

# Consultation Response

## Non-domestic market review: findings and policy consultation

Office of Gas and Electricity Markets (Ofgem)

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## **About this consultation**

Ofgem launched this consultation to follow up on its previous call for information on the non-domestic energy market. This component of the market covers both commercial businesses and residential properties receiving their energy supply via a commercial contract (e.g. park homes, care homes, and houseboats). Thousands of older people rely on a non-domestic commercial supply contract for their energy or pay for their energy costs via a commercial intermediary (e.g. to a landlord or site owner through collective bills). This means that despite being residential households they generally have no direct contractual relationship with their supplier, miss out on many of Ofgem's consumer safeguards, and face barriers to accessing affordability and energy efficiency schemes. We refer to this as the 'commercial supply trap'. Ofgem are proposing several reforms to address this. Our response is focused solely on the residential component of the regulator's proposals. We also provide updated data on how many residential households are reliant on a commercial contract to underpin their energy supply.

## **Key points and recommendations**

- Age UK recommends that financial support and regulatory protections be extended to all residential dwellings, regardless of how residents pay for their energy.
- At least 883,000 UK households find themselves stuck in the commercial supply trap – in England this represents around 3% of all households.
- Age UK commends Ofgem's efforts to address the issues faced by residential households relying on commercial supply contracts in the energy market.
- We are nonetheless disappointed that the regulator has not gone further with its proposals.
- Ofgem has chosen not to implement a Priority Services Register (PSR) for households stuck in the commercial supply trap.
- We recommend Ofgem reconsider this decision, institute a non-domestic PSR, and provide equivalent redress for these households during network outages.
- It is welcome that Ofgem's proactive work with the Department for Levelling Up, Housing and Communities (DLUHC) should allow some atypical supply households to lodge complaints via the Private Rented Sector Ombudsman Service (PRSOS).
- Nonetheless, we are concerned that a heavy reliance on Maximum Resale Price (MRP) legislation to protect non-domestic residential households remains flawed.
- Ofgem has committed to reforming the MRP process and is considering options for increasing compensation – Age UK is keen to support these efforts.
- Ofgem should also consider expanding the remit of the Energy Ombudsman to include households relying on atypical supply arrangements, particularly in cases where the consumer remains outside the remit of the PRSOS.
- Ofgem, DESNZ, and DLUHC need to work more closely to establish the joint working and legislative changes required to end the commercial supply trap.

## **About Age UK**

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

## **Introduction**

We welcome the opportunity to respond to this consultation<sup>1</sup>. Our response focuses on residential customers within the non-domestic energy market and follows on from our reply to Ofgem's original call for information (CfI)<sup>2</sup>. We continue to believe that financial support and regulatory protections should be extended to all residential dwellings, regardless of how residents pay for their energy<sup>3</sup>. Without taking this action there is a risk of entrenching inequalities within the energy market.

The commercial supply trap<sup>4</sup> – affecting residential customers paying their energy bills via a commercial intermediary or reliant on a commercial supply contract to underpin their supply – impacts at least an estimated 883,000 UK households<sup>5</sup>. Housing types which are heavily impacted include park homes, care homes, and social housing units – dwellings which are disproportionately occupied by older people.

Ofgem has been instrumental in driving forward the discussion about how best to support these households. We commend the regulator's efforts, and recognise that without Government intervention, joined up working across government departments, and legislative changes, the regulator will be limited in terms of its ability to unilaterally address the commercial supply trap.

With the Department for Energy Security and Net Zero (DESNZ) launching its own call for evidence on the non-domestic energy market<sup>6</sup> we will redouble efforts to get the departmental and legislative changes required to put an end to the commercial supply trap for good. Our response herein focuses on providing Ofgem with an update on the data regarding how many households are affected and sharing our views on the proposals – we believe there is the potential to deliver reforms that are even more effective than those set out in the consultation paper, and we hope Ofgem takes the opportunity to implement changes along these lines.

## Response

Given the lack of data on the commercial supply trap we wanted to provide an update on the figures we collated in our previous CfI response<sup>7</sup>. Age UK recently received new data via a Freedom of Information Request (FOI) to the Department for Energy Security and Net Zero (DESNZ). The data, while not exhaustive, shows that there are at least an estimated 883,000 UK households in the commercial supply trap<sup>8</sup> – relying on non-domestic supply arrangements. The true figure is likely to be higher as these figures also exclude certain housing types in the commercial supply trap (e.g. non-self-funded care home residents). We have provided updated UK figures by housing type in table 1 and a heat map of local authorities in Britain by the number of households on non-domestic contracts in figure 1. For the purposes of Ofgem’s remit around 30,000 of the households in table 1 are in Northern Ireland<sup>9</sup>.

