

Chapter 8

Disconnection for arrears

This chapter covers:

1. When you can be disconnected for arrears (below)
2. Protection from disconnection (p120)
3. Preventing disconnection (p121)
4. At the point of disconnection (p123)
5. Getting your supply reconnected (p124)
6. Disputes: unlawful disconnection (p126)

1. When you can be disconnected for arrears

The most important power which suppliers have for non-payment of energy bills is to cut off your supply if you do not pay your bill. The power to disconnect is considered more effective than the right to recover money through the court system.

Unfortunately, suppliers sometimes find it difficult to distinguish between deliberate non-payment and those who would pay but are suffering financial hardship or other problems. However, disconnection should only be a last resort in extreme circumstances, when all other methods of recovery have failed. It should not be used as a standard method of debt enforcement.

In practice, very few customers are now disconnected as a result of a failure to pay bills.

The declining number of disconnections

In 2003 there were 15,973 disconnections of gas and 1,361 for electricity.¹

Between January and March 2013, 71 electricity disconnections and nine gas disconnections took place in the UK.² This represents a very small percentage of the number of customers in fuel debt during the same period – 981,863 electricity customers and 885,314 gas customers – and an even smaller percentage of all customers nationally.

8

Chapter 8: Disconnection for arrears

1. When you can be disconnected for arrears

Informing the supplier of vulnerability

Suppliers must conform to Standard Licence Condition (SLC) 27 with regard to vulnerable customers who fall into arrears (see p120). This condition covers payments, security deposits, disconnections and final bills.

It is important as a preliminary step in all cases to discover the cause of the arrears, and identify whether you fall into a vulnerable group. If someone in your household is vulnerable, inform your supplier as soon as possible, preferably before arrears arise.

Energy UK's definition of vulnerability

A customer is vulnerable if, for reason of age, health, disability or severe financial insecurity, s/he is unable to safeguard her/his personal welfare or the personal welfare of the household.³

If you fit within this definition you are likely to be in receipt of one of the following benefits:

- retirement pension;
- pension credit;
- disability living allowance;
- personal independence payment;
- attendance allowance;
- long-term incapacity benefit;
- employment and support allowance;
- income support (IS);
- IS with disability premium;
- income-based jobseeker's allowance;
- universal credit.

If you are entitled to such benefits but there has been a problem with your claim or your benefit has been sanctioned or suspended, quote these provisions in initial correspondence with a supplier.

Potentially vulnerable categories include those listed in paragraph 77 of *Taking Control of Goods: National Standards* (see Appendix 6) as well as those included under SLC 27 (see p120). Suppliers may also have their own definitions.

Remember that individual circumstances can vary, and that people may move in and out of vulnerable categories, or be vulnerable under more than one heading.

Your supplier is required, at least once a year, to take 'all reasonable steps' to inform all customers about the priority services register (see p93) and how you can be listed on it if you are of pensionable age, disabled, have a hearing or visual

impairment or have long term ill-health.⁴ If you have different suppliers for gas and electricity, you need to register with both.

If the supplier does not respond properly to the information about vulnerability, ignores information it holds, or if there is delay, you should consider making a formal complaint (see p119). Also inform Citizens Advice consumer service which may refer you to the Extra Help Unit (see p181).

When the supplier can disconnect – electricity

Contract suppliers can only disconnect for arrears if the contract says so. If you are threatened with disconnection, check your contract carefully.

With any remaining tariff customers, a tariff supplier may disconnect your supply if you have not paid all charges due in respect of your electricity supply⁵ within 28 working days after the date of the bill or other written request to pay.⁶ You must be given at least seven working days' written notice of the intention to disconnect⁷ and cannot be disconnected for any amount which is 'genuinely in dispute'.⁸ 'Charges due' include any amounts for the electricity supply, standing charges, meter provision or the provision of an electrical line or plant.⁹ They do not include other charges such as those for credit sale agreements or for repositioning/adapting a meter for a disabled person.¹⁰

Your supplier might attempt to wrongly include charges for periods when supply was disrupted and supply failed to be re-connect in a reasonable time. Check carefully that you are only being asked for the arrears for which you are liable.

