

# **Review of the Energy Market Investigation (Prepayment Charge Restriction) Order 2016**

## **DRAFT ORDER – CONSULTATION**

### **Energy Market Investigation (Variation to the Prepayment Charge Restriction Order 2016) Order 2019**

#### **Background**

1. On 24 June 2016, following a market investigation into the energy markets in Great Britain, the Competition and Markets Authority (the CMA) published its findings in a report under section 136 of the Enterprise Act 2002 (the Act) entitled *Energy market investigation: Final report* (the Report).
2. Two of the AECs identified by the CMA in the Report were the Domestic Weak Customer Response AEC and the Prepayment AEC. The CMA decided on a package of remedies to remedy, mitigate or prevent these AECs and/or associated detriment that it found, including a prepayment charge restriction for the tariffs made available (either directly or indirectly) or applied to domestic customers on prepayment meters by energy suppliers.
3. On 7 December the CMA made the [Energy Market Investigation \(Prepayment Charge Restriction\) Order 2016 \(the 2016 Order\)](#)<sup>1</sup> that 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 calculated in accordance with the 2016 Order for each charge restriction period. The Order also imposes a monitoring and compliance regime. Schedules 1 and 2 introduced the Electricity Supply Licence Condition 28A and the Gas Supply Licence Condition 28A for the purpose of giving effect to the Order, having had regard to GEMA's relevant statutory functions pursuant to section 168 of the Act. These licence conditions set out the details of the determination of relevant maximum

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<sup>1</sup> See also the [Explanatory Note](#) to the Order.

charges and benchmark maximum charges in each charge restriction periods for gas and electricity.

4. Under section 162(2) of the Act, the CMA has a statutory duty to keep under review orders from its investigations. From time to time, the CMA must consider whether, by reason of any change of circumstance, enforcement orders are no longer appropriate and need to be varied or revoked.
5. On 31 January 2019 the CMA published its decision to launch a review of the 2016 Order. The CMA's approach to the variation and termination of enforcement orders is covered in the CMA's guidance document published in [\*Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders \(CMA11\)\*](#).
6. On 7 June 2019, the CMA published its provisional decision that by reasons of changes of circumstance, the 2016 Order is no longer appropriate and needs to be varied (through an order).
7. The draft Explanatory Note accompanying this Draft Order provides an explanation of how the 2016 Order and the associated licence conditions, as it would be varied by the Draft Order, are expected to operate.

# DRAFT

## The Order

The CMA makes this Order exercising its powers under section 161(4) of the Act for the purpose of varying the [Energy Market Investigation \(Prepayment Charge Restriction\) Order 2016](#).

In accordance with section 15 of the Electricity Act 1989 and section 27 of the Gas Act 1986, the CMA amends the Electricity Supply Licence Condition 28A and the Gas Supply Licence Condition 28A for the purpose of giving effect to Articles 3 and 4 of this Order, having had regard to GEMA's relevant statutory functions pursuant to section 168 of the Act.

### 1. Citation, commencement and purpose

- 1.1. This Order may be cited as 'the Energy Market Investigation (Prepayment Charge Restriction Order 2016) Variation Order 2019'.
- 1.2. This Order shall come into force on [date].
- 1.3. This Order applies to Retail Energy Suppliers in Great Britain.
- 1.4. The purpose of this Order is to vary the Energy Market Investigation (Prepayment Charge Restriction) Order 2016. The 2016 Order, as varied by this Order, shall continue to be in force until 30 June 2021, or until such time (before this date) as it is further varied or revoked under the Act. The variation or revocation of the 2016 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. The definitions, interpretations and meanings ascribed to words and expressions in the Energy Market Investigation (Prepayment Charge Restriction) Order 2016 apply to this Order except where words and expressions are expressly defined.
- 2.2. In this Order, 'the 2016 Order' means the [Energy Market Investigation \(Prepayment Charge Restriction\) Order 2016](#).
- 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.

