

ENERGY MARKET INVESTIGATION

DRAFT ORDER – CONSULTATION

The Energy Market Investigation (Prepayment Charge Restriction) Order 2016

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act) (as provided for by section 36A of the Gas Act 1986 (GA86) and section 43 of the Electricity Act 1989 (EA89)), made an ordinary reference to the Chair of the Competition and Markets Authority (CMA) for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for an investigation into the supply and acquisition of energy in Great Britain.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act and concluded (a) in accordance with section 134(1) of the Act that there are features of the markets for the supply and acquisition of energy in Great Britain which, either alone or in combination, prevent, restrict or distort competition; and (b) in accordance with section 134(2) of the Act, that there are adverse effects on competition (AECs). The CMA published its findings in a report under section 136 of the Act entitled *Energy market investigation: Final report* published on 24 June 2016 (the Report).
3. Two of the AECs identified by the CMA were the Domestic Weak Customer Response AEC and the Prepayment AEC.
4. The features identified by the CMA as giving rise to the Domestic Weak Customer Response AEC were the following:
 - (a) Customers have limited awareness of, and interest in, their ability to switch energy supplier, which arises in particular from the following fundamental characteristics of the domestic retail gas and electricity

¹ [Energy market investigation terms of reference.](#)

supply markets: (i) the homogeneous nature of gas and electricity; and (ii) the role of traditional meters and bills.

- (b) Customers face actual and perceived barriers to accessing and assessing information arising, in particular, from the following aspects of the domestic retail gas and electricity markets: (i) the complex information provided in bills and the structure of tariffs; and (ii) a lack of confidence in, and access to, price comparison websites (PCWs) by certain categories of customers, including the less well-educated and the less well-off.
- (c) Customers face actual and perceived barriers to switching, such as where they experience erroneous transfers which have the potential to cause material detriment to those who suffer from them.

5. In addition, the CMA found that there are additional aspects of the prepayment meter segments that contribute to the features of the Domestic Weak Customer Response AEC. In particular, the CMA found that prepayment customers face:

- (a) higher actual and perceived barriers to accessing and assessing information about switching arising, in particular, from relatively low access to the internet and confidence in using PCWs; and
- (b) higher actual and perceived barriers to switching arising, in particular, from: (i) the need to change meter to switch to a wider range of tariffs (and the obstacles associated with this *requirement* such as perceptions of the complexity of the meter replacement process); and (ii) restrictions arising from the Debt Assignment Protocol hindering indebted prepayment customers' ability to switch supplier.

6. The features identified by the CMA as giving rise to the Prepayment AEC were the following:

- (a) technical constraints that limit the ability of all suppliers, and in particular new entrants, to compete to acquire prepayment customers, and to innovate by offering tariff structures that meet demand from prepayment customers who do not have a smart meter; and
- (b) softened incentives on all suppliers, and in particular new entrants, to compete to acquire prepayment customers due to: (i) actual and perceived higher costs to engage with, and acquire, prepayment customers compared with other customers; and (ii) a low prospect of successfully completing the switch of indebted customers, who represent about 7 to 10% of prepayment customers.

7. The CMA considered, in accordance with section 134(4) of the Act,
 - (a) whether action should be taken by it for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers;
 - (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; and
 - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
8. In the Report, the CMA decided on a package of remedies to remedy, mitigate or prevent the AECs and/or associated detriment that it found. The CMA decided to implement (through an Order) a prepayment charge restriction for the tariffs made available (either directly or indirectly) or applied to domestic customers on prepayment meters by energy suppliers.
9. The draft Explanatory Note accompanying the Draft Order provides an explanation of how the Draft Order and the associated licence conditions are expected to operate.

The Order

Reference and power

The CMA makes this Order in performance of its duty under section 138 of the Act for the purpose of remedying, mitigating or preventing the adverse effects on competition and any detrimental effects on consumers so far as they have resulted, or may be expected to result, from the adverse effects on competition as identified in the report of the CMA entitled *Energy market investigation: Final report* and published on 24 June 2016. The CMA makes this Order in exercise of the powers conferred by sections 86(1) to (5) and 87 (each applicable by virtue of section 164), 161(1), (3) and (4) of, and paragraphs 2, 8, 17 to 19, 21 and 22 of Schedule 8 to, the Act. In accordance with section 15 of the Electricity Act 1989 and section 27 of the Gas Act 1986, the CMA introduces the Electricity Supply Licence Condition 28A and the Gas Supply Licence Condition 28A for the purpose of giving effect to Articles 3.1 and 3.2 of this Order, having had regard to GEMA's relevant statutory functions pursuant to section 168 of the Act.