Charges due can only be properly established on the basis of a meter reading. Estimates cannot be used, and you should not be disconnected on the basis of an estimated bill. However, you must ensure you pay the amount you agree you do owe; otherwise there is an increased risk that you may be disconnected. The supply can be cut off at the premises to which the bill relates.¹¹ Failure to give the required notice of disconnection is an enforcement matter. Contact Citizens Advice consumer service for advice urgently if you think your supplier intends to disconnect your supply.

When the supplier can disconnect – gas

Gas suppliers supplying under the terms of contracts and deemed contracts may disconnect your supply if you have not paid any charges due for gas within the 28 days following the date of the bill.¹² 'Charges due' are any charges in respect of the supply of gas.¹³ You are entitled to seven days' notice in writing of the intention to disconnect.¹⁴ This is usually given in the final demand, which may arrive earlier than the 28 days above. A gas supplier is not entitled to disconnect your supply for any amount which is 'genuinely in dispute'.

8

Chapter 8: Disconnection for arrears

1. When you can be disconnected for arrears

It is important to pay any undisputed part of the bill, as well as to maintain or establish a payment arrangement for ongoing fuel costs while reaching a resolution of the dispute.

Note that public gas transporters may also disconnect your supply in certain circumstances (see p37).

Disconnection for assigned arrears

If you have changed supplier and you owe money to your previous supplier, the previous supplier can assign some of its debt to your new supplier in certain circumstances (see p108). The new supplier may cut off your supply as though it were the previous supplier if you fail to pay. You are entitled to a minimum of seven days' notice of the new supplier's intention to disconnect.¹⁵ There is no right to disconnect when the entire bill is genuinely in dispute.¹⁶ You may be protected from disconnection by conditions contained in your supplier's licence if you fall into one of the protected categories (see p120).

Disconnection when you pay in instalments

If you have an arrangement to pay in instalments, either for your current supply only or for your current supply plus an amount for arrears, the supplier is not entitled to disconnect for arrears while you keep to the terms of your agreement, since you are paying the amounts requested in writing.¹⁷

If you miss a payment, the supplier is entitled to disconnect for arrears from 28 working days after the date of your missed payment, but only if there are still charges due (see p117), and providing you have been given seven working days' notice of the intention to disconnect. If your account is in credit, based on a reading of your meter and allowing for any standing and other charges, the supplier is not entitled to disconnect.

In practice, rather than actually disconnect, suppliers are more likely to try to impose a prepayment meter. The supplier has to inform you of its intention to disconnect, subject to the notice period above, before being entitled to install a prepayment meter no less than 28 days from the date of your missed payment. See p102 for how to resist a prepayment meter. A prepayment meter may be installed with your agreement at any time.

Alternatively, your supplier may decide that a security deposit is required just in case you do not keep to your agreement to pay by instalments. The supplier has to write to you to inform you of this. The supplier must give you notice that it intends to disconnect if you do not pay a security deposit. A prepayment meter may be imposed if you do not wish to pay a security deposit. See p38 for more about security deposits.

If the breakdown of your instalment arrangement has occurred because you cannot afford to pay, you may be able to arrange another payment plan and, in

any event, the supplier must offer you a prepayment meter as an alternative to disconnection, providing this is safe and practical.

Payment arrangements fail for a variety of reasons. It might have been the wrong arrangement from the outset: the commencement date may not coincide with the receipt of income; the frequency of payments may not coincide with the receipt of income; or the amount for consumption or arrears may be set too high (or too low). There may have been a change in lifestyle or appliance use. You may have been ill or in hospital. Failing to keep to an agreement should not automatically preclude the possibility of another one being arranged – it is essential to establish why a previous arrangement failed. Suppliers are required to make instalment arrangements based on what you are able to pay.

Fuel Direct (see p160) should also be considered as a payment option. Suppliers are expected to use '*where available*', a means by which payments may be deducted at source from a social security benefit received by that customer.¹⁸ The use of the words '*where available*' suggests that a supplier may be at fault if it overlooks or ignores this option.¹⁹

Complaints about disconnection

To complain about a disconnection by an energy supplier, first contact the company concerned. Energy suppliers are subject to regulations setting out how to respond to a complaint (see Chapter 14).

