Devonshires

IT'S THE LAW: A Hot Topic
The Heat Network Regulations

Stay Cool

Popular in the 1960s and 70s (less so in the 80s, 90s and noughties) communal heating systems are back!

Older systems tended to work on the basis of fixed annual charges, regardless of how much energy was being consumed by a particular customer. It was often easier for customers to leave the heating on 24/ 7/ 365 and just open the windows if they wanted to cool down.

Nowadays, what with society moving in a much greener direction and the largest share of CO_2 emissions from UK buildings coming from their space and water heating systems, such practices aren't considered sustainable. And, what's more, there are laws that need to be complied with.

In the heat of the moment

Someone supplying heat, hot water and/or cooling through a communal system may be bound by the Heat Network (Metering and Billing) Regulations 2014. They could be a landlord or someone else. The system might be a boiler in the basement of a block of flats serving all of the flats or a central plant building proving hot water to all of the houses on an estate. The aim of the Regulations is to ensure that the amount that users of heating, cooling and hot water pay for their use is based on their consumption. The assumption being that this will incentivise them to consume less.

There are three main obligations imposed by the Regulations:

1. **A requirement to provide the Office for Product Safety and Standards with details of all qualifying systems -** The "details" to be provided are set out in Part 2 of the Regulations and a notification template is available from https://www.gov.uk/guidance/heat-networks. Submissions can be made by a third party on behalf of the heat supplier. It is possible for heat suppliers to make a block notification (for example if they operate a number of separate buildings all covered by the Regulations). First notification is required on or before the first date of operation of the relevant system. Updated notifications are then required every four years.
2. **An obligation to install meters, heat cost allocators and thermostatic radiator valves -** The final customer meters must measure accurately, memorise and display the consumption of heating, cooling and hot water. The heat supplier must also install temperature control devices to enable final customers to control their consumption of heating or cooling. Such devices would include thermostatic radiator valves and thermostats. In connection with district heating networks (i.e. where multiple buildings are served), heat suppliers must, in addition, install meters to each building.
3. **A duty to issue bills that comply with the standards imposed by the Regulations -** This requires bills and billing information for the consumption of heating, cooling or hot water by a final customer to be (i) accurate (ii) based on actual consumption and (iii) compliant with the detailed billing standards set out in Schedule 2 of the Regulations.

Are you part of the system?

The Regulations apply to both commercial and residential properties. The question is whether a system falls within the definitions of "**communal heating system**" or "**district heat network"** as set out in the Regulations.

In short, a **communal heating system** is a system where steam, hot water or cooled liquids are distributed from a central source around one building which is occupied by more than one final customer, for the purpose of space heating, cooling or hot water. Buildings that use a communal heating system for their common parts only do not fall within the scope of the Regulations.

A **district heat network** is one where steam, hot water or cooled liquids are distributed from a central source of production through a network to multiple buildings or sites which are occupied by one or more final customers, for the use of space heating, cooling or hot water.

A **final customer** will be a tenant (or subtenant) who purchases heating, cooling or hot water for their own consumption from a heat supplier. For this definition to be triggered it is important that the final customer pays for the services and uses them itself. As long as it does, there does not necessarily need to be a contract in place governing this relationship for the Regulations to be triggered.

In the residential context, a final customer will be someone who occupies partitioned private space intended to be used as a domestic dwelling with its own living and sleeping space and sanitary and cooking facilities. This takes out of the picture most halls of residence, multi-occupancy houses (where facilities are shared) and residential

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care homes.
In the non-domestic context, occupiers can still be final customers even if they share facilities. Examples would include shops in a shopping centre (whether or not toilet facilities are shared) and an office block with separate office suites (even if they have a common reception and staff kitchen).

Where the landlord is resident and there is a communal heating or hot water system supplying just one other tenant/ occupier the Regulations will not apply. In counting the number of customers in this situation the landlord is not a customer because they are not purchasing heating/ cooling from themselves.

So…

- A block of 20 flats where each flat has its own boiler but all of the common parts are heated by radiators connected to a common boiler is not covered by the Regulations.
- A house converted into two flats with a common boiler would not be covered by the Regulations if the freeholder lives in one of the flats. It would be caught if they move out and let both flats to separate people.
- A house let to 4 students, each with their own bedroom, but sharing the kitchen and bathroom would not be covered by the Regulations.
- An estate of 101 houses with a central plant building supplying heat to the radiators in each of the houses is covered by the Regulations.
- A block of 30 offices, each with its own boiler, but with a common air conditioning system fed by cooled liquids, will be covered by the Regulations

The obligations fall to be complied with by the heat supplier. A heat supplier is the person who supplies and charges for the supply of heating, cooling or hot water to a final customer through the communal heating system or district heat network. This is not necessarily always the freeholder. Consider, for example, where:

- A building is subject to a headlease and it is the head tenant who operates the communal heating system; or
- An energy service company controls the communal heating system and has responsibility for supply and billing through direct customer agreements.

The get outs

A heat supplier will not be required to install heat meters if 'they' have 'determined' that it's not 'cost effective' or 'technically feasible' to do so. The same applies to the installation of heat cost allocators and thermostatic radiator valves.

That determination needs to be made again (and again), every four years. And the Regulations themselves have a fair few things to say about the determination – so heat suppliers shouldn't think they have carte blanche to determine that they are exempt from the requirements.

If a heat supplier has used these 'get outs' to avoid installing cost allocators they have a follow on obligation to employ alternative methods for measuring charges for the supply of heating and hot water.

For district heat networks final customer meters will always need to be installed (with no get outs) where a new connection is being made to a newly constructed building or where a building supplied via district heating undergoes major renovation.

The question of what 'cost effective' means is currently being reviewed by the Department for Business, Energy and Industrial Strategy. BEIS have confirmed that they will not be taking action for non-compliance until this issue is further resolved. How binding that confirmation is (and whether they might change their position) is debatable.

A heat supplier will not be required to comply with the rules relating to billing if it is not technically possible or economically justified to do so. This is said to be where a reasonable estimate of the annual cost of issuing the bills and billing information is over £70 per final customer.

Turning up the heat

The OPSS, as the enforcement authority for the Regulations in England, has a range of powers it can use to ensure that heat suppliers comply with the Regulations. These include:

- Service of a compliance notice;
- Acceptance of an enforcement undertaking;
- Imposition of a penalty payment for non-compliance; and
- Criminal prosecution

The OPSS, additionally, has powers of entry. These apply where required to inspect the system, meters and heat cost allocators; to look at and take copies of relevant documents and records and to seize relevant equipment as evidence in any proceedings.

The new

For new buildings, developers should be thinking through the consequences of the Regulations from the outset. They should, at the design and specification stage, be considering whether the Regulations apply and, if they do, ensuring that their contractor is obliged to install a compliant system with all necessary meters, cost allocators and thermostatic valves at no additional cost. When drafting leases and tenancies they should ensure that charges for heat, hot water and cooling (if relevant) are taken out of the standard service charge arrangements so that charging can be dealt with in a compliant way (i.e. based on actual usage by that tenant).

The old

The Regulations also apply to existing buildings. In some cases this will require the retrofitting of heat meters, unless the above "get outs" apply. Things can get tricky with buildings that are already up and running. If the building is already subject to leases granted before the Regulations came into force the required arrangements may not sit well with the leases entered into. Clauses that have a fixed service charge that covers the cost of heat or which links it to square footage don't meet the requirements of the Regulations and so may not be enforceable. It is unclear whether a Court would hold that those terms prevail over the Regulations. It may be sensible to seek deeds of variation. Clearly, you may find that some tenants will gain by being charged based on usage where those with high consumption will lose out. It will be important to seek buy in from all, so that the service charge arrangement for the building, as a whole, stack up.

The tiny print

Find out more

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