Part 1

General and interpretation

1. Title, commencement and scope

- 1.1 This Order may be cited as 'The Energy Market Investigation (Prepayment Charge Restriction) Order 2016'.
- 1.2 This Order shall come into force on [date after the Order] December 2016.
- 1.3 This Order applies to Retail Energy Suppliers in Great Britain.
- 1.4 This Order shall continue to be in force until 30 June 2021, or until such time (before this date) as it is varied or revoked under the Act. The variation or revocation of this Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

2. Interpretation

- 2.1 In this Order:

Act	means the Enterprise Act 2002.
Charges for Electricity Supply Activities	has the meaning given to Charges for Supply Activities in the Electricity Supply Licence.
Charges for Gas Supply Activities	has the meaning given to Charges for Supply Activities in the Gas Supply Licence.
Charge Restriction Period	means a period, between 1 April 2017 and 31 December 2020, either: <ul style="list-style-type: none"> (a) beginning on 1 April of each year and ending on 30 September of the same calendar year; or (b) beginning on 1 October of each year and ending on 31 March of the subsequent calendar year; or (c) beginning on 1 October of 2020 and ending on 31 December 2020.
Charge Restriction Region	has the meaning given to it in Electricity Supply Licence Condition 28A or in Gas Supply Licence Condition 28A (as applicable), as inserted pursuant to Articles 4.1 and 4.2, respectively.
CMA	means the Competition and Markets Authority.
Commercial Interoperability	means that Retail Electricity Suppliers and Retail Gas Suppliers are capable of operating smart metering equipment installed by another Retail Electricity Supplier or Retail Gas Supplier (as applicable) without the need to replace any equipment in the premises.
Domestic Customer	means a customer supplied or requiring to be supplied with electricity at domestic premises.
Electricity Supply Licence	means an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989.
Excluded Smart Meter	means either: <ul style="list-style-type: none"> (a) a smart meter identified in the second version of the smart metering equipment technical specification designated by the Secretary of State; or

(b) a smart meter otherwise identified by the CMA through a direction as being fully interoperable, in terms of providing Functional Interoperability, Technical Interoperability and Commercial Interoperability.

Functional Interoperability	means that functional requirements are required to be delivered in a consistent, defined way, such that any Retail Electricity Supplier or Retail Gas Supplier will be capable of operating any meter with a clear understanding of the processing the equipment will undertake and the outputs they, and their customers, will receive.
Gas Supply Licence	means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
GEMA	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
Metering Arrangement	has the meaning given to it in Electricity Supply Licence Condition 28A or in Gas Supply Licence Condition 28A (as applicable), as inserted pursuant to Articles 4.1 and 4.2, respectively.
Prepayment Charge Restriction Compliance Statement	means a statement containing the information set out in Article 5.1 to be submitted by a Retail Energy Supplier to the CMA pursuant to Articles 5.1 and 5.2 in the form prescribed in Schedule 3.
Prepayment Meter	means any electricity or gas meter operating in a mode which requires a customer to pay charges in advance, and references to the installation or removal of a Prepayment Meter includes the switching of any electricity or gas meter to or from such a mode.
Prepayment Tariff	means a Tariff in respect of any domestic supply contract or deemed contract with a Relevant Customer which includes a requirement to pay charges through a Prepayment Meter.
Relevant Customer	means a Domestic Customer supplied via a Prepayment Meter, excluding those Domestic Customers supplied via an Excluded Smart Meter.

Retail Electricity Supplier	means any person authorised to supply electricity by virtue of an Electricity Supply Licence.
Retail Energy Supplier	means any Retail Electricity Supplier and any Retail Gas Supplier.
Retail Gas Supplier	means any person authorised to supply gas by virtue of a Gas Supply Licence.
Relevant Maximum Charge	means the maximum annual charge amount (in pounds sterling) for any projected consumption level, calculated in accordance with Schedule 1 (for electricity), and in accordance with Schedule 2 (for gas).
Tariff	has the meaning given to it the Electricity Supply Licence or the Gas Supply Licence (as applicable).
Technical Interoperability	means that a Retail Electricity Supplier's or Retail Gas Supplier's smart metering equipment is substantially interchangeable and inter-connectable with that of any other Retail Electricity Supplier's or Retail Gas Supplier's (as applicable) in any particular premises.

