



# CONSULTATION ON HEAT NETWORK REGULATION: IMPLEMENTING CONSUMER PROTECTIONS

## **BPF RESPONSE**

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### **PREPARED AND SUBMITTED BY**

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## Heat networks regulation: implementing consumer protections BPF response to joint DESNZ/OFGEM consultation

### BPF

The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs.

We promote the interests of those with a stake in the UK built environment and represent a broad range of investors, owners, managers and developers of real estate as well as those who support them. Our members have hundreds of billions of pounds of assets under management, including over 100,000 homes and hundreds of millions of square feet of commercial real estate space. Their investments help drive the UK's economic success, provide essential infrastructure and create great places where people can live, work, and relax.

### Heat network regulation: implementing consumer protections

We welcome the opportunity to respond to the DESNZ/OFGEM consultation paper on heat network regulation and implementing consumer protections.

The regulatory proposals are well-suited to larger ESCO operators who will generally be better placed to adapt to Ofgem's standards. Compliance with a new regulatory regime is likely to be more challenging for landlord-run heat networks and does not easily fit within existing Landlord and Tenant / Housing legislation. This is acknowledged in the consultation, with proposals on how to address the discrepancies, but clarity on how this will apply in practice and under legislation is required ahead of the launch date of January 2026.

Certainty on regulatory proposals is needed in order for existing property developers, landlords and other stakeholders to prepare for regulation. With under 12 months to prepare for regulation, there are still a number of key issues subject to further consultation which makes it difficult to prepare within the proposed timescales.

We provide more detail below

If you would like to discuss any aspect of our response, please contact Rob Wall ([RWall@bpf.org.uk](mailto:RWall@bpf.org.uk)), Assistant Director (Sustainability) at the BPF.

## Consultation questions

### Scope of the regulation and authorisation regime (Questions 1 – 6)

*With reference to the draft authorisation condition 23 on definitions, do you agree or disagree with the definitions for relating to network types (domestic and microbusiness, non-domestic, industrial, self-supply)?*

*With reference to proposed consumer protection measures in this consultation, are there any measures that in your view are not relevant to heat networks using shared ground loops and individual consumer heat pumps? If so, what measures and why?*

*Are there proposed consumer protection measures that in your view should be tailored to suit shared ground loop technology and if so, how?*

*In applying consumer protections to a heat network using shared ground loops and individual consumer heat pumps, in your view should there be differentiation between networks which charge a fee to access the loop, networks that do not charge a fee, and networks that utilise other ambient heat sources in addition to boreholes?*

*With reference to the draft authorisation condition 23 on definitions, do you agree or disagree with the definition for bulk supply?*

*Do you agree or disagree with our proposals to apply some consumer protection measures to bulk supply activity? Please provide evidence and reasons for your response.*

Consumer protection measures need to apply to bulk supply activity to prevent regulatory obligations falling disproportionately on the entity that has the direct consumer-relationship. With the introduction of heat zoning, supply to downstream networks is likely to become more commonplace so it is important that there are regulatory measures in place to ensure the right party is held accountable for network failure.

### Approach to non-domestic/ SME consumers (Questions 7 – 8)

*Do you agree or disagree with the proposed protections for non-domestic heat network customers? Please provide evidence to support your views, or evidence of the potential impacts.*

*Do you agree or disagree with the proposed definition of an SME for the purposes of heat network regulation?*

We agree with proposals that non-domestic customers should receive fair treatment from heat network suppliers and operators. Step-in requirements will also be important for certain non-domestic customers where heat supply is critical for business continuity.

### Supply to Premises (Question 9)

*Do you agree or disagree with the proposed approach to 'supply to premises' conditions?*

The approach to a "Deemed Contract" needs to align with proposals for "unbundled heat supply". Particularly for existing heat networks where heat charges are governed through the terms of the lease or tenancy agreement, it is unclear how landlords can require tenants to enter into separate heat supply agreements (if this is not expressly provided for in the lease or tenancy agreement). Is

the intention that the Deemed Contract process will be used to require existing customers to sign up to separate heat supply contracts?

## Standards of Conduct (Questions 10 -13)

*Do you agree or disagree with our proposed approach to the Standards of Conduct?*

*Do you currently engage with your consumers on a regular basis?*

*If yes, could you provide examples of how you currently engage your consumers, both on the maintenance of the network and more broadly?*

*Do you agree or disagree with our approach to a principle on the security of supply?*

The Standards of Conduct are well suited to larger ESCO operators but it is less clear how this will apply to landlord-run schemes, particularly where customer service obligations are outsourced (e.g. under appointment of a separate metering and billing provider). It would be useful to clarify if requirements to have complaints procedure, feedback and consumer engagement must be specific to the authorised entity.

