

## **ENERGY MARKET INVESTIGATION**

### **Draft Explanatory Note**

#### **Energy Market Investigation (Restricted Meters) Order 2016**

*This note is not a part of the Order*

#### **Introduction**

1. The Competition and Markets Authority (CMA) published its findings in a report under section 136 of the Enterprise Act 2002 (the Act) entitled *Energy market investigation: Final Report* on 24 June 2016 (the Report).
2. The Report set out the CMA's findings that there are features of the energy markets in Great Britain which, alone or in combination prevent, restrict or distort competition and, therefore, have an adverse effect on competition (AEC).
3. The CMA decided on a package of remedies to be implemented by it to remedy, mitigate or prevent the adverse effects on competition (and associated detriment) that it found.
4. The Energy Market Investigation (Restricted Meters) Order 2016 dated [x] December 2016 (the Order) gives effect to one of these remedies, ie the Restricted Meters Remedy. The Restricted Meters Remedy involves 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.
5. Section 15 of the Electricity Act 1989 and section 27 of the Gas Act 1986 provide that where the CMA makes an order under section 161 of the Act, such order may also provide for the modification<sup>1</sup> of the conditions of a particular licence, or the standard conditions of licences of any type (including supply licences for gas and electricity) to such extent as may appear to the

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<sup>1</sup> The term 'modification' includes additions, alterations and omissions.

CMA to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

6. The Order introduces a new electricity supply licence condition [x], (the Electricity Licence Condition). This Explanatory Note applies to the Order and the Electricity Licence Condition.
7. Nothing in this Explanatory Note is legally binding.
8. Terms defined in the Order and the Electricity Supply Licence (including in the Electricity Licence Condition) have the same meaning in the Explanatory Note. In the event of a conflict between this Explanatory Note and any provision of the Order or the Electricity Licence Condition, the Order and Electricity Licence Condition shall prevail.

### **Possible consequences for non-compliance**

9. Section 167 of the Act places a duty on any person to whom the Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.
10. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
11. Section 167 of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.
12. The obligations set out in Articles 3.1, 3.2, 4.1, 4.2 and 4.3 of the Order have been introduced, pursuant to Article 1.5 and Schedule 1, into the Electricity Supply Licence. To the extent that the obligations set out in the Order have been introduced into the Electricity Supply Licence, GEMA has a duty to monitor compliance and, where appropriate, to use its powers under sections 28 to 30 of the Gas Act 1986 and 25 to 28 of the Electricity Act 1989, including where appropriate by imposing on the licensee a penalty of such amount as is reasonable in all the circumstances of the case. The CMA intends to collaborate with GEMA so as to put in place processes to monitor and ensure compliance with the obligations set out in the Order and associated conditions of the Electricity Licence Condition, where appropriate through enforcement measures.

## **Review of the Order**

13. The CMA has a duty under section 162 of the Act to monitor the operation of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. Retail Energy Suppliers may apply for a variation or cancellation of all or part of the Order on the basis of a change of circumstances, or recommend that the CMA reviews the need for the Order or part of it.
14. GEMA has a general duty, under section 34 of the Gas Act 1986 and section 47 of the Electricity Act 1989, to monitor activities connected with regulated energy activities (including supply) in a manner which it considers will best further its principal objective to protect the interests of existing and future consumers. It similarly has a duty to provide advice, information and assistance to the CMA (on GEMA's own initiative or where expressly requested).
15. In view of these duties, the CMA expects GEMA to consider, from time to time, the need for the Order (and associated obligations set out in the Electricity Licence Condition), and informs the CMA of any change of circumstance which in its view might require the termination or variation of the Order (and any consequential change to the Electricity Licence Condition).
16. The obligations in Articles 3.1, 3.2 and 4.1 to 4.3 are subject to a sunset provision linked to the roll-out of smart meters. The roll-out of smart meters is due to be completed by December 2020. Therefore, the obligations in Articles 3.1, 3.2 and 4.1 to 4.3 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. In the event that such roll-out were materially ahead of (or behind) schedule, the CMA will consider whether to revoke the Order early (or recommend that GEMA consider introducing further measures until the roll-out is substantially completed) in light of such a change of circumstances.

## **Structure of the Order**

17. The Order is divided into 4 Parts and has 2 Schedules:
  - (a) Part 1 contains general provisions, which include specifying when the Order comes into force, the scope of the Order and the definitions that are used throughout the Order.
  - (b) Part 2 contains an obligation on electricity suppliers with 50,000 or more Domestic Customers to make the tariffs which continue to be capable of being entered into by any Domestic Customer with a single-rate meter available to customers on restricted meters; and prohibits suppliers from

making these tariffs available conditional upon the Domestic Customer changing their existing meter, or incurring any costs associated with keeping their existing meter.

