemed Contracts’ section proposed at 3.2 above should also include a statement of rights and obligations for customers supplied under deemed contracts. In CER’s view, these rights and obligations should be no different to those applicable to customers supplied under contracts other than deemed contracts.

Do you agree with the proposals outlined above? Outline reasons for agreement or disagreement.

**2.5.1 Summary of respondents’ comments**

The six respondents who commented on this proposal were broadly in agreement, noting that customers supplied under a deemed contract should be in neither worse nor better position than customers supplied under negotiated contracts.

One supplier questioned the need to include the rights and obligations of customers supplied under deemed contracts in the deemed contracts section, stating that these
rights and obligations are largely the same as those of customers who have entered supply contracts with suppliers. It was suggested, instead, that only terms and conditions which differ from supply under a negotiated contract should be contained in this section. The NCA agreed with the proposal that the terms and conditions section of deemed contracts should clearly set out the rights and obligations afforded to customers supplied under deemed contracts and that these rights and obligations should put customers in no worse position than if they had a negotiated contract.

2.5.2 CER response to comments

As stated in the consultation paper, it is the CER’s view that transparency and easy access to all aspects pertaining to the terms and conditions of supply is necessary in order to ensure that customers are fully informed and that their rights are respected. Taking stock of the default nature of deemed contracts, the CER believes that including a statement of customers’ rights and obligations in the deemed contracts section will alert customers to the meaning of being supplied under a deemed contract and ultimately help customers engage effectively with the market with a view to finding a contract of supply that best suits their energy needs. In this context, the CER wishes to highlight to respondents that notifying customers supplied under deemed contracts of their right to enter into a contract of supply with the current supplier or with another supplier is a legislative requirement: “the owner or occupier has been notified (by post or personal delivery) by the licence holder—

I. that the premises has continued to be so supplied,

II. of his or her right to enter into a contract of supply with the licence holder or with another licence holder, and

III. of the terms and conditions of the contract which are deemed to exist from the date the owner or occupier began to take supply of electricity or gas”.

2.5.3 CER’s decision
The CER, noting the overall agreement with the proposal, will proceed with the following decision.

**Decision 4**
The terms and conditions section of deemed contracts should include a statement of the rights and obligations afforded to customers supplied under deemed contracts. These rights and obligations should place customers in no worse position than if they were supplied under contracts other than deemed contracts.

### 2.6 Tariffs applying to customers supplied with gas or electricity under a deemed contract

Consultation paper CER/14/135 proposed that licence holders applied the standard tariff applicable to the relevant category of customers when charging for electricity or gas supplied under a deemed contract. The proposal makes provisions for cases where the licence holder charges above the standard tariff for supplying gas or electricity to a premises under a deemed contract. In these instances, it was proposed that the onus be placed on the licence holder to demonstrate that this rate reflected the additional costs incurred for supplying that premises for that supply. In addition, any debt accrued under a deemed contract should be recouped at a unit rate no higher than the standard tariff applicable to each customer category.

### Consultation Question 5

Respondents are invited to comment on the proposal that suppliers would apply standard tariffs applicable to the relevant category of customers when charging for electricity or gas supplied under deemed contracts. Outline reasons for agreement and disagreement. Respondents are also invited to comment on the proposal that any debt accrued under a deemed contract should be recovered at a unit rate no higher than the standard tariff applicable to the relevant category of customers.

### 2.6.1 Summary of respondents’ comments
Seven respondents commented on this proposal. The NCA supported the CER’s proposal, noting that due to the default nature of deemed contracts, consumers would not have been in a position to select a rate appropriate to their individual needs, which may place consumers at risk of being charged a higher tariff than that which they may have chosen if they had the opportunity to select. The NCA suggested that proposals should not be overly prescriptive in terms of stipulating a minimum tariff. This, in the NCA’s opinion, may allow suppliers to offer a more favourable rate to consumers supplied under deemed contracts. Finally, the NCA supports the proposal that any debt recovery arising from a deemed contract should be made at a unit rate no higher than the standard tariff applicable to the relevant customer category.