Ofgem usually refuses to investigate a complaint until you have given the supplier a reasonable opportunity to deal with it. If you need help to make your complaint, seek advice from Citizens Advice consumer service. If your complaint has not been resolved to your satisfaction within eight weeks you can ask Ofgem to investigate your complaint. Provided you have exhausted the supplier's internal complaints procedure, Ofgem can investigate your complaint about disconnection against:

- a gas transporter for:
 - disconnection of, or a threat to disconnect, your gas;
 - refusal to reconnect your supply following disconnection;
- a gas supplier for:
 - cutting off of, or a threat to cut off, your gas;
 - refusal to reconnect your supply following disconnection;
 - the failure of a prepayment system;
- an electricity supplier, distributor or licence holder for:
 - disconnection of, or a threat to disconnect, your electricity;
 - refusal to reconnect your supply following disconnection;
 - the failure of a prepayment system.

For more information on complaints, see Chapter 14.

2. Protection from disconnection

The following provisions may prevent disconnection in certain circumstances.

- If you are having difficulty paying your bill, condition 27 of the Standard Licence Conditions (SLCs – see below), the supplier's code of practice and the Energy UK's safety net may offer some protection (see p95).
- If you claim certain means-tested benefits, Fuel Direct may be an option (see p160).
- The supplier may not be entitled to disconnect (see p126).
- If you are a tenant, your local authority may be able to help (see p199).

Condition 27 of the Standard Licence Conditions

If you are threatened with disconnection because you cannot pay your bill, SLC 27 gives you the following rights.

- You are entitled to a payment arrangement to repay your arrears at a rate you can afford.
- Using, where available, a means by which payments may be deducted at source from a social security benefit such as Fuel Direct (see Chapter 11).
- To pay by regular instalments and through a means other than a prepayment meter.
- If you have not been able to manage a payment arrangement, you must be offered a prepayment meter (if safe and practical) as an alternative to disconnection. The meter must be set to recover arrears at a rate which you can afford.
- If you are a pensioner or have children under 18, you should receive protection from disconnection in winter (see below). If the supplier knows or has reason to believe you are such a customer, it *must not* disconnect you if you live alone or live with another pensioner or children under 18.²⁰ This provision applies even where there is suspicion of theft of electricity.²¹
- If you are below pension age and your household includes persons who are of pensionable age, disabled or chronically sick, the supplier must take 'all reasonable steps' to avoid disconnecting your supply in winter.²²
- You should be offered information about how you can reduce your charges by using fuel more efficiently.

Winter

'Winter' is defined as the months of October, November, December, January, February and March.²³

Suppliers are obliged to develop methods for dealing with customers in arrears under the terms of this condition. These set out the procedures which should be

followed by each supplier and provide the practical mechanism for protecting your rights. Any departure from the methods may constitute a breach of your rights and could be referred to Ofgem for investigation (see p1).

Calculation of an instalment rate

Under SLC 27 a supplier must not disconnect you unless it has first taken all reasonable steps to arrange the payment of charges.

Your supplier 'must take all reasonable steps' to discover your ability to pay and must take this into account when calculating instalments, whether this is by way of a payment plan or through a prepayment meter.

You should provide your supplier with a financial statement (see p99) setting out details of your income, expenditure and debts.

The supplier must also consider:

- relevant information provided by third parties, where it is available; *and*
- where instalments will be paid using a prepayment meter, the value of all of the charges that are to be recovered through that meter.

Other situations where disconnection should not occur

Examples of when supply will not be disconnected include:

- if you agree and keep to a payment plan;
- if the debt is in the name of a past customer and you have made arrangements to take over the supply;
- if you have a query about your bill and you have paid the part of it which you agree you owe;
- you have agreed to have a prepayment meter installed;
- you request Fuel Direct;
- you have contacted social services for help (see p178) – you must tell the supplier that you are doing this.

It may be useful to suggest these alternatives to disconnection as basis for negotiation with suppliers.

3. Preventing disconnection

There are reasons why you should always try to prevent disconnection.

- You cannot solve a debt problem by being disconnected. Even after you have been disconnected, the supplier still requires you to pay the money you owe and can take court action to get it. You are also charged the costs of disconnecting the supply.
- If you later want your supply reconnected, you will have to pay any arrears still owing, plus the costs of disconnection and reconnection.