Although we expect further detail to be set out under the technical standards consultation, it is not clear to what extent existing networks will be required to implement upgrades to meet current standards. The cost of upgrades to existing plant and equipment is likely to result in significant additional costs for the asset owner and/or higher tariffs for customers.

For landlord-run heat networks, the requirements to promptly make any upgrades or modifications to ensure the network remains fit for purpose may be difficult to implement depending on the terms of the lease or tenancy agreement (which may restrict the ability to "upgrade" existing plant/equipment).

## Fair Pricing (Questions 14 - 15)

*Do you have any views on the high-level fair pricing framework discussed in the Fair Pricing section and in Annex 3 of this document?*

*Do you agree or disagree with our proposal to extend the scope of fair pricing to all non-domestic consumers?*

The consultation refers to separating the variable/consumption element of heat charges from service charges. This may make it difficult for Ofgem to compare prices across networks – particularly where ESCOs incorporate maintenance/replacement costs as part of the standing charge for heat. Landlords would unlikely be able to report quarterly on amounts collected as service charge and this may then impact benchmarking in the market and the ability for Ofgem to determine whether pricing is "disproportionate".

Linked to proposals on "unbundling heat", if heat charges are unbundled from service charge, does it mean that landlords can charge more than the cost of the provision of heat (ie make a profit – provided it is fair and not disproportionate)? As a service charge, landlords do not make a profit. As landlords are expected to act as energy suppliers under the regulations, it seems fair to align with tariff setting practices undertaken by ESCOs (that include a profit margin) in order for landlords to bear additional regulatory risk.

The consultation also refers to protecting consumers from the "improper recovery" of capital expenditure from sinking funds – particularly where there is a discrepancy between the consumers paying into the sinking fund and those who are benefitting from the improvements. It is not clear how this is intended to work in practice. For existing landlord-run schemes, the lease provisions will often dictate how sinking funds can be used. For existing developments where sinking funds have been built up over time it is not clear if legislation will take precedence over the terms of the lease (particularly where funds are required to meet regulatory technical standards).

For ESCO concessions, in the current market generally few ESCOs are willing to hold a separate ring-fenced fund that can be transferred back to the landlord/developer on early termination or insolvency (as this will often result in higher tariffs for customers). Are Ofgem proposing that ring-fenced funds will be required in order to protect consumers? Further guidance on what constitutes "improper recovery" would be useful to understand.

The consultation specifically refers to shielding customers from the "improper recovery of significant initial capital costs in the development phase". It will be useful for Ofgem to clarify how this will apply to developers and landlords of schemes that have already taken capital contributions.

## Vulnerability (Questions 16 – 24)

*Do you agree or disagree with our proposed overall approach to vulnerability, adopting the existing Ofgem definition for gas and electricity consumers but combining this with targeted protections for heat network consumers, where needed, through the authorisation conditions?*

*Do you agree or disagree with our proposed protections from disconnection? Please give reasons or supporting evidence for your answer, and clearly outline any alternative proposal.*

*Do you agree or disagree with our proposal to align with gas and electricity PPM protection rules? Do you think it is appropriate to go further than gas and electricity PPM protections? If you have an alternative approach, please set this out, including how this would impact on debt management and the recovery of costs.*

*Do you agree or disagree with our proposal to explore options to mitigate the impact of unrecoverable debt arising from prohibitions on disconnecting consumers, or installing pre-payment meters, for protected consumers? If yes, please provide any views you may have on approaches for doing so.*

*Do you agree or disagree with our self-disconnection proposals?*

*Can you provide any evidence of the impacts these proposals could have on suppliers, particularly smaller suppliers?*

*Do you agree or disagree with the proposed protections that will be included in the Statutory Instrument that provides for Powers of Entry?*

*Please provide evidence of any impacts or supporting rationale in your response, these can be marked as confidential if appropriate.*

One of the key issues raised is the ability for landlords to threaten tenants with eviction or forfeiture for non-payment of heat charges. Disconnection for non-payment is a last resort measure – but without this option available, smaller heat suppliers (such as landlords or a ManCo) may struggle to finance a shortfall. This may present an insolvency risk, particularly for landlords (such as social housing providers) with a large number of vulnerable customers.

The obligation to proactively offer repayment plans for consumers struggling to pay their bills is likely to be challenging for smaller heat networks, particularly those operated on a "not-for-profit" basis or as a cost pass-through, who may not be able to absorb the bad debt risk.