- (c) Part 3 contains an obligation on electricity suppliers to provide certain information to Domestic Customers on restricted meters and Citizens Advice, and specifies details of how and when this information must be provided to them.
- (d) Part 4 contains provisions for monitoring compliance, including provisions allowing the CMA to give directions as to compliance with the Order and to require the supply of information for the purposes of monitoring compliance with the Order and reviewing its operation.
- (e) Schedule 1 contains new Electricity Supply Licence Condition [X].
- (f) Schedule 2 contains a Template Restricted Meters Remedy Compliance Statement.

### ***Part 1 – General and Interpretation***

- 18. Article 1 provides that the Order applies to Retail Electricity Suppliers, defined as any person authorised to supply electricity by virtue of an Electricity Supply Licence. Article 1.2 provides that the Order shall come into force on [day after the order] December 2016 except Articles 3.1, 3.2, and 4.1 which shall come into force on 1 April 2017. Article 1.4 provides that the 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.
- 19. Article 2 includes definitions of various terms used in the Order, and in a number of instances cross-refers to terms defined in the Electricity Supply Licence. To the extent possible, the terms used in the Order have been defined to have the same meaning as in the Electricity Supply Licence. For the avoidance of doubt, when a word or expression has been expressly defined in the Order, the definition set out in the Order shall prevail over other definitions.

## ***Part 2 – Obligation to make available Relevant Tariffs***

20. The aim of Article 3 of the Order is (a) to impose an obligation on licensed electricity suppliers with 50,000 or more Domestic Customers<sup>2</sup> (Relevant Retail Electricity Suppliers) to make all Relevant Tariffs (as defined below) available to each Relevant RMI Customer (also defined below); and (b) to prohibit Relevant Retail Electricity Suppliers from making the Relevant Tariffs available conditional upon such customers changing their existing meter, or incurring any costs associated with keeping their existing meter.

### ***Relevant RMI Customers***

21. Relevant Retail Electricity Suppliers must comply with the requirements contained in Article 3 in respect of the Relevant RMI Customers, ie a Domestic Customer receiving the supply of electricity through Relevant Restricted Metering Infrastructure (as defined below). For the avoidance of doubt, Relevant Retail Electricity Suppliers must comply with these requirements in respect of each Relevant RMI Customer currently supplied by them, and any Relevant RMI Customer wishing to be supplied by them.
22. Domestic Customers will have a Relevant Restricted Metering Infrastructure if they:
- (a) have (i) one electricity meter whereby electricity consumption in two or more consumption windows is separately recorded on two or more registers; or (ii) two or more electricity meters (each with one or more registers) installed in the same premises whereby electricity consumption for distinct purposes<sup>3</sup> is separately recorded on such meters; and
  - (b) do not have an Economy 7 meter,<sup>4</sup> a prepayment meter, or a smart meter.
23. The obligations in Article 3 will ensure that these customers have the option of switching to tariffs they currently might not have access to, and might reduce the costs to these customers of switching supplier and switching tariffs.

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<sup>2</sup> For avoidance of doubt, the customers that are supplied pursuant to a contract with a white label retail energy supplier are included when determining the number of customers supplied by a particular Retail Energy Supplier.

<sup>3</sup> The definition of Restricted Metering Infrastructure refers to situations where a Domestic Customer has, for instance, one meter recording usage for heating water and space heating and another meter recording all other uses. This definition is not intended to include a situation where a Domestic Customer has one meter recording consumption in their house and another meter recording consumption for other areas of a domestic property (eg a pool and a garage).

<sup>4</sup> ie 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 17 'day/normal' hours and the off-peak electricity consumption level is recorded during seven 'night/low' hours.