- If the supplier has had to get a magistrate's warrant (or Justice of the Peace or sheriff's warrant in Scotland) to disconnect your supply, you also have to pay the costs of obtaining the warrant (although an application may be made to the court to use its discretionary power to refuse the claimed costs). If you have produced a means statement (see p99), this should be submitted to the court.

You may have to pay a security deposit as a condition of being supplied following disconnection. If you are finding it difficult to meet your fuel costs, seek advice and let your supplier know about the difficulties you are experiencing as soon as you can. You are more likely to be able to obtain a solution which genuinely meets your needs if you have time to think about your proposals to the supplier, or what the supplier is prepared to offer you.

You should be able to prevent disconnection if:

- you contact the supplier; *and*
- you arrange to pay your arrears at a rate you can afford; *or*
- you request to be put on the Fuel Direct scheme (see p160); a request may also be made by the supplier; *or*
- you agree to accept a prepayment meter set to collect the arrears at a rate you can afford.

In practice, disconnection most often occurs where there has been no contact between the customer and the supplier. Once you contact the supplier, the supplier must consider your situation and work with you to identify a suitable way for your supply to continue and for you to repay your arrears at a rate you can afford (see Chapter 7).

The codes of practice may make some provision for disconnection to be delayed, typically for 14 or 21 days, if you tell the supplier that you are going to ask social services (social work in Scotland) for help with the bill.

Usually suppliers prefer you to contact them by telephone. It is safer in terms of establishing an agreement and ensuring that the correct information is received, to confirm everything in writing. If possible, send an email to your supplier to confirm what you have agreed to pay so that you have a record for future reference.

If all else fails you can still make representations at the warrant stage if the matter goes to the magistrates' court (see Chapter 10). It is often possible to negotiate a settlement even at this point. You should always attend court, taking an adviser or friend with you if possible.

4. At the point of disconnection

The supplier's right to enter your premises

The supplier may, with your consent, enter your premises to disconnect your supply, providing it has served you with a correct notice of disconnection and has published details of Standard Licence Condition (SLC) 27 on its website (see p120 and Chapter 10).²⁴ If you do not consent, the supplier must obtain a warrant from the magistrates' court (or sheriff court in Scotland). The costs of the warrant are added to your bill – these are generally around £75. Although in some cases, the supplier will disconnect your supply from the mains supply outside your property – which makes reconnection extremely expensive. It has yet to be tested in law to what extent, if any, a realistic offer to clear arrears may be grounds for a magistrates' court to refuse to issue a warrant of entry to disconnect.

Your home must be left no less secure than it was before entry. Any damage caused by legally gaining entry must be made good or compensation paid. If the supplier fails to secure your premises and your possessions are stolen as a result, you can sue the supplier. Suppliers sometimes change locks and leave a note telling you where to pick up a key.

Disconnecting external meters

A warrant is not required for the disconnection of an external meter. Disconnection is lawful, providing the correct notices have been given (see p117).

Disconnecting smart meters

The new technology contained within smart meters means that suppliers can disconnect your supply remotely without visiting your home. Ofgem has sought to address this development by modifying and strengthening the existing protection contained in SLC 27 for all vulnerable customers.²⁵ Suppliers must be able to show that they have:

- taken pro-active steps to establish whether anyone in the household is vulnerable;
- made sure that written contact with you is in plain English and that it includes details of sources of help, such as Citizens Advice consumer service;
- made a number of attempts to contact you using different methods such as telephone and email and at different times of the day;
- visited the property and looked for any visual signs indicating vulnerability;
- checked whether the property is unoccupied, either on a temporary or permanent basis;
- considered whether the occupancy of the property has changed.

Last-minute negotiations

If the supplier agrees not to disconnect at the last minute, but an official turns up to carry out the disconnection, the disconnection should not be agreed to, and the official should be asked to contact the supplier's office. Many suppliers accept payment on the doorstep, but some make an extra charge to cover their expenses. Always get a receipt to establish payment.