### **3. Variations to the Energy Market Investigation (Prepayment Charge Restriction) Order 2016**

3.1. The 2016 Order is varied as follows:

3.2. For Article 3.4 of the 2016 Order, substitute—

*‘Articles 3.1 and 3.2 shall cease to have effect on 31 December 2020. However, in the event that any conditions are put in place by GEMA to allow Relevant Customers to benefit from a charge restriction other than pursuant to this Order, the CMA may issue a direction pursuant to Article 6 releasing Retail Energy Suppliers from their obligation to comply with Articles 3.1 and 3.2 within the Charge Restriction Period beginning on 1 October 2020 and ending on 31 December 2020 in relation to some or all Relevant Customers. A direction under this paragraph shall only be issued in relation to Relevant Customers who will benefit from that charge restriction made by GEMA in that Charge Restriction Period.’*

### **4. Variations to the Electricity Supply Licence Condition 28A**

4.1. The Electricity Supply Licence Condition is amended as follows.

4.2. In paragraph 28A.1, after the first sentence insert—

*‘The licensee must ensure that, between 1 April 2017 and 31 December 2020, the aggregate amount of all Charges for Supply Activities to each Relevant Customer does not exceed the Relevant Maximum Charge within each Charge Restriction Period. However, the licensee will be released from its obligation to comply with SLC28A in the Charge Restriction Period beginning on 1 October 2020 and ending on 31 December 2020 if the CMA issues a direction pursuant to Articles 3.4 and 6 of the Energy Market Investigation (Prepayment Charge Restriction) Order 2016 (as varied) releasing it from that obligation.’*

4.3. For paragraph 28A.7, substitute—:

‘28A.7 For each Charge Restriction Period, the Authority will calculate the Benchmark Maximum Charge for each:

(a) Benchmark Annual Consumption Level;

(b) Charge Restriction Region; and

(c) Benchmark Metering Arrangement,

in accordance with the following formula:

$$\text{ChargeMax}_{i,j,k,l} = (WC_{i,j,k,l} + NC_{i,j,k,l} + PC_{i,j,k,l} + OC_{j,k,l} + PPM_j + E_{i,j,k,l} + H_{i,j,k,l})$$

where (the following units all being in pounds sterling):

<i>ChargeMax<sub>i,j,k,l</sub></i>	means the Benchmark Maximum Charge in Charge Restriction Region <i>i</i> , Charge Restriction Period <i>j</i> , at Benchmark Annual Consumption Level <i>k</i> , for Benchmark Metering Arrangement <i>l</i> ;
<i>WC<sub>i,j,k,l</sub></i>	has the meaning given to it in paragraph 28AD.7 and calculated in accordance with paragraph 28AD.8;
<i>NC<sub>i,j,k,l</sub></i>	has the meaning given to it in paragraph 28AD.7 and calculated in accordance with paragraph 28AD.9;
<i>PC<sub>i,j,k,l</sub></i>	has the meaning given to it in paragraph 28AD.7 and calculated in accordance with paragraph 28AD.10;
<i>OC<sub>j,k,l</sub></i>	means the Operating Cost Allowance in Charge Restriction Period <i>j</i> , at Benchmark Annual Consumption Level <i>k</i> , for Benchmark Metering Arrangement <i>l</i> , calculated in accordance with paragraph 28A.13;
<i>PPM<sub>j</sub></i>	means the prepayment meter uplift allowance in Charge Restriction Period <i>j</i> calculated in accordance with paragraph 28A.14;
<i>E<sub>i,j,k,l</sub></i>	means the Earnings Before Interest and Tax Allowance in Charge Restriction Region <i>i</i> , in Charge Restriction Period <i>j</i> , at Benchmark Annual Consumption Level <i>k</i> , for Benchmark Metering Arrangement <i>l</i> , calculated in accordance with paragraph 28A.12;

*H<sub>i,j,k,l</sub>* means the headroom allowance in Charge Restriction Region *i*, in Charge Restriction Period *j*, at Benchmark Annual Consumption Level *k*, for Benchmark Metering Arrangement *l*, calculated in accordance with paragraph 28A.15.’

