

ENERGY MARKET INVESTIGATION

DRAFT ORDER – CONSULTATION

The Energy Market Investigation (Restricted Meters) 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 (AEC). 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. One of the AECs identified by the CMA was the Domestic Weak Customer Response AEC. 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 supply markets: (i) the homogeneous nature of gas and electricity; and (ii) the role of traditional meters and bills.

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

7. The CMA decided to implement (through an Order) a requirement on electricity suppliers (a) to make all their single-rate electricity tariffs available to all domestic electricity customers on restricted meters without making such tariffs available to such customers conditional upon the replacement of their restricted meter; and (b) to provide certain information to such customers.
8. The draft Explanatory Note accompanying the Draft Order provides an explanation of how the Draft Order and the 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 to remedy, mitigate or prevent 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. 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) and paragraphs 4, 10, 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 Licence Condition [X] for the purpose of giving effect to Articles 3 and 4 of this Order, and having had regard to the Gas and Electricity Markets Authority's relevant statutory functions pursuant to section 168 of the Act.

Part 1

General

1. Title, commencement and scope

- 1.1. This Order may be cited as 'The Energy Market Investigation (Restricted Meters) Order 2016'.
- 1.2. This Order shall come into force on [date after the order] December 2016, except Articles 3.1, 3.2, and 4.1 which shall come into force on 1 April 2017.
- 1.3. This Order applies to Retail Electricity Suppliers in Great Britain.
- 1.4. This Order shall continue to be in force until 30 June 2021, except for Articles 3.1, 3.2 and 4.1 to 4.3 which shall continue to be in force until 31 December 2020, 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.

- 1.5. A new electricity supply licence condition [X] will be introduced in the Electricity Supply Licence as per Schedule 1.

2. Interpretation

- 2.1. In this Order:

Act	means the Enterprise Act 2002.
Annual Consumption Details	has the meaning given to it in the Electricity Supply Licence.
Annual Consumption Breakdown	means a breakdown of the Annual Consumption Details by each Consumption Window that has applied over the period represented by the Annual Consumption Details per MPAN.
Bill	has the meaning given to it in the Electricity Supply Licence.
Citizens Advice	has the meaning given to it in the Electricity Supply Licence.
Citizens Advice Scotland	has the meaning given to it in the Electricity Supply Licence.
CMA	means the Competition and Markets Authority.
Consumption Window	means each separate period within a total period of 24 hours in which electricity consumption was recorded and charged at a distinct Unit Rate.
Contract	has the meaning given to it in the Electricity Supply Licence.
Domestic Customer	has the meaning given to it in the Electricity Supply Licence.
Economy 7 Metering Infrastructure	means one or more Electricity Meters installed in the same premises whereby, in each period of 24 hours, the peak electricity consumption level is recorded during seventeen 'day/normal' hours and the off-peak

electricity consumption level is recorded during seven 'night/low' hours.

Electricity Meter	has the meaning given to it in the Electricity Supply Licence.
Electricity Supply Licence	means an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989.
GEMA	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
MPAN	means the Meter Point Administration Number, as the reference number used to uniquely identify electricity supply points in Great Britain.
Prepayment Metering Infrastructure	means one or more Electricity Meters installed in the same premises operating in a mode which requires a customer to pay charges in advance.
Region	has the meaning given to it in the Electricity Supply Licence.
Relevant Citizens Advice Body	means Citizens Advice or Citizens Advice Scotland (as applicable).
Relevant Restricted Metering Infrastructure	means Restricted Metering Infrastructure, excluding any Economy 7 Metering Infrastructure, Smart Metering Infrastructure or Prepayment Metering Infrastructure.
Relevant Retail Electricity Supplier	means a Retail Electricity Supplier that supplies electricity to 50,000 or more Domestic Customers.
Relevant RMI Customer	means a Domestic Customer receiving the supply of electricity through Relevant Restricted Metering Infrastructure.
Relevant Tariff	means each Tariff which continues to be capable of being entered into by any Single-Rate Customer for the supply of electricity from the Retail Electricity Supplier based on the Single-Rate Customer's Region subject to the Tariff's non-meter related terms and conditions.

RMI Customer	means a Domestic Customer receiving the supply of electricity through Restricted Metering Infrastructure, excluding any Economy 7 Metering Infrastructure and Smart Metering Infrastructure.
RMI Customer Information	means a RMI Customer's meter type; name of their current Tariff (including method of payment); Annual Consumption Details; MPAN; Annual Consumption Breakdown; all Standing Charges and Unit Rates for that RMI Customer that have applied for each Consumption Window over the period covered by the Annual Consumption Details; the length of time and the hours within which time is recorded for each Consumption Window; and contact details for the Relevant Citizens Advice Body.
Restricted Metering Infrastructure	means (a) one Electricity Meter whereby electricity consumption in two or more Consumption Windows is separately recorded on two or more registers; or (b) two or more Electricity Meters (each with one or more registers) installed in the same premises whereby electricity consumption for distinct purposes is separately recorded on such Electricity Meters.
Restricted Meters Remedy Compliance Statement	means a statement in the form prescribed in Schedule 2 to be submitted by a Retail Electricity Supplier to the CMA pursuant to Articles 5.1 to 5.3.
Retail Electricity Supplier	means any person authorised to supply electricity by virtue of an Electricity Supply Licence.
Single-Rate Customer	means a Domestic Customer receiving the supply of electricity through Single-Rate Metering Infrastructure.
Single-Rate Metering Infrastructure	means any Electricity Meter installed in a particular premises whereby electricity consumption is recorded on one register and through which electricity is continuously provided, and excludes Restricted Metering Infrastructure.
Smart Metering Infrastructure	means (a) any type of Electricity Meter which forms part of a Smart Metering System; and (b) an Electricity Meter, either on its own or with an ancillary device, which has functionality similar to a Smart Metering