Some electricity suppliers' disconnection officials routinely carry prepayment meters with them and will offer you one as an alternative, even at this late stage. If you accept the meter, check that it has been set to collect arrears at a rate you can afford. If it has not, ask the supplier to change the setting. Do not be put off by such statements as 'it cannot be changed' or 'it is set at the factory'. This is not the case. It is unlikely that a gas supplier would try to fit a prepayment meter straight away – the system has to be purged and re-lit first.

If you refuse to allow entry, the supplier has to obtain a warrant or may disconnect from the road. This costs more, unless you are able to negotiate keeping your supply and paying off the arrears at a rate you can afford in the meantime (see Chapter 7).

5. Getting your supply reconnected

Electricity suppliers must reconnect the electricity supply within two working days if:

- you pay your outstanding bill, together with the expenses of disconnection and reconnection and any security deposit; *or*
- you reach an agreement with the supplier to pay off the arrears in instalments as a condition of being reconnected.

In the event of unnecessary delays, you should demand that your electricity supplier reconnects your supply within the time limit.

Gas suppliers must reconnect your supply once you have paid your outstanding bill, together with the expenses of disconnection and reconnection.

Your supply should be reconnected within a 'reasonable time'. This also applies if you can reach an agreement with the supplier to pay the arrears in instalments.

In practice, if you agree to accept a prepayment meter set to collect the arrears, the supplier will reconnect your supply. You may have to pay the expenses of disconnection and reconnection separately, but usually they are added to your arrears and collected in instalments through the meter.

If you do not want your supply reconnected

The supplier continues to submit bills regardless of whether or not you want your supply reconnected. If you do not pay, it may seek recovery of the debt through

the small claims court or sell the right to recover the debt on to a third party (such as a debt collecting agency). In practice, few suppliers or debt collectors try to recover through the courts, preferring to send letters in the hope of payment. The reason is that in a small claims court action, legal costs cannot normally be recovered. As a result it would cost more to take a case to court than would be recovered, particularly if you have no disposable income, assets saving or valuable property.

In some cases the debt collector may actually be outside the jurisdiction of the county court in England and Wales, being based in Scotland. In such a case it will be uneconomic for the debt collection company to try to recover the arrears, since this will require issuing a case in the English courts which may in turn be sent to the area in which the debtor lives if a defence is entered by the debtor. This makes it too expensive to begin court action.

Assuming you agree you are liable for the bill, try to negotiate payment in instalments prior to any court action. Otherwise, if the supplier has issued a claim in the county court, respond to the claim by completing the statement of your financial circumstances – and ask to pay in instalments. In these circumstances, the court usually orders payment in instalments. If the court has already made an order for payment of the whole debt at once, you could apply to the court to have the order varied to payment by instalments.

There is a fee of £50 for this application, unless you are exempt on grounds of low income. The court should not order you to pay an amount you cannot afford – even if this means you can only afford £1 or £2 a month. You are not liable for the supplier's legal costs if you lost in the small claims court which is why suppliers seldom commence recovery proceedings for sums under £10,000 (see Chapter 14). The supplier is only able to claim for its fee in starting proceedings. As of 22 April 2014, the fees are:

Sums up to £300	£25
Sums from £300-500	£55
Sums from £500-1,000	£80
Sums from £1,000-1,500	£115
Sums from £1,500-3,000	£170
More than £3,000	£335

In Scotland, you can apply for a 'time to pay' direction before a decree (court order). If you break this arrangement by allowing three instalments to pass unpaid, you lose the right to pay by instalments. If you allow a decree to pass without defending or seeking time to pay, you have to wait until the supplier seeks to enforce the decree before you can ask for a 'time to pay' order. You may be liable for the supplier's costs if you lose your case, but only if the debt is over £200. If the value is between £200 and £1,500, the maximum amount awarded to

8

Chapter 8: Disconnection for arrears

6. Disputes: unlawful disconnection

the successful party is £150. If the value is between £1,500 and £3,000 the amount awarded is 10 per cent of the value of the claim.

The costs of disconnection and reconnection

Charges for disconnection and reconnection must be 'reasonable' and must reflect the actual costs involved. Charges vary between suppliers. You will need to contact your supplier to find out how much it charges for disconnection and reconnection.