24. For the avoidance of doubt, as regards the categories of metering infrastructure that are excluded from the obligations in Article 3, the CMA makes the following observations:

(a) **Economy 7 Metering Infrastructure.** The definition of Economy 7 Metering Infrastructure:

- excludes (i) meters with a third (electric heating) register, in addition to the 'day/normal' and 'night/low' registers (eg Economy 7 Plus Weathercall), and/or (ii) meters where part of the off-peak period occurs between 1200 and 1630 (with the remainder of the off-peak period occurring during a night-time period) (eg TwinHeat A & B); and
- includes meters where peak electricity consumption is recorded during 15.5 day/normal hours and off peak electricity consumption is recorded during 8.5 'night/low' hours (eg White Meter No 1 in the South Scotland PES area).<sup>5</sup>

(b) **Prepayment Metering Infrastructure.** We have received submissions that some suppliers may face technical constraints that prevent them from complying with the obligation to make all Relevant Tariffs (see below) available to Domestic Customers with a prepayment restricted meter. In order to make available the Relevant Tariffs to these customers, suppliers would need to use a number of additional prepayment tariff codes. In the current prepayment infrastructure, each supplier has access to 255 electricity tariff codes. This limits suppliers' ability to offer all Relevant Tariffs to prepayment customers. These technical constraints were identified in the Report<sup>6</sup> but having considered this further we do not believe anymore that the softening of SLC 22B.7(b) will materially address these constraints in the specific context of this remedy.<sup>7</sup> In the CMA's view, this indicates that there is a material risk that a significant number of suppliers will not be able to comply with the Order in respect of Domestic Customers with a prepayment restricted meter.<sup>8</sup>

The CMA has weighed this evidence against the fact that prepayment meter customers will be subject to The Energy Market Investigation

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<sup>5</sup> We recognise that customers on, for example, White Meters are able to switch to Economy 7 Tariffs but they may not be aware that this is the case. While we have included these meters within the definition of Economy 7, we would expect suppliers to provide customers with information on the options available to these customers.

<sup>6</sup> Paragraphs 13.443 and 13.444.

<sup>7</sup> This is because the pricing strategy of single-rate non-prepayment tariffs will not be driven by consideration relating to tariff codes availability.

<sup>8</sup> We have considered whether this remedy could be implemented in relation to prepayment customers by limiting the scope of the Order to single-rate prepayment tariffs. However, this would still potentially face similar constraints and, in any event, this would limit the benefit of this remedy to consumers as the Report has shown that single-rate prepayment tariffs are generally less competitively priced than single-rate direct debit tariffs.

(Prepayment Charge Restriction) Order 2016, which will address a significant proportion of the detriment suffered by such customers as a result of the AECs and/or associated detriment found to be particularly affecting customers.

In light of these observations, the CMA considers that, considering the evidence in the round, there is a special reason to depart from the decision in the Report and has excluded prepayment meter customers from the obligation on suppliers to make Relevant Tariffs available to customers.

- (c) **Smart Metering Infrastructure.** Domestic Customers with any smart metering system (including SMETS 1 and SMETS 2 meters) will have access to a wide range of tariffs, and so are excluded from the obligation in Article 3

#### *Make available Relevant Tariffs*

25. Relevant Retail Electricity Suppliers will be required to make all Relevant Tariffs available for each Relevant RMI Customer to enter into a contract to purchase electricity.
26. Relevant Tariffs have been defined as each tariff which continues to be capable of being entered into by any Domestic Customer with Single-Rate Metering Infrastructure based on the customer's region. A Domestic Customer will have Single-Rate Metering Infrastructure if they have an electricity meter whereby electricity consumption is recorded on one register and through which electricity is continuously provided.
27. We note that access to the Relevant Tariffs by customers with Single-Rate Metering Infrastructure depends on the region where such customers are located. Therefore, access to the Relevant Tariffs by the Relevant RMI Customers will also need to be based on the region where such customers are located. Access to the Relevant Tariffs by Relevant RMI Customers can also be made subject to any other eligibility criteria associated with a Domestic Customer with Single-Rate Metering Infrastructure seeking electricity supply. For example, Online Account Management (OAM) only tariffs can be made available only to Relevant RMI Customers who accept online account management, and direct debit only tariffs can be made available only to Relevant RMI Customers who accept direct debit. If a Relevant RMI Customer changes payment method, Relevant Retail Electricity Suppliers will make available the tariffs associated with the new payment method.

