

By email: CDConsultations@ofgem.gov.uk
26 July 2023

Statutory Consultation – Involuntary PPM

Dear Lauren and Martin

Thank you for the opportunity to respond to this statutory consultation.

We welcome Ofgem's work to review consumer outcomes from previous involuntary prepayment meter installations and review the regulatory protections in this area for domestic customers. Poor practice by some suppliers has damaged confidence in the entire market. It's crucial that this gets addressed as we move into winter 2023/24.

Summary

- Ofgem has not recognised the advantages and possibilities of smart prepayment, and has omitted these from its proposals.
- The proposed Do Not Install category is incompatible with a supplier's duty to offer terms to all domestic customers in SLC 22.1 and offer a wide choice of payment methods in SLC 27.1.
- If Ofgem proceeds with 'Do Not Install' market segments, it risks stifling the ability of a supplier to develop innovative smart meter and technology-led solutions to support customers in those groups. The regulatory framework should encourage a supplier to develop systems which use advances in technology to support these groups of customers and their specific needs.
- The scope of the Safe and Reasonably Practicable Guidance, as drafted within paragraph 1.1, significantly exceeds the policy intent of the protections. The drafting unintentionally includes instances where the supplier offers a prepayment meter to a domestic customer, or where a customer requests prepayment as their chosen payment method.
- Age alone is not a defining factor in terms of which installation is safe and reasonably practicable. It is the presence or combination of other

vulnerability characteristics that determines which installations should or should not proceed.

- Electricity and gas prepayment meters have different criteria which prevent them from being safe and reasonably practicable. The proposals do not consider those differences.
- The independent assessment of cases is counter to the good governance of a supplier's end-to-end debt and warrant activity as the proposal creates a clear division in responsibility and accountability for decision making.
- The final licence conditions need to provide an exemption for involuntary prepayment meters installed where there is proven theft or meter tampering, as a supplier's responsibilities for detecting and preventing theft are very different to revenue collection. We have proposed how that can be easily accommodated within licence drafting while protecting Ofgem's policy intent.

Benefits of smart prepayment and advanced technology

We are disappointed Ofgem has not recognised the advantages of smart prepayment over legacy prepayment and that the proposals treat legacy prepayment and smart prepayment meters the same. While customers on legacy and smart prepayment meters must have equivalent protections, the protections must be proportionate to reflect the difference in the product and the associated risks. Ofgem's proposals do not do this. In failing to do so, Ofgem risks discouraging suppliers from innovating with smart prepay and preventing customers from benefiting from it.

We urge Ofgem to go further by announcing a clear end date and plan for the winding down of all legacy prepay infrastructure. Ofgem should also do all it can to enforce the "new and replace" licence obligation.

We propose that Ofgem takes time to allow suppliers to test involuntary smart prepayment installations under the Code to enable Ofgem to properly consider whether elements of the Code should be restricted to legacy prepayment and additional flexibility granted to a supplier's smart meter prepayment products.

Proposal to redefine High Risk as Do Not Install

Renaming the High Risk category to Do Not Install is inconsistent with current licence requirements. For instance, Including children under 5 or persons over 85 in the do not install category will require the supplier to refuse to offer prepayment as a payment method to any such customer, which is not compatible with existing SLC 27.1 (which includes a duty to offer prepayment), and SLC 22.2/SLC 22.3 (which, if the customer accepts those terms, obliges the supplier to supply under that contract).

Under the proposed drafting, if High Risk is Renamed Do Not Install, then a supplier cannot simultaneously comply with the existing licence requirements of SLC 22/SLC 27 and the Code.

We appreciate that in paragraph 2A.8 of the Statutory Consultation document Ofgem notes that the requirements of SLC 27.6 apply only when offering prepayment to customers in payment difficulty where it is safe and reasonably practical to do so. However, SLC 27.1 and SLC 22 are not limited in the same way and require that a licensee supplies through a prepayment meter within a reasonable period of time on request from any customer.