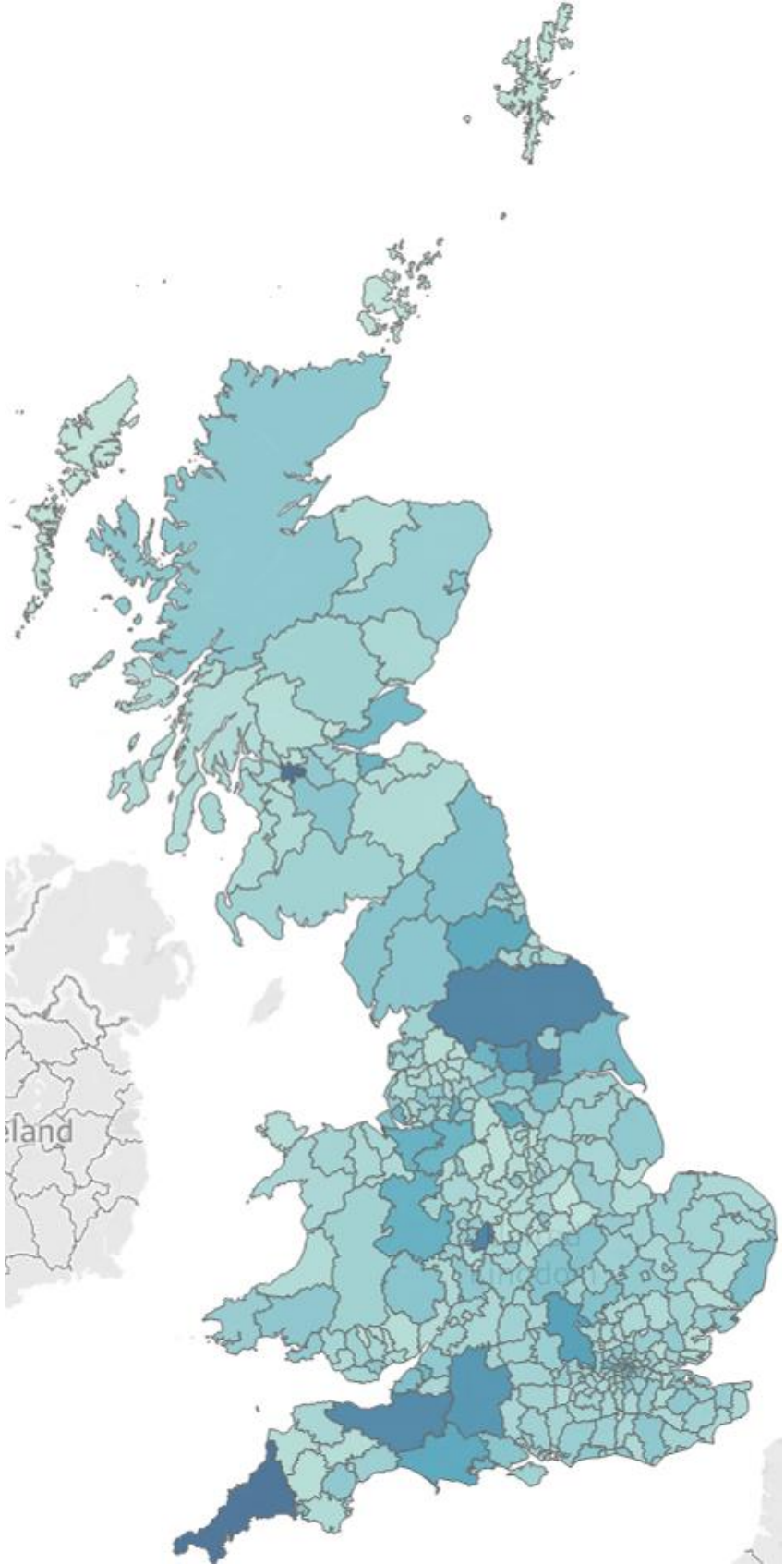
Table 1: UK households in the commercial supply trap (atypical supply)

Housing type	Number of households
Caravans, houseboats, mobile homes	128,000
Travellers	25,000
Private tenants on commercial meter	160,000
Social tenants on commercial meter	151,000
Heat network consumers	31,000
Homes off grid	2,000
Self-funded care home residents	306,000
Farmhouses	80,000

Source<sup>10</sup>: Age UK FOI to DESNZ. Note: These figures are best estimates and likely undercount the true figure as they do not include certain housing types (e.g. non-self-funded care home residents).

Age UK conducted research<sup>11</sup> to compile an [interactive map](#)<sup>12</sup> of figure 1. The map allows users to review the local authorities with the highest number of residential households reliant on non-domestic contracts. The authorities with the lowest overall numbers of non-domestic residential dwellings (500 or less) were the City of London, Melton, Harlow, Clackmannanshire, and the islands of Orkney, Shetland, and Na h-Eileanan Siar. The highest (9,000 or more) were Somerset, North Yorkshire, Birmingham, Cornwall, and Glasgow City. We also used 2021 Census data for England and Wales<sup>13</sup> to assess which local authorities had the highest and lowest proportions of non-domestic residential households. You can find an interactive map of these findings [here](#)<sup>14</sup>. Castle Point in the East of England had the highest overall proportion (7%) while Harlow had the lowest (1.3%).

Fig 1: Households in the commercial supply trap (atypical supply) by local authority (GB)



Source<sup>15</sup>: Age UK FOI to DESNZ. Note: See data limitations in appendix<sup>16</sup>.

Despite making welcome progress we believe Ofgem could use its existing remit to provide additional support to these households beyond what it has already proposed. We would welcome the opportunity for additional dialogue with the regulator to discuss this in greater detail.

Firstly, Ofgem has determined that it will not be implementing a Priority Services Register (PSR) for residential customers relying on non-domestic energy contracts. Instead, they have committed to work with network operators on an appropriate alternative. While we agree it would prove difficult to implement a non-domestic PSR, we fundamentally believe that on a risk/reward basis there is ample justification for undertaking the hard work required to fully extend this support to vulnerable households stuck in the commercial supply trap. We strongly recommend Ofgem reconsiders this decision and further reflect on how to extend network outage support and compensation to residential households on non-domestic contracts.

We are also disappointed Ofgem has chosen not to revise its definition of a domestic customer. Meeting the threshold for definitional criteria (a) through (d)<sup>17</sup> will render many atypical supply households as non-domestic, even though they are residential dwellings. We stand by our criticism that Ofgem's criteria are too rigid<sup>18</sup> and call for a more inclusive definition.

Ofgem must also be mindful of the gaming risks of its decision not to expand the definition. The evidence submitted to the regulator from multiple suppliers indicates that commercial supply contracts for residential customers will be increasingly common because of the innovation required to achieve net zero<sup>19</sup>. With such a restrictive definition of domestic customers, residential households could increasingly lack Ofgem's consumer safeguards as the proportion of homes falling under the non-domestic definition increases. Our estimates show that around 3% of English households are stuck in the commercial supply trap<sup>20</sup>. If Ofgem fails to expand its definition of domestic customers or find alternative routes to extend protections then we are very concerned that the proportion of households sitting outside of the regulator's safeguards will grow – cutting support to vulnerable older consumers, diluting the regulatory framework, and reducing market engagement.

Ofgem has worked proactively with DLUHC to propose extending the Private Rented Sector Ombudsman Service (PRSOS) to many atypical supply households. To date, Ofgem has relied heavily on Maximum Resale Price (MRP) legislation, via section 37 of the Gas Act 1986 and section 44 of the Electricity Act 1989, to ensure energy resellers, or intermediaries, are selling energy to atypical supply households at cost<sup>21</sup>. In principle this means a landlord, park site owner, or other intermediary is forbidden from making a profit on the energy they sell on to residential households, but MRP is limited by numerous

factors. It often does not apply for consumers paying for energy via inclusive bills (e.g. energy costs included in rental payments), billing practices frequently lack transparency, there are very limited repercussions for non-compliance<sup>22</sup> requiring customers to take intermediaries to tribunal, and we believe it hinders competition – as there is very little motivation for an intermediary to shop around for a cheaper energy tariff.

We therefore warmly welcome the regulator's efforts to reform the MRP redress process, by working with DLUHC to add atypical supply households to the Private Rented Sector Ombudsman Service (PRSOS) via the Renters (Reform) Bill. Ofgem must immediately work with the devolved administrations to bring in similar protections in Scotland and Wales. The regulator must also recognise that this approach has its own limitations, and will not address the fundamental issue that, unlike typical domestic customers, atypical supply households remain unable to shop around for cheaper tariffs and their intermediary has little motivation to do this on their behalf. It also remains unclear where the 'domestic landlord' remit starts and ends – as this new process will only apply where there is considered to be a domestic landlord in place. For instance, it remains unclear if a care home would have a domestic landlord by Ofgem's definition.

In cases where a domestic landlord is not in place the MRP, and its significant limitations, will still apply. As a result, Ofgem has committed to reforming the MRP process and is considering options for increasing compensation to make the tribunal process more worthwhile. We would warmly welcome the opportunity to work with Ofgem on what sufficient compensation for consumers would look like and how best to reform the MRP redress procedure. Ofgem should also consider expanding the remit of the Energy Ombudsman to include households relying on atypical supply arrangements, particularly for those who would remain outside the remit of the PRSOS.

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<sup>1</sup> Ofgem, 2023. Non-domestic market review: Findings and Policy consultation. Ofgem. [Online]. Available at: <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-policy-consultation>. [Accessed 15/08/23].

<sup>2</sup> Age UK, 2023. Call for Input: The Non-Domestic gas and electricity market. Age UK. [Online]. Available at: <https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/age-uk-call-for-input-response-to-ofgem-march-2023.pdf>. [Accessed 15/08/23].

<sup>3</sup> Age UK, 2023. Keeping the lights on: The case for an energy social tariff Discounted bills so older people can keep warm and well at home. Age UK. [Online]. Available at: <https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/safe-at-home/age-uk-energy-public-policy-report-march-2023.pdf>. [Accessed 27/03/23]. Pgs37-38.

<sup>4</sup> See our 'about this consultation' section or page 3 of our previous response for a full definition: Age UK, 2023. Call for Input: The Non-Domestic gas and electricity market. Age UK. [Online]. Available at: <https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/age-uk-call-for-input-response-to-ofgem-march-2023.pdf>. [Accessed 15/08/23]. Pg3.

<sup>5</sup> Age UK FOI request to DESNZ (summer 2023) on the numbers of households eligible for the EBSS Alternative Fund. In response to our FOI DESNZ indicated that these figures are their best working estimates on the number of eligible households for this scheme so should be interpreted with caution. We are using EBSS Alternative Fund eligibility as a proxy for the number of UK households in the commercial supply trap because the Fund was designed to support these households.

<sup>6</sup> DESNZ, 2023. Domestic consumers with non-domestic energy contracts. Department for Energy Security and Net Zero. [Online]. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1173132/domestic-consumers-on-non-domestic-energy-contracts-call-for-evidence.pdf#:~:text=Domestic%20consumers%20with%20domestic%20energy%20supply%20contracts%20have,contracts%20have%20had%20a%20different%20level%20of%20protection](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1173132/domestic-consumers-on-non-domestic-energy-contracts-call-for-evidence.pdf#:~:text=Domestic%20consumers%20with%20domestic%20energy%20supply%20contracts%20have,contracts%20have%20had%20a%20different%20level%20of%20protection). [Accessed 17/08/23].

<sup>7</sup> Age UK, 2023. Call for Input: The Non-Domestic gas and electricity market. Age UK. [Online]. Available at: <https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/age-uk-call-for-input-response-to-ofgem-march-2023.pdf>. [Accessed 15/08/23].

<sup>8</sup> Age UK FOI request to DESNZ (summer 2023) on the numbers of households eligible for the EBSS Alternative Fund. In response to our FOI DESNZ indicated that these figures are their best working estimates on the number of eligible households for this scheme so should be interpreted with caution. We are using EBSS Alternative Fund eligibility as a proxy for the number of UK households in the commercial supply trap because the Fund was designed to support these households.

<sup>9</sup> It should be noted that farm properties and homes fully off the grid were removed from the overall regional figures – this may therefore impact the Northern Ireland figures. To give a sense of the scale, farm properties and homes fully off the grid represented around 9% of the total number of UK households on atypical supply. The original figure for NI was 28,000 but we rounded this up to 30,000 to better reflect this gap in the data.

<sup>10</sup> Age UK FOI request to DESNZ (summer 2023) on the numbers of households eligible for the EBSS Alternative Fund. In response to our FOI DESNZ indicated that these figures are their best working estimates on the number of eligible households for this scheme so should be interpreted with caution. We are using EBSS Alternative Fund eligibility as a proxy for the number of UK households in the commercial supply trap because the Fund was designed to support these households. But it likely undercounts the number of affected households (e.g. these figures do not include non-self-funded care home residents).

<sup>11</sup> Age UK FOI request to DESNZ (summer 2023) on the numbers of households eligible for the EBSS Alternative Fund. In response to our FOI DESNZ indicated that these figures are their best working estimates on the number of eligible households for this scheme so should be interpreted with caution. We are using EBSS Alternative Fund eligibility as a proxy for the number of UK households in the commercial supply trap because the Fund was designed to support these households. It should be noted that 82,000 UK households (80,000 farm properties, and 2,000 off the grid) were removed from the local authority figures – this may therefore impact these figures. These figures also likely undercount the number of households in the commercial supply trap (e.g. these figures do not include non-self-funded care home residents).

<sup>12</sup> Available here: [https://public.tableau.com/views/Atypicalenergysupplyhouseholdsnon-domesticbyGBlocalauthority/Sheet1?:language=en-GB&publish=yes&:display\\_count=n&:origin=viz\\_share\\_link](https://public.tableau.com/views/Atypicalenergysupplyhouseholdsnon-domesticbyGBlocalauthority/Sheet1?:language=en-GB&publish=yes&:display_count=n&:origin=viz_share_link)



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<sup>13</sup> The most recent Scottish Census data was not available at the time of publication so we were unable to provide similar figures for Scotland at this stage.

<sup>14</sup> Available here: [https://public.tableau.com/shared/D7SN955J5?:display\\_count=n&:origin=viz\\_share\\_link](https://public.tableau.com/shared/D7SN955J5?:display_count=n&:origin=viz_share_link)

<sup>15</sup> Age UK FOI request to DESNZ (summer 2023) on the numbers of households eligible for the EBSS Alternative Fund. In response to our FOI DESNZ indicated that these figures are their best working estimates on the number of eligible households for this scheme so should be interpreted with caution. We are using EBSS Alternative Fund eligibility as a proxy for the number of UK households in the commercial supply trap because the Fund was designed to support these households. But it likely undercounts the number of affected households (e.g. these figures do not include non-self-funded care home residents).

<sup>16</sup> Note: These figures are best estimates and likely undercount the true figure as they do not include certain housing types (e.g. non-self-funded care home residents). Local authority figures have greater uncertainty and 80,000 farm properties, and 2,000 off grid homes were removed from the local authority figures due to data limitations. Due to these issues and rounding errors the totals by local authority do not sum to the overall figures. Local authority data for Northern Ireland was unavailable although we can provide overall figures for Northern Ireland upon request. The Isles of Scilly were not included due to issues with the estimates for this local authority.

<sup>17</sup> For definitions of these criteria see page 98: Ofgem, 2023. Non-domestic market review: Findings and Policy consultation. Ofgem. [Online]. Available at: <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-policy-consultation>. [Accessed 15/08/23]. Pg98.

<sup>18</sup> See pages 6-7 of: Age UK, 2023. Call for Input: The Non-Domestic gas and electricity market. Age UK. [Online]. Available at: <https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/consultation-responses-and-submissions/safe-at-home/age-uk-call-for-input-response-to-ofgem-march-2023.pdf>. [Accessed 15/08/23]. Pgs6-7.

<sup>19</sup> Ofgem, 2023. Non-domestic market review: Findings and Policy consultation. Ofgem. [Online]. Available at: <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-policy-consultation>. [Accessed 15/08/23]. Pg61.

<sup>20</sup> Age UK analysis of FOI request to DESNZ (summer 2023) on the numbers of households eligible for the EBSS Alternative Fund combined with DESNZ & DBIS data on the number of households in England (fuel poverty dataset, 2022).

<sup>21</sup> Ofgem, 2014. Maximum Resale Price Direction. Ofgem. [Online]. Available at: [https://www.ofgem.gov.uk/sites/default/files/docs/2014/03/mrp\\_direction.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2014/03/mrp_direction.pdf). [Accessed 16/08/23].

<sup>22</sup> See page 65: Ofgem, 2023. Non-domestic market review: Findings and Policy consultation. Ofgem. [Online]. Available at: <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-policy-consultation>. [Accessed 15/08/23]. Pg65.