## Quality of service: Complaints and GSOPs (Questions 25 – 29)

*Do you agree or disagree with our proposed approach to complaint handling?*

*Do you agree or disagree with our proposed compensation levels that broadly align with existing practice in the sector (Heat Trust levels)?*

*We welcome feedback from those that place Guaranteed Standards on external contractors through contract, on the requirement to take best endeavours to update existing contracts to align with our standards and compensation levels or provide feedback on what would be an appropriate transitional period to update contracts.*

*Do you agree or disagree that we should extend certain Guaranteed Standards to protect non-domestic consumers? Would the proposed standards be a reduction in protection, and would they reduce a non-domestic consumers ability to negotiate their own standards? We welcome feedback on our proposal to introduce the standards as a minimum for non-domestic consumers, providing the opportunity to go beyond.*

*Do you agree or disagree with our proposed approach to apply Overall Standards of Performance to heat networks operating on a not-for-profit business model?*

Further guidance is needed on the definition for "not-for-profit" heat networks – many heat networks are run on a "not-for-profit" basis (regardless of whether the heat network operator / supplier is a profit-making entity). It may be difficult for consumers to understand why they are not entitled to compensation payments when this is a regulatory requirement for other larger networks.

## Billing and Transparency: Updated proposals (Questions 30 - 37)

*Do you agree or disagree with the proposals for including additional information on consumer bills?*

*If you agree, what timescales could you reasonably implement these changes?*

*Do you agree or disagree that we should further explore the proposal on unbundling heat from other service charges, noting this may require legislative change to be implemented?*

*Do you have any views on options 1, 2 and 3?*

*If we were able to unbundle the heat charge for individual properties, do you agree or disagree with our proposals on limiting back-billing to 12 months?*

*Can you provide evidence of any potential impacts of limiting back-billing to 12 months for individual properties? Do you have any concerns regarding communal areas?*

*Do you agree or disagree that we should seek to align with HNTAS technical standards/metering rules to give networks adequate time to meet regulatory requirements?*

*Do you foresee any potential challenges of creating new contracts or amending existing ones to ensure the information proposed is included?*

*What timeframe should we allow heat networks to implement this?*

Clear guidance on Ofgem's approach to "unbundling heat charges" and how this will be addressed in legislation is required as soon as possible in order for landlords to prepare for the launch date of January 2026. Existing leases / tenancy agreements cannot be easily amended, and many property developers/landlords will find it difficult to futureproof without clear guidance – particularly

developments that are currently selling Units. Clarity is needed on whether "unbundling heat charges" refers to restrictions on fixed services charges/heat included with rent or whether the intention is for legislation to take heat charges outside of the service charge regime completely.

Although the consultation highlights poor outcomes where heat is bundled with service charge/rent, it would be useful to understand how Ofgem intends to deal with fixed service charge arrangements (eg where the utilities are covered in a single fixed charge). This can often benefit the tenant in terms of price certainty. Where heat costs are included within rent, more often than not this means that the landlord is not recovering its outgoing costs. For many landlord-run heat networks, heat charges for individual consumption are recovered as a variable service charge, often with separate billing agents appointed to bill tenants on a monthly basis.

Service charges are typically charged based on estimated costs for the year, with a balancing charge issued after the year-end accounts have been prepared. If a 12-month back-billing limit is introduced, this would give landlords no time to reconcile their costs, prepare year-end accounts or issue any balancing charge demands after the end of the service charge year, and would only work in practice if heat charges are brought entirely outside of existing service charge legislation. If landlords cannot recover their actual costs (ie settle up at the end of period), does this mean that landlords can charge at a profit, provided it meets Ofgem's pricing requirements?

For landlord-run heat networks, the main issues that lead to poor outcomes for consumers (and landlords) are issues with late meter readings, changes in tariffs not being communicated and invoices providing only fairly basic or inadequate information about consumption. In many circumstances, this occurs at the outset / initial occupation stage where contracts have not been properly set up or thought through, and meter readings have not been taken. For social housing providers, who may have blocks within a larger development, outcomes for their tenants are often dependent on the superior landlord setting up billing/metering properly, which the social housing provider cannot always easily resolve.

Currently heat charges recovered as a service charge are subject to Section 19 LTA 1985 (ie reasonableness). Tenants already have the ability to challenge the reasonableness of service charges. With the proposal that the variable heat charges (ie charges based on individual consumption) are uncoupled from standing charges (ie charges to cover maintenance and replacement costs), tenants would have to challenge variable and standing charges separately under two regimes (ie one under the heat regulations, one under s.19 LTA 1985).

Further guidance is required on the approach to heat supply contracts. There is a list of specific information that should be included in a supply contract – including details of charges, circumstances where charges may be adjusted, compensation and refund arrangements, complaints handling processes, key performance indicators etc. This does not fit easily within a lease or tenancy agreement and is more suited to a separate heat contract approach – it is not clear what other forms of documents or communications will be sufficient. Clarity on this approach is needed to allow developers/landlords to prepare for the introduction of regulation from January 2026.