Exemption for proven theft and meter tampering

One area of particular concern is that Ofgem has not recognised that a supplier may look to install involuntary prepayment meters where there is proven theft or meter tampering. These situations can be discovered without a customer having proceeded through a typical debt and warrant timeline.

However, these situations are not mentioned at all in the statutory consultation, and we believe there needs to be an exemption applied to the licence conditions and Safe and Reasonably Practical Guidance where theft and meter tampering is found. We have proposed such an exemption in this response which does not change the policy position for involuntary prepayment installations in other circumstances or create loopholes to the Safe and Reasonably Practical Guidance.

Acknowledging theft and meter tampering as separate to a supplier's debt and revenue assurance activities is an important distinction that needs to be reflected, and we would be happy to discuss our proposed solution further with you.

Proposed scope of the Safe and Reasonably Practicable Guidance

As currently drafted, the combination of SLC 28.4 and paragraph 1.1 of the guidance leads to an unintended consequence that the guidance applies "*at any time*", which, according to the guidance, includes when "*a customer requests or supplier offers a Prepayment Meter (PPM) to a Domestic Customer*".

The combination of these two requirements, as highlighted below in blue, would therefore include any supplier-customer interaction where a prepayment meter or prepayment payment method is either offered for requested, including at any time where a supplier acts in accordance with in accordance with SLC 22.1 or SLC 27.1, or where those interactions are had through a third party representative of the supplier, such as a price comparison service.

Proposed drafting of SLC 28.4

28.4 The licensee must at all times have regard to the Prepayment Meter guidance, which includes the interpretation of “safe and reasonably practicable in all the circumstances of the case” which, following consultation, the Authority may issue, and may from time to time revise

Proposed paragraph 1.1 of the guidance:

1.1. This guidance applies where:

a) the Domestic Customer requests or a supplier offers a Prepayment Meter (PPM) to a Domestic Customer or is considering installing an Involuntary PPM

I welcome the clarification provided by Ofgem on the Supplier Involuntary PPM workshop on 20 July 2023 that the do not install restrictions only apply to involuntary prepayment meter installations, and not where a customer consents to pay in advance via prepayment.

The inclusion of offering a prepayment meter within the Code is important, as it ensures that the Code applies where a customer consents to have a prepayment meter installed as part of the supplier's debt and revenue assurance activities. Therefore, my proposal would be to amend the drafting of SLC 28.4 to clarify that the guidance is applied where the supplier is considering installing an involuntary prepayment meter. This will correct the unintended consequence of SLC 28.4 of having to have regard to the guidance at times outside of pursuing an involuntary prepayment meter installation.

I have also included a specific exclusion for instances where an involuntary prepayment meter installation occurs on discovery of proven theft or meter tampering. These situations can be found outside of a supplier's debt collection and warrant processes, and it would be impossible for a supplier to comply with each requirement, for instance for there to be 10 attempts to engage with the customer.

Proposed redrafting (amendments shown in red):

28.4 Where, other than in response to proven theft or meter tampering, the licensee is considering installing an involuntary Prepayment Meter, it must at all times have regard to the Prepayment Meter guidance, which includes the interpretation of “safe and reasonably practicable in all the circumstances of the case” which, following consultation, the Authority may issue, and may from time to time revise.

I would be happy to discuss this further with you. If this feedback is sufficient, I look forward to receiving updated licence drafting to clarify this point.

Independent assessment of each installation

The requirement for an independent assessment undermines good governance practices, as the responsibility and accountability for a final go/no go decision is by design removed from a supplier's operational debt team and handed to someone independent of that process. It also enables a supplier to outsource this function, potentially including outsourcing it to the same third party which is executing the warrant visit. As drafted, it is difficult to see how this requirement would prevent the alleged practices which were reported in The Times where there were apparent failures of controls, potentially due to similar divisions of responsibility and accountability during the process.

I have included responses to the specific questions within the Statutory Consultation in Appendix 1.

Please let me know if you would like to discuss any aspect of this response further.