Suppliers were broadly in agreement with the CER’s proposal. Two suppliers gave conditional support to the application of the standard tariff to customers supplied under deemed contract by highlighting the fact that, where customers fail to enter into a contract of supply voluntarily, suppliers may face higher costs associated with non-payment, increased number of attempts to communicate with non-engaging customers. To this end, it was suggested that suppliers should not be excluded from passing through the cost of debt recovery; also, that allowances should be made in cases where suppliers may need to recoup administration charges.

Some suppliers commented on the fact that, in the case of LEUs and FVT / RTF customers, there may not be a standard rate applicable to this customer category. In these cases, suppliers enter contractual arrangements which contain provisions for the period succeeding the expiry of a supply contract. It was suggested that this proposal should apply only to domestic and small business customers.

2.6.2 CER’s response to comments

The CER welcomes the general consensus on charging the standard tariff in respect of customers supplied under deemed contracts. With regard to NCA’s comments, we note that suppliers charge either a standard unit rate or discounted unit rates calculated based on a percentage discount off the standard unit rate. Such discounts may be offered to customers who fulfil certain criteria, including entering into a fixed contract, paying by direct debit, receiving an electronic bill. In order to avail of discounted unit rates, customers are required to actively engage with suppliers prior
to entering into a negotiated contract (i.e. providing contact details). By their nature, deemed contracts assume at least temporary non-engagement on customers’ part. In such circumstances, it is impossible for suppliers to offer a tariff which is more favourable than the standard unit rate.

The CER acknowledges that a standard tariff to which customers may default under a deemed contract typically applies to domestic and small / medium business customers and that the larger the customer the less likely it is that such rate applies.

It is the CER’s view that where the standard rate is not applicable, suppliers should ensure that the charges imposed under deemed contracts are in compliance with legislative requirements as stated in the Energy Miscellaneous Act 2012: “(ii) the charges imposed under the deemed contract are—
(I) clearly identified in relation to the usage, and
(II) do not contain any penalties.”

With respect to debt recovery, the CER considers that recovery of costs to supply customers under deemed contracts should be made at the standard tariff (i.e. standard unit rate and standing charge) applicable at the time of consumption. In terms of administration charges and recovery of financial debt accrued by customers supplied under deemed contracts as a result of non-payment of account, suppliers may enter into payment agreements with customers, as is the case with customers supplied under contracts other than deemed contracts. The minimum requirements in respect of this matter are set out in the Supplier’s Handbook.

2.6.3 CER’s decision

The CER, noting the overall agreement with the proposal, will proceed with the following decision.

**Decision 5**

Suppliers will apply standard tariffs applicable to the relevant category of customers when charging for electricity or gas supplied under deemed contracts. Where the standard rate is not applicable, suppliers will ensure that the charges imposed under deemed contracts are: (I) clearly identified in relation to the usage and (II) do not contain any penalties.
2.7 The method of determination of the quantity of electricity or gas which is to be charged as having been supplied under a deemed contract

The CER proposed that the method employed to calculate the amount of gas or electricity which is treated to be supplied to the premises under a deemed contract terms would not be different than that employed to calculate the amount due by customers on supply contracts other than deemed contracts. It was further proposed that the bills issued to customers supplied under a deemed contract should comply with the requirements set out in the Electricity and Gas Supplier’s Handbook.

Consultation Question 6

Respondents are invited to comment on the proposal that the method employed to determine the amount of gas or electricity which is treated as having been supplied under a deemed contract is similar to that employed to calculate the amount of gas or electricity supplied under a contract other than a deemed contract. Outline reasons for agreement and disagreement.

2.7.1 Summary of respondents’ comments

Six respondents commented on this proposal and were in general agreement with the arguments put forward by the CER. The NCA strongly supported the CER’s consideration that suppliers should act ‘in a reasonable manner’ when determining the quantity of energy consumed when consumers avail of supply without notifying the relevant supplier. The NCA were also in favour of the provisions of a bill detailing the breakdown of charges in a manner similar to that of a negotiated contract.

Suppliers highlighted the difficulties encountered in estimating the quantity of energy consumed in the absence of actual meter reads and notification of customers’ movements.