28. The Order and Licence Conditions require Relevant Retail Electricity Suppliers to make the Relevant Tariffs available to Relevant RMI Customers immediately. We recognise that there may be circumstances where a Relevant Retail Electricity Supplier is unable, for technical reasons, to make the Relevant Tariffs immediately available to RMI Customers or within a reasonable period of time. In such circumstances, we expect Relevant Retail Electricity Suppliers to make arrangements which mean that, once the tariff is available, the supplier will retrospectively apply the tariff to the customer as from an earlier date which corresponds to the period of delay in making the Relevant Tariff available.
29. Where a supplier has white label partnerships, the supplier has responsibility for ensuring that Relevant RMI Customers have access to the suppliers' own tariffs and those offered by their white label partners.
30. The Order does not require the Relevant Retail Electricity Suppliers to allow the Relevant RMI Customers who switch to a Relevant Tariff to switch back or default onto a preserved meter-specific tariff.<sup>9</sup> Therefore, if a Relevant RMI Customer switches away from a preserved meter-specific tariff, then such a customer may not be able to switch back or default onto that preserved meter-specific tariff.
31. The obligation to make all Relevant Tariffs available to Relevant RMI Customers will also apply where there is a change of occupier and/or when a single-rate fixed-term tariff to which a Relevant RMI Customer has switched expires. In these circumstances, the Relevant RMI Customer may be moved onto a deemed or default tariff. Where the Relevant Retail Electricity Supplier does offer tariffs that are compatible with that Relevant Restricted Metering Infrastructure, then it is for the Relevant Retail Electricity Supplier to decide what the appropriate deemed or default tariff is for the customer, subject to complying with existing licence conditions. However, Relevant Retail Electricity Suppliers will still need to ensure compliance with wider regulatory obligations (such as licence conditions and industry codes) which may be relevant to this situation.

*Prohibition to require the replacement of the existing electricity meter*

32. Relevant Retail Electricity Suppliers will be prohibited from requiring Relevant RMI Customers to replace their existing meter (such as to Single-Rate Metering Infrastructure or Economy 7 Metering Infrastructure) in order to switch to a Relevant Tariff. Relevant Retail Electricity Suppliers will also be

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<sup>9</sup> For the avoidance of doubt, a preserved tariff is a tariff that is no longer made available to new customers.

prohibited from charging any additional costs or financial charge associated with keeping their existing Restricted Metering Infrastructure.

33. For the avoidance of doubt, a Relevant Retail Energy Supplier will be required to make the Relevant Tariffs available to the Relevant RMI Customers on their existing meters, at no additional cost for the customer.

#### *Assessment of compliance*

34. Relevant Retail Electricity Suppliers will be able to comply with the obligations contained in Article 3 by either aggregating consumption across registers (and, possibly, electricity meters) and to apply the Relevant Tariffs to the aggregated consumption on an ex post basis; or by setting up meter-specific tariffs where the standing charge and all unit rates are the same as those for the relevant single-rate tariff. The Report recognised that compliance with these obligations may require some software developments and adjustments to suppliers' systems (in particular, billing systems) and processes.<sup>10</sup>
35. Paragraph 3 of the Electricity Licence Condition allows a Relevant Retail Electricity Supplier to seek a direction from GEMA where, for technical reasons, the supplier cannot comply with Articles 3.1 and 3.2. In this case, the supplier will need to provide evidence showing that, for material technical reasons which cannot be resolved within a reasonable period, it is not possible to make the Relevant Tariffs available to one or more Relevant RMI Customers. In addition, the supplier will need to comply with any alternative requirements specified by GEMA.

#### *Timeframe for complying with the obligations*

36. Relevant Retail Electricity Suppliers must comply with the requirements in Articles 3.1 and 3.2 from 1 April. The exclusion of Domestic Customers with prepayment restricted meters from the requirement in Article 3.1 (see paragraph 24 above), and Relevant Retail Electricity Suppliers' flexibility around making the Relevant Tariffs available (see paragraph 28 above) will, in the CMA's view, make compliance with the Order more manageable.
37. These requirements will be in force until 31 December 2020 when the roll-out of smart meters is expected to be completed.

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<sup>10</sup> Paragraphs 13.425, 13.458 and 13.462.

### ***Part 3 – Obligation to provide information***

38. The aim of Article 4 is to require *all* Retail Electricity Suppliers (*a*) to provide Relevant RMI Customers with the Specified Information (as defined below); (*b*) to provide RMI Customers with the RMI Customer Information (as defined below); and (*c*) to provide the Relevant Citizens Advice Body (ie Citizens Advice or Citizens Advice Scotland, as applicable) with information on RMI Customers' metering infrastructure.
39. For the avoidance of doubt, the obligations contained in Article 4 will apply to all Retail Electricity Suppliers (ie not just those with 50,000 or more domestic customers as per the obligation to make available Relevant Tariffs set out above).

#### *Specified Information*

40. Specified Information includes (*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 (eg telephone number, email address and website address) for the Relevant Citizens Advice Body.
41. Specified Information must be provided in each Relevant RMI Customer's bill or other regular written correspondence with the Relevant RMI Customer. Written correspondence applies to communications such as bill statements, the annual report, price changes and product end notifications. We expect that the manner in which Specified Information is presented to Relevant RMI Customers will be specified by Ofgem and may be subject to testing as part of the Ofgem-led programme.<sup>11</sup> This information will be necessary to ensure that the Relevant RMI Customers are aware that they can switch supplier and that Citizens Advice can help them understand the options available to them and switch supplier.

#### *RMI Customer Information*

42. Retail Electricity Suppliers will also be required to use all reasonable endeavours to provide RMI Customers with RMI Customer Information in a timely manner after the RMI Customer has submitted a written or oral request for, or other inquiry concerning, any of the RMI Customer Information.

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<sup>11</sup> Ie a programme used to identify through robust testing the most appropriate form of information received by domestic customers from suppliers.

43. RMI Customers are those who receive the supply of electricity through Restricted Metering Infrastructure, excluding any Economy 7 Metering Infrastructure and Smart Metering Infrastructure.
44. RMI Customer Information includes 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.
45. We recognise that suppliers may not be able to provide certain fields of the RMI Customer Information to new RMI Customers and this is reflected in the requirement being to use all reasonable endeavours to provide such information.

*Information on RMI Customers' metering infrastructure*

46. Retail Electricity Suppliers will be required to provide the Relevant Citizens Advice Body with information on RMI Customers' metering infrastructure (ie restricted metering infrastructure excluding Economy 7 and smart metering infrastructure) that will enable the Relevant Citizens Advice Body to advise RMI Customers. We expect that this information will relate to factual non-customer specific issues including, but not limited to, information on the restricted metering infrastructure they support with meter-specific tariffs or other tariffs; the availability of these tariffs to new customers; details of the meter-specific tariffs they offer (including standing charge and unit rates); and the operational hours of the different registers on the restricted metering infrastructure.
47. The Relevant Citizens Advice Body is already providing RMI Customers with information (online, by telephone and face-to-face) on tariffs available to them, and it has established a reputation for providing advice to RMI Customers. However, this information will allow the Relevant Citizens Advice Body to:
  - (a) give more precise/accurate advice to RMI Customers on (i) their rights to switch suppliers and to switch to single-rate tariffs retaining their current meter, where relevant; (ii) the options for switching supplier and tariffs available to them; and (iii) the factors to take into account in comparing the options available to them; and
  - (b) help RMI Customers access the information they need to compare their options.

### *Timeframe for complying with the obligations*

48. To the extent that the obligation to provide Specified Information is closely related to the obligation to make available Relevant Tariffs, the timeframe for complying with both obligations is the same, ie from 1 April 2017 until 31 December 2020 (see paragraph 36 above).
49. Retail Electricity Suppliers must comply with the obligation to provide RMI Customers with RMI Customer Information, from [date after publication of the Order] December 2016 until 31 December 2020.
50. Retail Electricity Suppliers must comply with the obligation to provide the Relevant Citizens Advice Body with information concerning RMI Customers' metering infrastructure from [date after publication of the Order] December 2016 until 31 December 2020.

### ***Part 4 – Monitoring and compliance***

51. Article 5 of the Order sets out the compliance reporting requirements in relation to Parts 2 and 3 of the Order.
52. Articles 5.1 to 5.3 require suppliers to submit compliance statements to the CMA in the format specified in Schedule 2 to the Order. The first compliance statement must be submitted to the CMA by 30 April 2017. Each subsequent compliance statement must be submitted to the CMA by 30 April in each year.
53. These compliance statements are required to assist the CMA in complying with their statutory duty to monitor compliance with the Order and Licence Conditions, respectively.
54. Paragraph 11 of the Electricity Licence Condition requires Retail Electricity Suppliers to give GEMA any information that it reasonably requests about the Retail Electricity Suppliers' compliance with the relevant obligations as soon as reasonably practicable after receiving a request. This requirement will assist GEMA in monitoring compliance with the Electricity Licence Condition. Paragraph 12 of the Electricity Licence Condition requires Retail Electricity Suppliers to give GEMA any information that it reasonably requests to assess the impact and effectiveness of the relevant obligations.
55. Article 6 provides that the CMA may give directions as to compliance with the Order.
56. Article 7 provides for any person to whom this Order applies to provide information required by the CMA to allow it to monitor and review compliance with and operation of the Order. GEMA has a general power, under the

Electricity Supply Licence, to obtain from Retail Electricity Suppliers information that it considers may be necessary to enable it to perform any functions given or transferred to it by or under any legislation.