4.4. Omit paragraphs 28A.8, 28A.9, 28A.10 and 28A.11.

4.5. For paragraph 28A.12, substitute—

*‘For the purposes of paragraph 28A.7, the Earnings Before Interest and Tax Allowance in Charge Restriction Region *i*, in Charge Restriction Period *j*, at Benchmark Annual Consumption Level *k*, for Benchmark Metering Arrangement *l*, shall be calculated as follows:*

$$E_{i,j,k,l} = EBIT \times (WC_{i,j,k,l} + NC_{i,j,k,l} + PC_{i,j,k,l} + OC_{j,k,l} + PPM_j)$$

where:

*EBIT means 1.9368%.’*

4.6. For paragraph 28A.13, substitute—

*‘For the purposes of paragraph 28A.7, the Operating Cost Allowance in Charge Restriction Period *j*, at Benchmark Annual Consumption Level *k*, for Benchmark Metering Arrangement *l*, shall be calculated in accordance with paragraph 28AD.11 after exclusion of any Smart Metering Non-Pass-Through Net Cost Change, as defined in SLC 28AD and published in the format set out in Annex 5 of SLC 28AD.’*

4.7. For paragraph 28A.14 substitute—

*‘For the purposes of paragraph 28A.7, the prepayment uplift allowance in Charge Restriction Period *j*, shall be calculated as follows:*

$$PPM_j = PPM_0 \times \frac{CPIH_j}{CPIH_0}$$

where

*‘PPM<sub>0</sub>* shall be £24.4072 for both Single-Rate Metering Arrangements and Economy 7 Metering Arrangements

*CPIH<sub>j</sub>* means the value of the Consumer Prices Index including owner occupiers’ housing costs, series ID: L522 (the “CPIH Index”), published by the Office for

*National Statistics or the successor to such series as may be identified by the Monetary Policy Committee of the Bank of England for the purposes of targeting inflation or as otherwise directed by the Authority. The value used shall be chosen as follows:*

- *For a Charge Restriction Period starting on 1 April of each calendar year, the value of CPIH<sub>j</sub> shall be calculated as:*

$$CPIH_j = CPIH_{Dec\ j-1}$$

- *For a Charge Restriction Period starting on 1 October of each calendar year, the value of CPIH<sub>j</sub> shall be calculated as:*

$$CPIH_j = CPIH_{Jun\ j-1}$$

*CPIH<sub>0</sub> has the value 102.2.'*

4.8. For paragraph 28A.15, substitute—

*'For the purposes of paragraph 28A.7, the Headroom Allowance in Charge Restriction Region i, in Charge Restriction Period j, at Benchmark Annual Consumption Level k, for Benchmark Metering Arrangement l, shall be calculated as follows:*

$$H_{i,j,k,l} = HAP \times (WC_{i,j,k,l} + PC_{i,j,k,l} + OC_{j,k,l} + PPM_j + E_{i,j,k,l})$$

*where:*

*HAP means the Headroom Allowance Percentage, which is 1.4641% for Single-Rate Metering Arrangements and Economy 7 Metering Arrangements.'*

4.9. For paragraph 28A.17, substitute—:

*'Subject to paragraphs 28A.18 and 28A.19, at the same time as publishing the Benchmark Maximum Charges pursuant to paragraph 28A.16(b) the Authority will also publish the following values for each Charge Restriction Region i, at Benchmark Annual Consumption Level k, and for Benchmark Metering Arrangement l, and, where relevant, identify the data sources used for:*

(a) *the wholesale cost allowance calculated in accordance with paragraph 28AD.8;*

(b) *the network cost allowance determined in accordance with paragraph 28AD.9;*

(c) *the policy cost allowance, calculated in accordance with paragraph 28AD.10;*

(d) *the value of CPIH<sub>t</sub> as described in paragraph 28A.14.'*

4.10. In paragraph 28A.25, for subparagraph (a) substitute—

*'in respect of each Economy 7 Tariff, off-peak and peak consumption levels of 42% and 58%, respectively, shall be the Assumed Consumption Split, subject to any direction from the Authority issued pursuant to paragraph 28A.27;'*

4.11. In paragraph 28A.29, for 'no more than five Working Days after the start of each Charge Restriction Period' substitute 'no more than 30 calendar days after the start of each Charge Restriction Period (without prejudice to the Authority's existing powers to request such information from the licensee at an earlier date)'.

4.12. In paragraph 28A.32

4.12.1. omit the defined term '*Baseline Value*'.

4.12.2. For the defined term '*Benchmark Annual Consumption Level*' substitute –

***'Benchmark Annual Consumption Levels'*** means the benchmark annual consumption levels *nil kWh and m kWh, where m shall respectively take the following values:*

*For Single-Register Metering Arrangements*

*m = 3,100 kWh;*

*For Multi-Register Metering Arrangements*

*m = 4,200 kWh;*

4.13. Omit annexes 1 to 4.



## 5. Variations to the Gas Supply Licence Condition 28A

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

5.2. In paragraph 28A.2, after the first sentence insert–

*‘The licensee must ensure that, between 1 April 2017 and 31 December 2020, the aggregate amount of all Charges for Supply Activities to each Relevant Customer does not exceed the Relevant Maximum Charge within each Charge Restriction Period. However, the licensee will be released from its obligation to comply with SLC28A in the Charge Restriction Period beginning on 1 October 2020 and ending on 31 December 2020 if the CMA issues a direction pursuant to Articles 3.4 and 6 of the Energy Market Investigation (Prepayment Charge Restriction) Order 2016 (as varied) releasing it from that obligation.’*

5.3. For paragraph 28A.6, substitute–:

*‘28A.6 For each Charge Restriction Period, the Authority will calculate the Benchmark Maximum Charge for each:*

*(a) Benchmark Annual Consumption Level; and*

*(b) Charge Restriction Region;*

*in accordance with the following formula:*

$$\text{ChargeMax}_{i,j,k} - (WC_{j,k} + NC_{i,j,k} + PC_{j,k} + OC_{j,k} + PPM_j + E_{i,j,k} + H_{i,j,k})$$

*where (the following units all being in pounds sterling):*

*ChargeMax<sub>i,j,k</sub> means the Benchmark Maximum Charge in Charge Restriction Region i, Charge Restriction Period j, at Benchmark Annual Consumption Level k;*

*WC<sub>j,k</sub> has the meaning given to it in paragraph 28AD.6 and calculated in accordance with paragraph 28AD.7;*

*NC<sub>i,j,k</sub> has the meaning given to it in paragraph 28AD.6 and calculated in accordance with paragraph 28AD.8;*

*PC<sub>j,k</sub> has the meaning given to it in paragraph 28AD.6 and calculated in accordance with paragraph 28AD.9;*

*OC<sub>j,k</sub> means the Operating Cost Allowance in Charge Restriction Period j, at Benchmark Annual*

- Consumption Level k, calculated in accordance with paragraph 28A.12;*
- $PPM_j$  means the Prepayment Meter Uplift Allowance in Charge Restriction Period j calculated in accordance with paragraph 28A.13;
- $E_{i,j,k}$  means the Earnings Before Interest and Tax Allowance in Charge Restriction Region i, in Charge Restriction Period j, at Benchmark Annual Consumption Level k, calculated in accordance with paragraph 28A.11;
- $H_{i,j,k}$  means the Headroom Allowance in Charge Restriction i, in Charge Restriction Period j, at Benchmark Annual Consumption Level k, calculated in accordance with paragraph 28A.14.'

5.4. Omit paragraphs 28A.7, 28A.8, 28A.9 and 28A.10.

5.5. For paragraph 28A.11, substitute—

*'For the purposes of paragraph 28A.6, the Earnings Before Interest and Tax Allowance in Charge Restriction Region i, in Charge Restriction Period j, at Benchmark Annual Consumption Level k, shall be calculated as follows:*

$$E_{i,j,k} = EBIT \times (WC_{j,k} + NC_{i,j,k} + PC_{j,k} + OC_{j,k} + PPM_j)$$

where:

*EBIT means 1.9368 %.'*

5.6. For paragraph 28A.12, substitute—

*'For the purposes of paragraph 28A.6, the Operating Cost Allowance in Charge Restriction Period j, at Benchmark Annual Consumption Level k, shall be calculated in accordance with paragraph 28AD.10 after exclusion of any Smart Metering Non-Pass-Through Net Cost Change, as defined in SLC 28AD and published in the format set out in Annex 5 of SLC 28AD.'*

5.7. For paragraph 28A.13 substitute—

*'For the purposes of paragraph 28A.7, the Prepayment Meter Uplift Allowance in Charge Restriction Period j, shall be calculated as follows:*

$$PPM_j = \left( PPM_0 \times \frac{CPIH_j}{CPIH_0} \right)$$

Where

$PPM_0$  means the Baseline Value of the prepayment uplift and shall be £39.6617

$CPIH_j$  means the value of the Consumer Prices Index including owner occupiers' housing costs, series ID: L522 (the "CPIH Index"), published by the Office for National Statistics or the successor to such series as may be identified by the Monetary Policy Committee of the Bank of England for the purposes of targeting inflation or as otherwise directed by the Authority. The value used shall be chosen as follows:

- For a Charge Restriction Period starting on 1 April to 30 September the value of  $CPIH_j$  shall be calculated as:

$$CPIH_j = CPIH_{Dec\ j-1}$$

- For a Charge Restriction Period starting on 1 October of each calendar year and ending 31 March of the subsequent calendar year, the value of  $CPIH_j$  shall be calculated as:

$$CPIH_j = CPIH_{Jun\ j-1}$$

$CPIH_0$  has the value 102.2.

5.8. For paragraph 28A.14, substitute—

*'For the purposes of paragraph 28A.6, the Headroom Allowance in Charge Restriction Region  $i$ , in Charge Restriction Period  $j$ , at Benchmark Annual Consumption Level  $k$ , for Benchmark Metering Arrangement  $l$ , shall be calculated as follows:*

$$H_{i,j,k} = HAP \times (WC_{j,k} + PC_{i,j,k} + OC_{j,k} + PPM_j + E_{i,j,k})$$

where:

$HAP$  means the Headroom Allowance Percentage, which is 1.4641%.

5.9. For paragraph 28A.16, substitute—:

*'Subject to paragraphs 28A.17 and 28A.18, at the same time as publishing the Benchmark Maximum Charges pursuant to paragraph 28A.15(b) the Authority*

will also publish the following values and, where relevant, identify the data sources used for:

- (a) the wholesale cost allowance calculated in accordance with paragraph 28AD.7;
- (b) the network cost allowance determined in accordance with paragraph 28AD.8;
- (c) the policy cost allowance, calculated in accordance with paragraph 28AD.9;
- (d) the value of CPIH<sub>j</sub> as described in paragraph 28A.13.'

5.10. In paragraph 28A.22, for 'no more than five Working Days after the start of each Charge Restriction Period' substitute 'no more than 30 calendar days after the start of each Charge Restriction Period (without prejudice to the Authority's existing powers to request such information from the licensee at an earlier date)'.

5.11. In paragraph 28A.25

1.11.1 omit the defined term '*Baseline Value*'.

1.11.2 for the defined term '*Benchmark Annual Consumption Level*' substitute—

**'Benchmark Annual Consumption Levels'** means the benchmark annual consumption levels nil kWh and m kWh, where m shall take the value 12,000 kWh;

5.12. Omit annexes 1 to 4.

[signed] KIP MEEK

*Group Chair*

Competition and Markets Authority