2.7.2 CER’s response to comments

The CER notes the respondents overall agreement with the proposal. The CER acknowledges that suppliers may not always be aware of the movements of their customers until a period of time has elapsed after the event. However, industry processes for estimating energy consumption in the absence of actual meter reads are already established and may be applied to deemed contracts.
2.7.3 CER’s decision

The CER, noting the overall agreement with the proposal, will proceed with the following decision.

**Decision 6**

The method employed to determine the amount of gas or electricity which treated as having been supplied under a deemed contract should be similar to that employed to calculate the amount of gas or electricity supplied under a contract other than a deemed contract.

**2.8 Class or classes of occupiers or owners of premises**

In the consultation paper, the CER proposed that all customer categories (owners or occupiers, whichever the case may be) should be covered by the proposed regulations put forward in this consultation paper.

**Consultation Question 7**

Respondents are invited to comment on the classes of occupiers proposed by the CER. Outline reasons for agreement or disagreement.

**2.8.1 Summary of respondents' comments**

Six respondents commented on this proposal. Three suppliers were in agreement with the CER’s view. One supplier, while supporting the proposal, commented that suppliers should retain the right to refuse to deem a contract on certain customers, due to their size and the risk associated with non-payment of energy consumed under a deemed contract. The supplier goes on to state that, in such cases, the supplier should be entitled to disconnect the supply of energy. Another supplier gave conditional support to this proposal, contingent on it being applicable to domestic and small businesses customers only. The main reasons put forward are similar to those presented at 2.6 above: large energy customers engage in competitive tendering of their businesses in a timely manner, therefore it is unlikely that general regulations on deemed contracts will apply to such customers. Secondly, the bespoke nature of such contracts does not lend itself to general provisions.
Similar to the response given to consultation question 2, Gaslink requested that the Gaslink BGN Terms and Conditions for Gas Users at Non Daily Metered (NDM) Offtake Points, or any replacement thereof, apply to all classes of occupiers.

2.8.2 CER’s response to comments

The CER gave due consideration to the responses received and noted suppliers’ comments in relation to this proposal not being applicable to large energy customers. The CER is cognisant of the fact that energy suppliers as well as substantial commercial customers have a vested interest in ensuring that negotiated supply contracts are agreed timely and efficiently and that these contracts contain provisions covering the period immediately after the expiry of a negotiated contract (i.e. the applicable rate). It may be argued that some regulations proposed in the consultation paper may be rendered moot in the case of large energy customers. However, excluding a certain category of customers from the application of these regulations based solely on a low degree of probability that these regulations will be applied in practice is not a compelling argument. The CER’s view is that customers should not be excluded from customer protection measures based on their size. The CER agrees with Gaslink’s proposal that Gaslink BGN Terms and Conditions for Gas Users at Non Daily Metered (NDM) Offtake Points should apply to all classes of occupiers. Following from this, the CER considers that the ESB Networks (a) ESB Networks General Conditions for Connection to the distribution system for customers with a connection greater than 100 kVA and (b) ESB Networks General Conditions for Connection to the distribution system for customers with a connection less than 100kVA should apply to all classes of occupiers.

2.8.3 CER’s decision
The CER, noting the overall agreement with the proposal, will proceed with the following decision.

The CER, while noting respondents’ comments, will proceed with the following decision.

### Decision 7

Regulations in relation to deemed contracts will apply to the following categories of customers: owners and/or occupiers, domestic and commercial.

Gaslink BGN Terms and Conditions for Gas Users at Non Daily Metered (NDM) Offtake Points apply to all classes of occupiers.

ESB Networks (a) ESB Networks General Conditions for Connection to the distribution system for customers with a connection greater than 100 kVA and (b) ESB Networks General Conditions for Connection to the distribution system for customers with a connection less than 100kVA apply to all classes of occupiers.

### 2.9 Class or classes of licence holders

The CER proposed that regulations in relation to deemed contracts apply to the following licence holders: in relation to supply of electricity, class or classes of licence holder means licence holders who have been granted a licence to supply electricity under Section 14 of the Electricity Regulation Act 1999 as amended. In relation to supply of natural gas, this will cover licence holders who have been granted a licence to supply gas under Section 16 of the Gas (Interim) Act 2002 as amended.

### Consultation Question 8

The respondents are invited to comment on the proposed classes of licence holders to which the deemed contracts regulations will be applicable. Are there any exceptions to be considered? Outline reasons for agreement or disagreement.

### 2.9.1 Summary of respondents’ comments

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Six respondents commented on this proposal. Similar to consultation question 8, the respondents supported the CER proposal except Gaslink, who noted that the regulations to be made by the CER should only apply to holders of licences to supply natural gas to end users, and not to all those who have been granted a licence under Section 16 of the Gas (Interim) (Regulation) Act 2002. One supplier qualified their support by noting that this proposal should only apply to domestic and small businesses.

2.9.2 CER’s response to comments

The CER notes the overall agreement with the proposed classes of licence holders and confirms that the proposal refers to licences to supply natural gas as granted under Section 16 of the Gas (Interim) (Regulation) Act 2002 and not to all licences granted under the Act. In relation to the comment that this proposal should only apply to certain classes of licence holders, the CER maintains the view expressed in section 2.8 above.

2.9.3 CER’s decision

The CER notes the overall agreement with the proposal and will proceed with the following decision.

**Decision 8**

Regulations in relation to deemed contracts apply to the following licence holders: in relation to supply of electricity, class or classes of licence holder means licence holders who have been granted a licence to supply electricity under Section 14 of the Electricity Regulation Act 1999 as amended. In relation to supply of natural gas, this will cover licence holders who have been granted a licence to supply gas under Section 16 of the Gas (Interim) Act 2002 as amended.

2.10 Type or types of premises
In CER/14/135 the CER proposed that the regulations made in respect of deemed contracts applied to both residential and commercial premises.

**Consultation Question 9**

The respondents are invited to comment on the types of premises proposed by the CER. Outline reasons for agreement and disagreement.

### 2.10.1 Summary of respondents’ comments

Six respondents commented on this proposal. Similar to consultation question 7, respondents agreed with the CER’s view. One supplier reiterated their opinion that regulating deemed contracts should be limited to domestic and small business customers.

### 2.10.2 CER’s response to comments

The CER notes the overall agreement with the proposal. In relation to the comment that this proposal should apply solely to domestic and small businesses customers, the CER maintains the view expressed in section 2.8 above.

### 2.10.3 CER’s decision

The CER notes the overall agreement with the proposal and will proceed with the following decision.

**Decision 9**

Regulations in relation to deemed contracts will apply to the following categories of premises: domestic and business.

### 2.11 Duration

The CER proposed that a deemed contract may have effect for the period of time that gas or electricity has been consumed without a contract of supply in place. It was further stated that customers supplied on deemed contracts should be free to enter into a formally agreed supply contract with the current supplier or switch to a supplier of their choice, subject to debt-flagging procedures set out by the CER.
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Consultation Question 10

Respondents are invited to comment on the proposal that customers supplied under deemed contracts should be free to switch to a supplier of their choice, subject to debt-flagging conditions, or enter a formally agreed supply contract with the current supplier. Outline reasons for agreement and disagreement.

2.11.1 Summary of respondents’ comments

Seven respondents commented on these proposals. The majority of respondents were in support of CER’s view that the duration of a deemed contract is the period of time during which gas or electricity was consumed in absence of a contract of supply, subject to the conditions stated in Section 5 16(A) (3) of the Act being fulfilled.

The NCA agreed that consumers supplied under a deemed contract should be free to switch to a supplier of their choice or, alternatively, enter into a formal agreement with the current supplier. The response went further to stress that provision of information and ability to switch are cornerstones in promoting a competitive market. The NCA indicated that it would be in favour of the introduction of a sunset provision where a consumer is afforded the opportunity to negotiate a formal contract or switch provider.

Suppliers supported the view that customers supplied under deemed contracts should not be precluded from switching and early termination fees would not be appropriate. One supplier gave conditional support to this view, contingent on the supplier not being left with a liability for the energy procured to supply the premises. It was suggested that customers who accrued debt while being supplied under a deemed contract should be required to give appropriate notice in advance of being allowed to switch.

Suppliers highlighted the difficulties posed by customers moving in and out of premises without notifying the relevant supplier and sought clarification in relation to liability for charges applicable under a deemed contract. One supplier noted that more information was required to be provided to customers once a supplier suspects that a premises is supplied under a deemed contract. It was proposed that
customers, once notified that they were being supplied under a deemed contract, should be given two weeks to either switch to another supplier or accept the current suppliers’ terms and conditions, including termination fees.

2.11.2 CER’s response to comments

With regard to proposal to introduce a sunset provision, the CER is asking respondents to note that the right of customers supplied under deemed contract to either enter into a contract with the current supplier or switch to another supplier is clearly stated in Section 5 16(A) (i) (II) of the Energy Miscellaneous Provisions Act 2012. The CER draws the attention of relevant parties to subsections I, II and III at point (i) in Section 5 16(A), which sets out minimum requirements for the content of suppliers’ notice to be sent to the owner or occupier of the premises considered to be supplied under a deemed contract: “the owner or occupier has been notified (by post or personal delivery) by the licence holder—

I. that the premises has continued to be so supplied,

II. of his or her right to enter into a contract of supply with the licence holder or with another licence holder, and

III. of the terms and conditions of the contract which are deemed to exist from the date the owner or occupier began to take supply of electricity or gas”.

The CER considers that a deemed contract may have effect for the period of time when gas and electricity is consumed without a contract of supply in place. A deemed contract begins when the supplier’s written notice, as detailed in legislation, is delivered to the premises considered to be supplied under a deemed contract, subject to all other requirements of the Act being fulfilled, and ends when the customer either enters a contract with the current supplier or switches to another supplier. In other words, the notice will be deemed to be received 2 days after the notice has been posted by the supplier to the premises.

2.11.3 CER’s decision
**Decision 10**

A deemed contract begins when the supplier’s written notice, as detailed in legislation, is delivered to the premises considered to be supplied under a deemed contract, subject to all other requirements of the Act being fulfilled, and ends when the customer either enters a contract with the current supplier or switches to another supplier. Customers supplied on deemed contracts should be free to enter into a formally agreed supply contract with the current supplier or switch to a supplier of their choice at any time, subject to debt-flagging procedures set out by the CER.

2.12 Advising and Informing Energy Customers

Section 3.7 of the consultation paper set out specific regulatory proposals in relation to advising and informing customers with regard to deemed contracts, including customer notification prior to the expiration of a fixed term contract, minimum standards in commercial advertisements and customer information for moving in and out of premises. These proposals are summarised below:

a) Suppliers will notify customers in writing of the expiration of a fixed term contract at least 30 days in advance of the expiration date. The notice will include additional information on the availability of electricity / gas supply offers and how they may obtain information about such offers/plans.

b) Suppliers will include the deemed contracts section proposed in section 3.2 (of the Consultation Paper CER/14/135) in the letter requesting a new occupier to register as account holder.

c) **Option 1** relates to a specific category comprising of customers who are on a standard tariff for a period of over 3 years or on a legacy tariff. This option will see suppliers notify customers in this category by including the following items with or on the bill at least once per year:

- A list of available electricity and/or gas supply offers/plans and information on how to obtain more information about such offers
- A highlight of the fact that there are no penalties associated with opting for another supply offer /plan
• A highlight of the fact they are free to access the competitive market and switch to a supplier of their choice subject to debt-flagging procedures

**Option 2** will see suppliers notify customers who have never switched by including the information described at in Option 1 above with or on the bill at least once per year.

d) Suppliers will ensure that *commercial advertisements* (including but not limited to introductory offers) involving fixed term contracts should show: duration of the contract, penalty fee, if applicable, for early termination of the contract and the tariff charged upon expiry of the contract.

e) Suppliers will keep all their customers informed about the importance of notifying their suppliers when moving premises. It is proposed that this is conducted through the following means:

- website: information on the proper process to be followed by customers when moving premises and details regarding possible consequences that customers may be faced with if they fail to adhere to the process
- written notice: purpose specific annual written notice sent to customers by post informing the customer on the proper process to be followed when “Moving In” and “Moving Out” premises.

### Consultation Question 11

Respondents are invited to comment on the proposals and options included in this section. Do you agree with these proposals? Respondents are invited to comment on the preferred option. Are there other options to be considered? Outline reasons for agreement or disagreement.

### 2.12.1 Summary of respondents’ comments

Six respondents commented on all or some of the proposals put forward by the CER in Section 3.7 of the Consultation Paper CER/14/135. As a general comment, the majority of suppliers questioned the appropriateness of using a consultation paper with a set purpose established under legislation to regulate certain aspects of
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deemed contracts in order to propose customers protection measures extending to contracts other than deemed contracts. The argument put forward was that the purpose of deemed contracts, as intended by the Energy Miscellaneous Act 2012, was to stop the dishonest off-take of energy and not to interfere with contracts already in place between suppliers and customers. In highlighting the original intent of legislation, suppliers stated that the proposed regulations should not go beyond the remit established by the Act.

Two suppliers suggested that the review of the Supplier’s Handbook would be a more appropriate context for these proposals. Another supplier, while welcoming the potential effect that of some of the proposals may have in terms of increased market engagement, commented that such proposals are only relevant for domestic and small businesses.

In relation to proposal (a), the majority of respondents noted that suppliers are already subject to requirements regarding fix term contracts under the Supplier Handbook. A supplier considered that there should be no obligation on suppliers to prompt customers whose fixed terms contracts have expired to churn. It was argues that advertising and gaining competitive advantage through innovative offerings was a matter for competing suppliers. Another supplier supported this proposal and went further to suggest that such additional information should be complemented by information on the existence of alternative suppliers in the market.

Two suppliers commented on proposal (b); one supplier agreed with the proposal, stating that the legal existence of a deemed contract is contingent on suppliers sending a purpose specific written notice, as described in legislation, to premises suspected to be supplied under a deemed contract. Another supplier, while agreeing that appropriate information regarding deemed contracts should be provided to customers, stated that it should be for the supplier to ensure that such information is sufficient to deem the contract and enforce it.

Proposal (c), comprising Option 1 and Option 2, received six responses. Two suppliers expressed disagreement with the proposals set out at Option 1 and one supplier agreed partially, contingent on these proposals being applied only to customers supplied under deemed contracts. It was argued that suppliers have a
vested interest to promote their products to customers, and, as such, this does not require regulation in a competitive and deregulated market.

The proposals set out in Option 1 received support from the NCA, who went further to suggest that the information contained in this option should be sent separately from a consumer’s bill. In addition and for comparison purposes, the NCA recommended that the consumer’s supply rate under a deemed contract should be listed alongside rates offered under alternative contracts of supply.

Four suppliers commented on the proposal put forward at Option 2. One supplier supported the proposal, while another supplier suggested that the proposal should only apply to the incumbents once their market share exceeded the threshold established for deregulation. Similar to the comments submitted in respect of Option 1, a supplier gave partial support to this proposal, contingent on it being applicable only to domestic and small business customers.

Suppliers who commented on the proposal set out at option (d) noted that the businesses are already subject to regulations regarding advertisements established by the ASAI and BAI. One supplier conditioned their support to the proposal on it being applicable to marketing brochures, websites and during the sign-up process, so that customers have all the information they needed to make a fully informed consent. Similarly, another supplier commented on the impact that this regulation, if adopted, would have on radio advertisement for energy products.

Three suppliers commented on proposal (e); suppliers agreed that customers should be made aware of the importance of notifying suppliers when moving in and out of premises. However, it was noted that a specific requirement imposed on suppliers to write directly to the customers would be excessive. Suppliers were of the view that sufficient information is currently provided to customers via bills and website. One supplier supported the introduction of this information in the Codes of Practice.

2.12.2 CER’s response to comments

As part of the development of the consultation paper, the CER considered it appropriate that consumer information and protection measures should also be considered and consulted upon. The CER gave full consideration to the comments received to this proposal and noted the respondents’ views with regard to the intent
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of the Energy Miscellaneous Act 2012. The CER further notes and welcomes that the majority of respondents agreed that the consumer related issues should be considered, but that the proposals raised be considered further as part of a separate consultation discussion. A further point made was that the focus and priority of this decision should be on the implementation of legislative requirements under deemed contracts. Taking on board these comments, the CER will issue a separate consultation paper covering a range of consumer information and protection measures, the decisions of which will subsequently amend the Supplier Handbook.