Kevin Hammond
Head of Regulatory Compliance
Octopus Energy

Appendix A: Responses to Consultation Questions

1. Do you agree with our proposals to integrate the Code into the supply licences?

We are concerned that the current Code, which was pulled together at speed, is untested on any involuntary prepayment meter installations.

As Ofgem is aware, the Code was established quickly and in response to the intense media scrutiny following the investigation by The Times earlier this year. The provisions of the Code are currently untested and writing them into the licences makes any future improvements subject to the usual statutory consultation process.

Our preference would be to have an opportunity to have a period where suppliers, in collaboration with Ofgem, can develop the Code through experience and review. It is quicker and easier for suppliers to have multi-party discussions about best practice through Energy UK and amend a code of practice, than seek to modify licence conditions through the regulator. It is notable that previous industry codes of practice, such as the Billing Code and Debt and Disconnection Safety Net, worked this way and constantly sought to improve customer outcomes.

2. Do you agree with our approach to integrating the relevant parts of the Code into the Safe and Reasonably Practicable guidance?

Yes, we support bringing the requirements together into a single document.

3. Can you provide evidence on whether we should retain the 'over 85s' in the 'do not install' category?

We do not support this for the involuntary installation of smart prepayment meters as age on its own is not the defining factor when considering whether a smart prepayment meter is safe and reasonably practicable. Age is an important consideration, but needs to be considered alongside the customer's wider characteristics and the overall situation, including how the supplier's systems and processes enable the safe and practicable use of the smart prepayment meter.

Renaming the High Risk category to Do Not Install is inconsistent with current licence requirements. We have wider concerns with the creation of Do Not Install customer groups, including how this is compatible with a supplier's duty to offer terms in SLC 22 and a wide choice of payment methods to all customers in SLC 27.

4. Can you provide evidence on whether we should include children under the age of 5 in the 'do not install' category?

We do not support this for the involuntary installation of smart prepayment meters as age on its own is not the defining factor when considering whether a prepayment meter is safe and reasonably practicable.

Ofgem has not defined a case for including instances where there are children under the age of 5 within the High Risk/Do Not Install category. Our experience of serving our wider base of prepayment meter customers demonstrates this can be safe and practical. This is particularly the case in relation to smart prepayment meters where the technology enables suppliers to develop deep monitoring and extra care services which basically eliminate the risk of harm to individuals in vulnerable situations. With these services, customers can get support from suppliers within minutes if they disconnect, be prevented from disconnecting if necessary or in certain circumstances or receive additional support if their usage/payment patterns suggest they need it.

If Ofgem acts to all but ban suppliers from offering prepayment within this segment of the domestic market, this runs the risk of stifling smart prepay innovation and undermining any incentive on suppliers to develop these beneficial products.

Renaming the High Risk category to Do Not Install is inconsistent with current licence requirements. We have wider concerns with the creation of Do Not Install customer groups, including how this is compatible with a supplier's duty to offer terms in SLC 22 and a wide choice of payment methods to all customers in SLC 27.

5. Can you provide further evidence of the potential costs and benefits of our proposals?

We note that Ofgem could potentially have reduced market-wide compliance costs by engaging in targeted compliance activity earlier in the winter, rather than waiting for a press discovery of bad behaviour and then engaging in market-wide compliance activity. Overall, we would like to see Ofgem rapidly evolve how it monitors compliance in the retail market as we believe this would be more cost effective and drive better customer outcomes. We would like to see Ofgem move to a risk-based compliance approach focused on consumer outcomes and only doing deep dives into high risk activity.

6. We are consulting separately on an increased Additional Support Credit allowance to mitigate any impacts on bad debt. Do you have any views

on how we can ensure suppliers spend this ASC allowance to help PPM consumers stay on supply?

We do not support the proposals for a one-off ASC uplift to the cap because it introduces a very significant moral hazard by reducing important incentives on suppliers to:

1. Help customers manage their debt and avoid prepay in the first place;
2. Reduce the cost of serving prepay customers; and
3. Work hard to recover repayable debt afforded to customers.

We will provide further detail on our concerns about this proposal in response to the ASC consultation.

Octopus Energy

July 2023