System in respect of elements other than the measurement of consumption for multiple time periods and/or providing remote access to data.

Smart Metering System has the meaning given to it in the Electricity Supply Licence.

Specified Information means (a) a statement that the Relevant RMI Customer is able to change their Retail Electricity Supplier or change to a Relevant Tariff without having to change, nor incurring any costs or any other financial charge associated with replacing, their Electricity Meter; and (b) contact details for the Relevant Citizens Advice Body.

Standing Charge has the meaning given to it in the Electricity Supply Licence.

Tariff has the meaning given to it in the Electricity Supply Licence.

Unit Rate has the meaning given to it in the Electricity Supply Licence.

2.2 In this Order any reference to:

- (a) **'month'** means calendar month;
- (b) a **'person'** includes any individual, firm, partnership, body corporate or association;
- (c) **'written'** or **'in writing'** includes the transmission of information or the conclusion of a process made on, by, or through electronic communications or by a postal service; and
- (d) 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

Single-Rate Tariffs Remedy

3. Obligation to make available Relevant Tariffs

- 3.1. Subject to Article 3.2, Relevant Retail Electricity Suppliers must make all Relevant Tariffs available immediately for each Relevant RMI Customer to enter into a contract to purchase electricity.
- 3.2. Relevant Retail Electricity Suppliers must not make their compliance with Article 3.1, or any Contract that is or may be concluded as a result of complying with Article 3.1, conditional upon the Relevant RMI Customer changing their existing Relevant Restricted Metering Infrastructure, or incurring any additional costs or any other financial charge associated with keeping their existing Relevant Restricted Metering Infrastructure.
- 3.3. Relevant Retail Electricity Suppliers' compliance with Articles 3.1 and 3.2 will be assessed in accordance with the rules set out in Schedule 1.

Part 3

Information Remedy

4. Obligation to provide information

- 4.1. Retail Electricity Suppliers must provide the Specified Information to each Relevant RMI Customer in each Relevant RMI Customer's Bill, or other regular written communications with the Relevant RMI Customer.
- 4.2. Retail Electricity Suppliers must use all reasonable endeavours to provide each RMI Customer with the RMI Customer Information in a timely manner after the RMI Customer has submitted a request for, or other inquiry concerning, any of the RMI Customer Information.
- 4.3. Retail Electricity Suppliers must provide the Relevant Citizens Advice Body with information concerning RMI Customers' metering infrastructure in a timely manner after the Relevant Citizens Advice Body has submitted a reasonable request and in such format specified by the Relevant Citizens Advice Body.

Part 4

Monitoring and Compliance

5. Monitoring and compliance

- 5.1. Retail Electricity Suppliers must submit, on an annual basis, a Restricted Meters Remedy Compliance Statement to the CMA.
- 5.2. The first Restricted Meters Remedy Compliance Statement is to be submitted to the CMA by 30 April 2017.
- 5.3. Each subsequent Restricted Meters Remedy Compliance Statement is to be submitted to the CMA by 30 April in each year.
- 5.4. A Retail Electricity Supplier must ensure that any Restricted Meters Remedy Compliance Statement is signed by the Chief Executive Officer, the Managing Director or any Director responsible for restricted meter tariffs offered by the Retail Electricity Supplier.

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 article 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 Electricity 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 – Amendment to the Electricity Supply Licence

Condition [X] is inserted into the Electricity Supply Licence as follows.

Condition [x]

Obligation to make available Relevant Tariffs

1. Subject to paragraph 2, the Relevant Licensee must make all Relevant Tariffs available immediately for each Relevant RMI Customer to enter into a contract to purchase electricity.
2. The Relevant Licensee must not make their compliance with paragraph 1, or any Contract that is or may be concluded as a result of complying with paragraph 1, conditional upon the Relevant RMI Customer changing their existing Relevant Restricted Metering Infrastructure, or incurring any additional costs or any other financial charge associated with keeping their existing Relevant Restricted Metering Infrastructure.
3. The Relevant Licensee may apply to the Authority to request a direction concerning the compliance with paragraph 1 where, due to material technical reasons which cannot be resolved within a reasonable period, the Relevant Tariffs cannot be made available to one or more Relevant RMI Customers.
4. If the Authority has given a direction to the Relevant Licensee pursuant to paragraph 3, the Relevant Licensee is not required to comply with paragraph 1 to the extent set out in such direction but is required to comply with any alternative obligations specified by the Authority.
5. The Relevant Licensee must comply with paragraphs 1 and 2 from 1 April 2017 until 31 December 2020.