2.2 In this Order any reference to:

- (a) '**day**' means calendar day;
- (b) '**month**' means calendar month;
- (c) '**oral**' or '**orally**' relates to the transmission of information or the completion of a process made orally including in person or by telephone;
- (d) a '**person**' includes any individual, firm, partnership, body corporate or association;
- (e) '**written**' or '**in writing**' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
- (f) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.

2.3 The headings used in this Order are for convenience and have no legal effect.

- 2.4 References to any statute, statutory provisions or licence conditions shall be construed as references to that statute, statutory provision or licence condition as amended, re-enacted or modified, whether by statute or otherwise.
- 2.5 The Interpretation Act 1978 applies to this Order except where words and expressions are expressly defined.

Part 2

Prepayment Charge Restriction

3. Obligation to comply with the Prepayment Charge Restriction

- 3.1 Retail Electricity Suppliers must ensure that the aggregate amount of all Charges for Electricity Supply Activities to each Relevant Customer does not exceed the Relevant Maximum Charge within each Charge Restriction Period.
- 3.2 Retail Gas Suppliers must ensure that the aggregate amount of all Charges for Gas Supply Activities to each Relevant Customer does not exceed the Relevant Maximum Charge within each Charge Restriction Period.
- 3.3 Retail Energy Suppliers' compliance with Articles 3.1 and 3.2 will be assessed in accordance with the rules set out in Schedules 1 and 2.
- 3.4 Articles 3.1 and 3.2 shall cease to have effect on 31 December 2020.

4. Certain amendments to licence conditions

- 4.1 The Electricity Supply Licence is amended in accordance with Schedule 1.
- 4.2 The Gas Supply Licence is amended in accordance with Schedule 2.

Part 3

Monitoring and compliance

5. Monitoring and compliance

- 5.1 Retail Energy Suppliers must submit a Prepayment Charge Restriction Compliance Statement to the CMA no more than 30 days after the end of each Charge Restriction Period.
- 5.2 Retail Energy Suppliers must ensure that any Prepayment Charge Restriction Compliance Statement is signed by the Chief Executive Officer, the Managing Director or any Director responsible for prepayment tariffs.

6. Directions by the CMA as to compliance

6.1 The CMA may give directions falling within Article 6.2 to:

- (a) a person specified in the directions; or
- (b) a holder for the time being of an office so specified in any body of persons whether incorporated or unincorporated.

6.2 Directions fall within this paragraph if they are directions:

- (a) to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
- (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

6.3 In Article 6.2 above, 'actions' includes steps to introduce and maintain arrangements to ensure that any director, employee or agent of a Retail Energy Supplier carries out, or secures compliance with, this Order.

6.4 The CMA may vary or revoke any directions so given.

7. Supply of information to the CMA

7.1 Any person to whom this Order applies is required to provide any information and documents required by the CMA for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order and/or to review the effectiveness of the operation of this Order, or any provision of this Order.

7.2 Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order.

7.3 Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.

7.4 Subject always to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

Schedule 1

Electricity Supply Licence Condition 28A

1. The Electricity Supply Licence Condition is amended as follows.
2. After Condition 28, insert: [see relevant attachment]

Schedule 2

Gas Supply Licence Condition 28A

1. The Gas Supply Licence Condition is amended as follows.

After Condition 28, insert: [see relevant attachment]

Schedule 3

Template Prepayment Charge Restriction Compliance Statement

Prepayment Charge Restriction Compliance Statement for [insert name of retail energy supplier]

[I/We], [insert name(s)], confirm on behalf of [insert name of retail energy supplier(s)] that during the Charge Restriction Period commencing on [insert date] and ending on [insert date], [insert name(s) of retail energy supplier(s)] [has][have] complied with The Prepayment Charge Restriction Order 2016 [with the following exceptions:

[description of any non-compliance].

[where appropriate] The following steps have been taken to remedy such non-compliance:

[description of steps to terminate non-compliance and/or rebates paid]].FOR AND ON BEHALF OF [NAME OF RETAIL ENERGY SUPPLIER(S)]

Signature:

Name:

Title: