Non-Domestic Change of Occupier

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SCHEDULE [X]

Non-Domestic Change of Occupier Schedule

Version: 0.3 Effective Date: [insert]

Energy Suppliers	Mandatory for Non-Domestic Consumers
Gas Transporters	N/A
Distribution Network Operators	N/A
DCC	N/A
Meter Equipment Managers	N/A
Non-Party REC Service Users	N/A

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Change History

Version Number	Implementation Date	Reason for Change
0.1	N/A	Initial draft for impact assessment
0.2	N/A	Updated draft for consultation
0.3	[TBC]	For implementation

1 INTRODUCTION

1.1 This REC Schedule sets out obligations for Energy Suppliers in relation to a Change of Occupier at a Non-Domestic Premise.

1.2 This REC Schedule sets out:

(a) obligations relating to a Change of Occupier without a Switch (see Paragraph 2);

(b) obligations relating to a Change of Occupier with a Switch (see Paragraph 3); and

(c) a non-exhaustive list of example evidence which Energy Suppliers might seek to rely upon in assessing whether or not there has been a Change of Occupier (see Appendix 1).

1.3 In the case of a Change of Occupier with a Switch, this REC Schedule needs to be read in conjunction with the processes applying in relation to a Switch under the Registration Services Schedule, as further described in Paragraph 3.

1.4 This REC Schedule only applies to Non-Domestic Premises.

1.5 RECCo shall prepare, make available via the REC Portal and periodically review and update a non-binding guidance document to supplement this REC Schedule.

2 CHANGE OF OCCUPIER WITHOUT A SWITCH

2.1 This Paragraph 2 applies to the Registered Supplier for the RMP at a Non-Domestic Premises where the Registered Supplier is notified that there has been a Change of Occupier, but has not been notified of a Switch Request.

2.2 The Energy Supplier shall, within 10 Working Days of receiving notification of a Change of Occupier (or, upon receipt of requested information including where additional information has been requested, the receipt of the additional requested information):

(a) determine that there has been a Change of Occupier;

(b) determine that there has not been a Change of Occupier, and notify the Consumer in accordance with Paragraph 2.4; or

(c) only if the Energy Supplier does not have sufficient information to make such a determination, request additional information from the Consumer in accordance with Paragraph 2.4.

2.3 In making a determination under Paragraph 2.3, the Energy Supplier must have regard to the non-exhaustive examples of evidence listed in Appendix 1.

2.4 All communications by the Energy Supplier under Paragraph 2.2(b) or 2.2(c) shall be in writing, and shall be addressed to whoever submitted the notification of the purported Change of Occupier (which may be the Consumer or a TPI acting on behalf of the

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Consumer). All such communications must be in plain and intelligible language. If the Energy Supplier rejects a purported Change of Occupier, then the Energy Supplier shall clearly explain the reason(s) for the rejection. If the Energy Supplier requests further information, then the Energy Supplier shall clearly explain what is required and why.

2.5 Each Energy Supplier shall retain evidence of the basis upon which it made each determination under Paragraph 2.2 and of all its communications under Paragraph 2.4 (and of responses to such communications). Such evidence shall be retained for at least 12 months from the date of determination.

2.6 It is acknowledged that a Change of Occupier may cause the Energy Contract between the outgoing Consumer and the Energy Supplier to end, but this will depend upon the terms of the Energy Contract. If the Energy Contract ends, a deemed supply contract with the incoming Consumer will apply under the Electricity Act and/or the Gas Act (as applicable). The consequences in respect of the arrangements between the Energy Supplier and the outgoing Consumer will be governed by their Energy Contract.

3 CHANGE OF OCCUPIER WITH A SWITCH

3.1 This Paragraph 3 applies to the Losing Supplier and the Gaining Supplier for the RMP at a Non-Domestic Premises where the Gaining Supplier identifies in its Switch Request that there has been a Change of Occupier.

3.2 This Paragraph 3 is to be read in conjunction with the processes applying in relation to a Switch under the Registration Services Schedule, including:

(a) the obligations of Gaining Suppliers under paragraph 2.7 of the Registration Services Schedule; and

(b) the obligations of Losing Suppliers under paragraph 6.3 of the Registration Services Schedule.

3.3 If the Losing Supplier raises an Objection to a Switch on the grounds that the Losing Supplier does not believe that there has been a Change of Occupier, then the Gaining Supplier may (but is not obliged to) provide evidence of the Change of Occupier in accordance with Paragraph 3.6.

3.4 If a Losing Supplier receives evidence of a Change of Occupier from the Gaining Supplier pursuant to Paragraph 3.3, then the Losing Supplier shall, within 10 Working Days of such receipt:

(a) determine that there has been a Change of Occupier, and notify the Gaining Supplier in accordance with Paragraph 3.6 (in which case the Losing Supplier will not continue to raise an Objection to the Switch);

(b) determine that there has not been a Change of Occupier, and notify the Gaining Supplier in accordance with Paragraph 3.6 (in which case the Losing Supplier may continue to raise an Objection to the Switch); or

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(c) only if the Losing Supplier does not have sufficient information to make such a determination, request additional information from the Gaining Supplier in accordance with Paragraph 3.6 (in which case the Losing Supplier may continue to raise an Objection to the Switch).