Obligation to provide information

6. The licensee must provide the Specified Information to each Relevant RMI Customer in each Relevant RMI Customer's Bill, or other regular written correspondence with the Relevant RMI Customer, in a manner designed to promote positive engagement (which may be specified by the Authority).
7. The licensee must use all reasonable endeavours to provide each RMI Customer with the RMI Customer Information in a timely manner after the RMI Customer has submitted a request for, or other relevant inquiry concerning, any of the RMI Customer Information.

8. The licensee must provide the Relevant Citizens Advice Body with information concerning RMI Customers' metering infrastructure in a timely manner after the Relevant Citizens Advice Body has submitted a request and in such format specified by the Relevant Citizens Advice Body.
9. The licensee must comply with paragraph 6 from 1 April 2017 until 31 December 2020.
10. The licensee must comply with paragraphs 7 and 8 from [date after the order] December 2016 until 31 December 2020.

Reporting obligation

11. The licensee must give the Authority any Information that it reasonably requests about the licensee's compliance with paragraphs 1 to 4 and 6 to 8 as soon as reasonably practicable after receiving a request from the Authority.
12. The licensee must give the Authority any Information that it reasonably requests to assess the impact and effectiveness of the obligations contained in paragraphs 1 to 4 and 6 to 8.

Definitions for condition

Annual Consumption Breakdown	means a breakdown of the Annual Consumption Details by each Consumption Window that has applied over the period represented by the Annual Consumption Details per MPAN.
Consumption Window	means each separate period within a total period of 24 hours in which electricity consumption was recorded and charged at a distinct Unit Rate.
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MPAN	means the Meter Point Administration Number, as the reference number used to uniquely identify electricity supply points in Great Britain.

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Relevant Citizens Advice Body	means Citizens Advice or Citizens Advice Scotland (as applicable).
Relevant Licensee	means a licensee that supplies electricity to 50,000 or more Domestic Customers.
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Relevant RMI Customer	means a Domestic Customer receiving the supply of electricity through Relevant Restricted Metering Infrastructure.
Relevant Tariff	means each Tariff which continues to be capable of being entered into by any Single-Rate Customer for the supply of electricity from the supplier based on the Single-Rate Customer's Region subject to the Tariff's non-meter related terms and conditions.
RMI Customer	means a Domestic Customer receiving the supply of electricity through Restricted Metering Infrastructure, excluding any Economy 7 Metering Infrastructure and Smart Metering Infrastructure.
RMI Customer Information	means a Relevant RMI Customer's meter type; name of their current Tariff (including method of payment); Annual Consumption Details; MPAN; Annual Consumption Breakdown; all Standing Charges and Unit Rates for that RMI Customer that have applied for each Consumption Window over the period covered by the Annual Consumption Details; the length of time and the hours within which time is recorded for each Consumption Window; and contact details for Citizens Advice.
Restricted Metering Infrastructure	means (a) one Electricity Meter whereby electricity consumption in two or more Consumption Windows is separately recorded on two or more registers; or (b) two or more Electricity Meters (each with one or more

registers) installed in the same premises whereby electricity consumption for distinct purposes is separately recorded on such Electricity Meters.

Single-Rate Customer

means a Domestic Customer receiving the supply of electricity through Single-Rate Metering Infrastructure.

Single-Rate Metering Infrastructure

means any Electricity Meter installed in a particular premises whereby electricity consumption is recorded on one register and through which electricity is continuously provided, and excludes Restricted Metering Infrastructure.

Smart Metering Infrastructure

means (a) any type of Electricity Meter which forms part of a Smart Metering System; and (b) an Electricity Meter, either on its own or with an ancillary device, which has functionality similar to a Smart Metering System in respect of elements other than the measurement of consumption for multiple time periods and/or providing remote access to data.

Specified Information

means (a) a statement that the Relevant RMI Customer is able to change their electricity supplier or change to a Relevant Tariff without having to change, nor incurring any costs or any other financial charge associated with replacing, their Electricity Meter; and (b) contact details for the Relevant Citizens Advice Body.

Schedule 2 – Template Restricted Meters Remedy Compliance Statement

Restricted Meters Remedy Compliance Statement for [insert name of Retail Electricity Supplier]

[I/We], [insert name(s)], confirm on behalf of [insert name of Retail Electricity Supplier(s)] that during the period commencing on [insert date] and ending on [insert date], [insert name(s) of Retail Electricity Supplier(s)] [has][have] complied with The Energy Market Investigation (Restricted Meters) Order 2016.

FOR AND ON BEHALF OF [NAME OF RETAIL ELECTRICITY SUPPLIER(S)]

Signature:

Name:

Title: