

# Invitation to Comment on a proposed review of the Energy Market Investigation (Prepayment Charges Restriction) Order 2016

## Introduction and statutory duties

1. The Competition and Markets Authority (CMA) is considering whether to launch a review of certain aspects of the Energy Market Investigation (Prepayment Charges Restriction) Order 2016 (the Order). The Order was one component part of a package of remedies put in place to address certain adverse effects on competition affecting prepayment energy customers identified during the CMA's energy market investigation.
2. The Order imposes a restriction on the unit rate and standing charge for retail energy suppliers for a period until the end of 2020.
3. The CMA has a statutory duty, under Section 162 of the Enterprise Act 2002 to keep under review enforcement orders. From time to time, the CMA must consider whether, by reason of any change of circumstances, an order is no longer appropriate and needs to be varied or revoked.
4. The final report in the energy market investigation published on 24 June 2016 (the Final Report) provided for the Order to be subject to a mid-term review, commencing in January 2019, concerning the progress made in the roll-out of smart meters in Great Britain.<sup>1</sup> The CMA has set out in its published guidance, *Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders* (CMA11),<sup>2</sup> that in launching a review, the CMA will consider its published prioritisation principles and whether there is a realistic prospect of finding a change of circumstances (CMA11, paragraph 3.10).
5. The CMA invites comments from parties affected by the Order on whether this proposed review should be launched, and on its proposed scope.

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<sup>1</sup> <https://www.gov.uk/cma-cases/energy-market-investigation#final-report>

<sup>2</sup> See the [CMA's guidance on remedy reviews, CMA11](#).

## Background

6. On 26 June 2014, Ofgem made a reference to the CMA for an investigation into the supply and acquisition of energy in Great Britain. The CMA investigated the matters referred to it and concluded that there were features of the markets for the supply and acquisition of energy in Great Britain which, either alone or in combination, prevented, restricted or distorted competition; and that there were adverse effects on competition (AECs). Two of the AECs identified by the CMA in the Final Report were the Domestic Weak Customer Response AEC and the Prepayment AEC (as defined in the Final Report).
7. In its Final Report, the CMA decided on a package of measures to remedy, mitigate or prevent these AECs and/or associated detriment that it found. The CMA decided to implement a prepayment charge restriction for the tariffs made available (either directly or indirectly) or applied to domestic customers on prepayment meters by energy suppliers. Accordingly, on 7 December 2016 the CMA adopted the Order.
8. The Order requires retail electricity and gas suppliers to ensure that the aggregate amounts of all charges for gas and electricity to retail prepayment customers do not exceed the relevant maximum charges for each charge restriction period. The Order also imposes a monitoring and compliance regime. Schedules 1 and 2 to the Order set out the details of the determination of relevant maximum charges and benchmark maximum charges for charge restriction periods for gas and electricity.

## The proposed review and its scope

9. The Final Report provided for the Order to be subject to a mid-term review, commencing in January 2019. This review was intended to examine the progress made in the roll-out of smart meters (including SMETS 2 smart meters). Information on the progress in rolling out smart meters was envisaged to allow the CMA to determine whether the prepayment price cap would need to be revoked early (where smart meter rollout was likely to complete earlier than expected), or whether to encourage Ofgem to review the situation and decide whether to take further measures to protect prepayment customers for a longer period of time (where smart meter rollout was taking longer than envisaged when the Order was created).
10. On 23 November 2018, the National Audit Office published its report into the rolling out of smart meters, in which it highlighted that, '*the number of smart*

*meters installed by 2020 will fall materially short of the [Business, Energy and Industrial Strategy] Department's original ambitions'.<sup>3</sup>*