3.5 In making a determination under Paragraph 3.4, the Losing Supplier must have regard to the non-exhaustive examples of evidence listed in Appendix 1.

3.6 All exchanges of information and evidence between the Gaining Supplier and the Losing Supplier under this Paragraph 3 shall be via the Secure Data Exchange Portal (SDEP).

3.7 Disputes between a Losing Supplier and a Gaining Supplier concerning whether or not there has been a Change of Occupier shall be resolved in accordance with the process which applies under paragraph 3 of the Resolution of Consumer-Facing Switching and Billing Problems Schedule. In particular, if no reply is received from the Losing Supplier within the time period required by Paragraph 3.4, then the Gaining Supplier may escalate the issue to the Losing Supplier's Operational Contact.

3.8 The Losing Supplier and the Gaining Supplier shall keep the Consumer updated, and notify the Consumer of the outcome of the dispute, in accordance with paragraph 3 of the Resolution of Consumer-Facing Switching and Billing Problems Schedule.

3.9 For clarity, whether or not a Losing Supplier can validly raise an Objection depends upon the terms of the Energy Contract between the Losing Supplier and the Consumer, as set out in Condition 14 of the Energy Supply Licences. The Energy Supply Licences do not require Energy Contracts for Non-Domestic Premises to terminate on a Change of Occupier. If the Energy Contract has not terminated, the Losing Supplier may be able to validly raise an Objection under Condition 14 of the Energy Supply Licences.

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Appendix 1 – Example Evidence of a Change of Occupier

The types of evidence listed in this appendix are non-exhaustive examples of the types of evidence which may be used to demonstrate that there has been a Change of Occupier. The existence or absence of the types of evidence listed in this appendix may not be conclusive either way. The evidence available needs to be considered collectively. Further examples of supporting evidence that may be used are outlined in the supplementary guidance document(s) published by RECCo.

TYPE OF DOCUMENT	SUMMARY
Lease	A lease is an agreement between the owner of a property (the landlord) and an occupier (the tenant) under which the landlord agrees that the tenant can occupy the property. A new lease would indicate that the property has a new occupier (the tenant), unless the tenant is the same entity which previously occupied the property (under a previous lease or other arrangement). A signed and dated copy of the new lease between the landlord and the tenant (both parties details completed) should be provided. Although long leases need to be in writing, it is possible to agree a shorter lease by oral agreement. Some written evidence can nevertheless be expected – for example, emails or letters.
Sub-Lease	A sub-lease is the same as a lease – see above. A sub-lease arises where the landlord is itself a tenant under an existing lease (the head lease).
Tenancy Agreement	A tenancy agreement is the same as a lease – see above.
Contractual right or licence to use a property	It is possible for an entity to use a property under a contractual arrangement that does not amount to a lease – or for an entity to occupy a property under a document that is not called a lease. The name given to a document is not a reason for rejection, and the same considerations apply.
Lease/Tenancy Surrender	A lease/tenancy surrender is an agreement between a tenant and landlord to end the lease/tenancy. A surrender would indicate that the property has a new occupier (the landlord), because a surrender indicates that the landlord has re-entered the property and that the tenant has ceased to occupy the property. There might also be a new lease to a new tenant. A signed and dated copy of the surrender between the landlord and the tenant (both parties details completed) should be provided.
Lease/Tenancy Termination	A surrender (see above) is an agreement to end a lease/tenancy. However, it may also be possible for a tenant or a landlord to end a lease/tenancy on notice (depending on the terms of the lease/tenancy) – for example, because there has been a breach or because there is a break right.

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	Termination of a lease/tenancy would indicate that the property has a new occupier (the landlord). There might also be a new lease to a new tenant. A signed and dated copy of the notice by which the landlord or the tenant ended the lease/tenancy should be provided. A copy of the lease/tenancy with an explanation of the clause under which the notice was given might also be requested.
Sale of a Property	Sale of a property would normally entail transfer of the legal title in the property from one entity (the seller/transferor) to another (the buyer/transferee). This may be the sale of a freehold title or the sale of a long-leasehold title. Sale of a property from one occupier to another would indicate that the property has a new occupier (the buyer/transferee). However, this will not be the case if the property is occupied by a tenant who remains in occupation. The sale of a property in England & Wales will normally be documented in a standard form published by HM Land Registry (England & Wales) – usually a TR1. The sale of a property in Scotland will normally be documented in a disposition deed. A signed and dated copy of the transfer document between the seller/transferor and the buyer/transferee (both parties details completed) should be provided.
Title Deeds / Land Registry	If it is necessary to establish which entity owns a property, then it will normally be possible to check online. HM Land Registry (in England & Wales) and the Land Register of Scotland (in Scotland) hold digital copies of title records for every registered property in Great Britian. Official copies can be requested from the land registries for a fee. The customer or its broker may provide a copy. A relatively small number of properties remain unregistered. Where this is the case, the owner of the property will hold title deeds. The land registries or title deeds will not evidence a change in occupier, but might be useful in checking who owns the property. There is an inevitable delay between ownership of a property transferring and the land registries being updated to reflect the change in ownership.

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