## **Step-in: measures to mitigate the risk and impact of heat network failure (Questions 38 – 52)**



*Do you agree or disagree that the risks associated with failure in social housing and local authority operated heat networks can be managed within existing regulatory arrangements? If you disagree, please explain why.*

*Are there additional sectors, other than social housing, where you consider the risks are managed due to factors not identified here? If yes, please provide details.*

*Do you agree or disagree with the proposals for authorisation conditions on financial responsibility and control over assets? If you disagree, please provide rationale or suggestions for other ways to address the risks.*

*Do you agree or disagree with the proposed financial monitoring requirements, including the metrics and the frequency? If you disagree, please provide further details and/or alternative suggestions.*

*Do you agree or disagree with the structure and contents of the proposed Operations/Supply Continuity Plan? If you disagree, please provide feedback such as additional material you consider should be required or other suggested changes.*

*Are you aware of examples of, or do you already have in place, this type of contractual step-in arrangement, to enable a replacement entity to continue to operate a heat network?*

*Do you have any feedback on what support could facilitate the implementation of a contractual step-in requirement for an existing heat network? Are there any arrangements that you think would support its introduction?*

*Where a heat network has a separate supplier and operator, do you agree or disagree that the supplier's contractual arrangement should be with the heat network operator?*

*Do you envisage any additional risks associated with the proposed Last Resort Direction process? If so, what do you consider are the most appropriate mitigations to these risks?*

*If you support the introduction of such a scheme, what would be the benefits of such an arrangement, and why do you think it is necessary? What impact do you think it would have on the likelihood of commercial solutions being found?*

*Do you agree or disagree with the proposal to introduce a Special Administration Regime, modelled on existing SARs and using bespoke provisions, where appropriate, to ensure it functions in the heat network sector?*

*Do you agree or disagree with the proposal for the introduction of transfer schemes?*

*Do you agree or disagree with the proposal that heat networks should put in place a funding mechanism to support the regulatory interventions outlined?*

*Are you aware of any of the proposed funding mechanisms currently being used to mitigate failure risks for existing heat networks?*

*Do you have any comments on the feasibility of the proposed funding mechanisms?*

Step-in arrangements are proposed to apply where the heat network operator or supplier is in financial difficulty or has an authorisation revoked, with technical failures addressed separately. In many cases, catastrophic plant failure will be inextricably linked to the operator's ability to finance repairs or replace infrastructure so the regulatory proposals will need to be closely aligned.

Financial resilience and monitoring requirements are likely to be difficult for smaller networks to manage, particularly landlord/ManCo-run heat networks that will not have the same access to funds as large ESCOs.

Contractual step-in arrangements do not easily apply to landlord/ManCo-run schemes where charges are recovered through the terms of the lease/tenancy agreement. Developer/landlord step-in rights are often found within an ESCO concession but these entities are unlikely to be authorised and will not be a "suitably experienced provider" as outlined in the consultation – is the



intention that an appointed ESCO will also have contractual step-in arrangements with another ESCO? This may produce an additional market for heat network operators to act as 'guarantors' for each other for step-in purposes – with customers ultimately paying the price through charges for maintaining these back-up arrangements.

The consultation does not currently anticipated that there will be a deemed authorisation / expedited authorisation process for landlords/developers in an ESCO concession scenario (ie as unlikely to be authorised already and may need to step-in and takeover immediately).

It is also not clear how contractual step-in will work for landlord-run schemes where charges are recovered through the terms of the lease/tenancy agreement. Particularly for smaller networks, it is difficult to see what the commercial incentive would be to take over a failing network with a small number of customers.

There is also a risk that funding to cover step-in requirement will lead to further increased costs for customers. Particularly for landlord/ManCo-run heat networks, arranging insurance or ringfencing funds to specifically deal with insolvency/authorisation revocation may be difficult. For existing networks, the lease/tenancy agreement provisions will often dictate what landlords can recover.

## Market segmentation (Questions 53 – 55)

*Do you agree or disagree with the proposed approach to Market Segmentation, including the characteristics we have identified to inform our proposals?*

*Do you agree or disagree with the proposal to develop and implement a minimum standard for regulated providers across some services over time?*

*Which services would you find appropriate to be regulated by a minimum standard?*

Market segmentation is likely to be necessary due to the diversity of the market. The three primary segments proposed works, small networks and "not-for-profit" networks. The consultation states registered social landlords who are "not-for-profit" could qualify but not local authorities.

This does not take into account that many heat networks are run on a "not-for-profit" basis, regardless of the status of the operator or supplier entity. Private landlords with heat networks may often be run on a cost pass-through basis, where the landlord does not make profit. Similarly, development schemes where ownership of the heat network transfers to a ManCo following the exit of a developer will have difficulty in meeting many of the regulatory requirements for an authorised operator / supplier (eg funding compensation payments).