11. Moreover, the CMA notes that, since the Order came into force, the Gas and Energy Markets Authority (GEMA) has adopted, on 6 November 2018, a charge restriction applying to certain energy tariffs.<sup>4</sup>
12. In view of these developments and in accordance with its statutory duty under Section 162 of the Enterprise Act 2002, the CMA proposes to assess as part of its review whether, by reason of any change of circumstances affecting the roll-out of smart meters, or the policy costs and DCC costs incurred by energy suppliers, the Order is no longer appropriate and needs to be varied or revoked. Consequently, the CMA's proposed review of the Order would examine the following matters:
  - the progress made on the roll-out of smart meters; and
  - the CMA's calculations underlying the initial benchmark figures set out in Annex 1 to the Gas Supply Licence Condition 28A and in Annex 1 to the Electricity Supply Licence Condition 28A concerning the 'policy cost allowance' and the DCC costs element of the 'indirect cost allowance'.

## **Prioritisation assessment**

13. In order to make the best use of its resources, the CMA needs to ensure that it makes appropriate decisions about which projects and programmes of work are undertaken across all areas of responsibility. The CMA has considered the information available in relation to the review of the Order outlined above, and assessed this in the light of its published [prioritisation principles](#), as follows.
14. Concerning the impact of this review, the CMA notes that the prepayment charge restriction was intended to reduce prepayment customers' bills by around £300 million per year. Imposing a restriction on pricing can have a significant impact on both suppliers and consumers. In line with its Final Report, the CMA considers that a review of the Order commencing January 2019 would still be appropriate.

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<sup>3</sup> Paragraph 14 of the Summary of '[Rolling out smart meters](#)', NAO, 23 November 2018, HC 1680.

<sup>4</sup> See Ofgem website for details. The [Domestic Gas and Electricity \(Tariff Cap\) Act 2018](#), introduced by Parliament on 19th July 2018, requires that any customers already benefiting from the prepayment meter price cap or a vulnerable price cap, are exempt from the default tariff cap. Those prepayment consumers on default tariffs with SMETS 2 smart meters are not protected by the prepayment tariff cap and are therefore in scope of the Default Tariff Cap.

15. The CMA considers that this review would represent a strategic priority, as this work not only reflects the CMA's statutory duty to keep under review orders and undertakings, but also that the energy markets remain an important area for consumers and hence the CMA. More specifically, the CMA notes that prepayment meters are often used by vulnerable consumers, and it is appropriate for the CMA to continue to focus on this area and ensuring these customers continue to be protected in an effective and proportionate way.
16. In relation to risk, the CMA is seeking the views of interested parties in advance of a potential launch to ensure it is aware of their views regarding the review and its scope.
17. Regarding the resources involved in the review, the CMA considers that conducting a limited-scope review would involve a modest amount of resources and represents an appropriate use of its limited resources at this time.
18. On the basis of the information available, and subject to the submissions it may receive in response to this invitation to comment, the CMA could expect to conclude that carrying out the proposed review of the Order in 2019 may represent an administrative priority, in line with its published prioritisation principles.

## **Invitation to comment**

19. The CMA is seeking views from interested parties on the following matters to assist it in reaching a decision on whether or not to launch a review of the Order, and if so, in determining the appropriate scope of any such review:
  - whether the CMA should prioritise the Order for review at this time;
  - whether it is appropriate for the scope of the review to consist of the assessment of (i) the progress made concerning the rollout of smart meters, and (ii) the CMA's calculations underlying the initial benchmark figures set out in Annex 1 to the Gas Supply Licence Condition 28A and in Annex 1 to the Electricity Supply Licence Condition 28A concerning the 'policy cost allowance' and the DCC costs element of the 'indirect cost allowance'; and
  - whether there is evidence that additional calculations of cost categories, or broader elements of the Order should also be subject to review.

20. Representations with relevant evidence should be made by 5pm on 18 January 2019 to:

[Remedies.reviews@cma.gov.uk](mailto:Remedies.reviews@cma.gov.uk)

Or:

Invitation to Comment: Energy Prepayment Review  
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37 Southampton Row  
London WC1B 4AD