Ultimately, the question of what is a reasonable cost may be determined by a court. Citizens Advice consumer service or Ofgem may also be able to examine charges. Operators may drop costs at their discretion, and in some cases (where costs appear to be excessive) it may be argued that a supplier is under a duty to mitigate its loss. Legal advice should be sought.

6. Disputes: unlawful disconnection

If you dispute that the supplier is entitled to disconnect, you can ask Citizens Advice consumer service to intervene. It can order the supplier to connect or continue your supply pending a decision on your dispute.

Unlawful disconnection is an enforcement matter. Suppliers can be forced to comply with the law by Ofgem. If the supplier ignores the order, you can apply for a court order to enforce it (see Appendix 5).

If disconnection was unlawful, you do not have to pay the costs of disconnection or reconnection. You may also have a claim for compensation, for any costs you have incurred as a result of the unlawful disconnection along with any other damage (including to reputation) that may arise from the way in which a supplier acted when disconnecting your supply. These claims may be pursued through the civil courts (see Chapter 14).

For example, a supplier may wrongly disconnect a supply, arising from a mistake by a contractor who visits a household. This can be a problem in multi-occupation buildings or where a contractor suspects the occupants are squatters. In such a case, immediately contact the supplier and be prepared to back up a demand for reconnection with an action through the courts (see Chapter 14). In such a case, an injunction may be sought to order reconnection and a claim for damages included as a result of nuisance and losses caused by being without a supply.

Prepayment meters and arrears

In theory, it should not be possible to get into arrears by using a prepayment meter. But in practice, arrears may be transferred from a previous supplier where

you switch supplier or they may be set on a prepayment meter if you accept a prepayment meter as an alternative to disconnection.

A problem associated with prepayment meters is that households may disconnect themselves simply by failing to top up the meter through lack of money. If you think this may happen to you, consider using one of the other methods of making payments such as Fuel Direct. Ensure that you provide your supplier with as much information as you can about your particular circumstances. If you feel that a prepayment meter is being imposed upon you, seek help from Citizens Advice consumer service.

If you have arrears from a previous supply, you may be faced with bills from both your current supplier and your previous supplier. In such a situation, you should pay for your current energy consumption first before paying any arrears to your former supplier, to avoid building up arrears on your on-going account. Treat the arrears on your old account as a debt (see Chapter 7). If you have any disposable income after addressing your priority expenditure such as rent, council tax and current fuel supply, then negotiate an affordable repayment plan with your former supplier just as you would with any other unsecured creditor.

Notes

1. When you can be disconnected for arrears

- 1 Department of Trade and Industry Fifth Report, House of Commons 1 February 2005
- 2 Ofgem, *Domestic suppliers' quarterly debt and disconnections – Quarter 1 2013*, 30 January 2014
- 3 Energy UK, *The Energy UK Safety Net: Protecting Vulnerable Customers from Disconnection*, 17 April 2014
- 4 Condition 26.6 SLC
- 5 Sch 6 para 1(6) EA 1989; Sch 4 UA 2000
- 6 Sch 6 para 1(7) EA 1989; Sch 4 UA 2000
- 7 Sch 6 para 1(6) EA 1989; Sch 4 UA 2000
- 8 Sch 6 para 1(9) EA 1989; Sch 4 UA 2000
- 9 Sch 6 para 1(1) EA 1989; Sch 4 UA 2000
- 10 Sch 6 para 27 EA 1989; Sch 4 UA 2000
- 11 Sch 6 para 1(6)(a) EA 1989
- 12 Sch 2B paras 7(1) and (3) GA 1986
- 13 Sch 2B paras 7(1) and (3) GA 1986

- 14 Sch 2B paras 7(1) and (3) GA 1986
- 15 Sch 2B para 7(4) GA 1986
- 16 Sch 2B para 7(3) GA 1986
- 17 Sch 2B para 7(5) GA 1986
- 18 Condition 27.6(i) SLC
- 19 See Conditions 27.5 and 27.6 SLC

2. Protection from disconnection

- 20 Condition 27.10 SLC
- 21 Condition 12A 11(d) SLC
- 22 Condition 27 11 SLC
- 23 Condition 1 (Definitions) SLC

4. At the point of disconnection

- 24 Condition 2 SLC