2.12.3 CER’s decision

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<th>Decision 11</th>
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<td>The CER will consult on these proposals in the context of the review of the Electricity and Gas Supplier’s Handbook.</td>
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The CER has reviewed in full the comments received on the proposals made in CER/14/135 in relation to certain aspects of deemed contracts. Following the publication of the decision paper, the CER will engage with the DCENR with a view to drafting legislation (i.e. statutory instrument) to reflect the decisions made. The Act requires that these regulations are laid before the Houses of the Oireachtas “as soon as it may be after it is made”. After submission, the Houses of the Oireachtas will have 21 days to pass a resolution annulling the regulations submitted. If no such resolution is tabled / passed, the commencement date will be as stated in the statutory instrument.
Annex 1

Decision 1
The commencement date upon which the regulations made in this decision paper come into effect will be as stated in the statutory instrument enacting these regulations. The CER intends to allow for a three month implementation period by licence holders on the publication of the SI.

Decision 2
Suppliers are required to include a separate section dealing with deemed contracts in the Standard Terms and Conditions of Supply. Suppliers are further required to ensure that this section includes the following BGN Gaslink and ESB Networks terms and conditions of supply:

* Gaslink BGN Terms and Conditions for Gas Users at Non Daily Metered (NDM) Offtake Points

* ESB Networks General Conditions for Connection to the distribution system for customers with a connection greater than 100 kVA

* ESB Networks General Conditions for Connection to the distribution system for customers with a connection less than 100kVA
Decision 3

Definition of deemed contract

A deemed contract is a legally enforceable agreement considered to have been made between the licensed supplier of electricity or gas and the owner or occupier of the premises. A deemed contract is consider to have come into existence because the owner or occupier (after receiving notice from the licenced supplier and where the premises continue to be supplied with gas or electricity) did not inform the licenced supplier that he or she continued to use the electricity or gas supplied to the premises concerned after the previous contract for supply to the premises concerned had expired, or was not cancelled when a previous owner or occupied vacated the premises or the new owner or occupied did not enter into a new contract of supply.

Decision 4

The terms and conditions section of deemed contracts should include a statement of the rights and obligations afforded to customers supplied under deemed contracts. These rights and obligations should place customers in no worse position than if they were supplied under contracts other than deemed contracts.

Decision 5

Suppliers will apply standard tariffs applicable to the relevant category of customers when charging for electricity or gas supplied under deemed contracts. Where the standard rate is not applicable, suppliers will ensure that the charges imposed under deemed contracts are: (I) clearly identified in relation to the usage and (II) do not contain any penalties.

Decision 6

The method employed to determine the amount of gas or electricity which treated as having been supplied under a deemed contract should be similar to that employed to calculate the amount of gas or electricity supplied under a contract other than a deemed contract.
Decision 7
Regulations in relation to deemed contracts will apply to the following categories of customers: owners and/or occupiers, domestic and commercial.

Gaslink BGN Terms and Conditions for Gas Users at Non Daily Metered (NDM) Offtake Points apply to all classes of occupiers.

ESB Networks (a) ESB Networks General Conditions for Connection to the distribution system for customers with a connection greater than 100 kVA and (b) ESB Networks General Conditions for Connection to the distribution system for customers with a connection less than 100 kVA apply to all classes of occupiers.

Decision 8
Regulations in relation to deemed contracts apply to the following licence holders: in relation to supply of electricity, class or classes of licence holder means licence holders who have been granted a licence to supply electricity under Section 14 of the Electricity Regulation Act 1999 as amended. In relation to supply of natural gas, this will cover licence holders who have been granted a licence to supply gas under Section 16 of the Gas (Interim) Act 2002 as amended.

Decision 9
Regulations in relation to deemed contracts will apply to the following categories of premises: domestic and commercial.

Decision 10
A deemed contract begins when the supplier’s written notice, as detailed in legislation, is delivered to the premises considered to be supplied under a deemed contract, subject to all other requirements of the Act being fulfilled, and ends when the customer either enters a contract with the current supplier or switches to another supplier. Customers supplied on deemed contracts should be free to enter into a formally agreed supply contract with the current supplier or switch to a supplier of their choice at any time, subject to debt-flagging procedures set out by the CER.
Decision 11
The CER will consult on these proposals in the context of the review of the Electricity and Gas Supplier’s Handbook.