

Decision

Decision on Market Stabilisation Charge licence condition

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In a period of high and volatile prices, a sharp fall in wholesale prices can pose a risk to market stability. Responsible suppliers must buy energy ahead on behalf of their price cap customers. If prices fall suddenly and customers leave the price cap in large numbers, this can result in unavoidable losses.

During the previous gas crisis we implemented a Market Stabilisation Charge (MSC) as a mitigation. This was a payment from a supplier who gained a customer to a supplier who lost a customer, to partially mitigate losses on energy already purchased.

After considering responses to our consultation, we have decided to reintroduce the MSC licence condition. This provides the option of implementing an MSC at pace if required at a later point, and deactivating it without letting it lapse. We consider that having this licence condition available helps to protect consumers' interests in a period of high and volatile prices, by supporting market stability and investability.

This is not a decision to activate the MSC. If we were minded to activate the MSC at a later point in time, this would be the subject of a future consultation and decision.

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Executive summary

Wholesale gas and electricity prices have increased significantly since the end of February 2026 due to the conflict in the Middle East. Our first priorities during any period of price volatility are to protect consumers including by taking any necessary steps to support market stability. We are closely monitoring the events and their impact on the market, but the future trajectory of wholesale prices is still highly uncertain. In that context it is important that we draw from our experience of the last energy crisis and ensure we are prepared for a range of scenarios.

The default tariff cap (the ‘Cap’) acts as an important protection for consumers – ensuring prices are fair and based on underlying costs. While it needs to reflect the international wholesale prices that suppliers face in buying energy for consumers, it does offer consumers some stability during times of volatility by preventing retail prices from changing more frequently, as a result of short-term wholesale volatility.

In ensuring suppliers are resilient and able to supply consumers reliably, it is also important that they are well hedged. This means that suppliers have purchased, ahead of time, the energy that their customers are likely to use. If a customer is on the Cap, then this means buying energy for the quarter ahead.

Failure to do so would mean that, if prices were to rise, then the supplier would be forced to sell energy to customers at less than the cost at which they buy it. This would lead to significant losses, which could in turn lead to supplier failure, the costs of which fall on all consumers through the Supplier of Last Resort process. It is therefore in consumers’ interests that suppliers are responsibly hedged.

Consumers however, are free to leave the Cap at any time. This means that if prices suddenly fall, consumers will have an incentive to leave the Cap and move to fixed tariffs priced below the Cap. This is generally a good thing for consumers, but can create material risks for the market in times of significant volatility, because suppliers who had already bought energy for these customers would have to sell this back at a loss.

If the scale of switching was sufficiently large, then it could result in serious market stability concerns. As described above, a resilient supply market is in the interests of consumers. We would therefore want to mitigate risks to resilience in a falling wholesale market.

In other markets, firms would have more options to manage risks in volatile conditions. A firm could choose to, for example: withdraw from accepting new customers, adjust its pricing, or set exit fees. Gas and electricity supply are essential services and so the regulatory framework places limitations on the options available to suppliers. While these requirements help to protect consumers, they may leave suppliers with fewer options to manage their risks in certain market conditions. It may therefore be necessary to put in place other interventions to help manage risks to market stability.

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During the previous gas crisis we implemented a Market Stabilisation Charge (MSC). This was a mechanism where a supplier gaining a customer in a sharply falling wholesale market made a payment to the supplier losing that customer, to partially mitigate the loss on the energy that the losing supplier would have bought. We allowed this temporary licence condition to lapse in 2024. Such a mechanism ensured that suppliers continued to have an incentive to hedge responsibly, even at high prices, and reduced the risk of socialised costs across all consumers. However, it did mean that fixed tariffs on offer during that period were priced slightly higher than they otherwise would have been.

We are considering if such a mechanism would be appropriate today in light of current market circumstances. We consider that it would be prudent to have the option of reinstating the MSC at pace if required. Following consideration of stakeholder responses, we have decided to implement an MSC licence condition as a sensible first step to provide optionality at pace.

We have not made any changes to the proposed licence drafting as provided in the consultation.

We recognise that activating an MSC would be a significant intervention. To be clear, this decision is not a process for deciding whether or not to activate the MSC. Were we minded to activate, we would consult separately on the case for doing so and the guidance and parameters to be applied. Such a consultation would not be subject to the same statutory timing requirements or standstill period – but we would endeavour to ensure suitable time for stakeholder input and consideration, while maintaining responsiveness to market circumstances.

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1. Introduction

We briefly introduce this decision and the process we have followed.

Purpose of this decision

- 1.1 This is a decision on reinstating the Market Stabilisation Charge (MSC) licence condition, in response to current wholesale market conditions. The MSC is a measure to help manage the risks to market stability from sharply falling wholesale prices. It involves a payment from a supplier who gains a customer to a supplier who loses that customer, to partially mitigate losses on wholesale energy that the losing supplier had already bought.
- 1.2 This decision does not mean that the MSC would take effect automatically. Rather, we may use the MSC as a tool if required. This would mean activating it in accordance with the licence condition as required.

Context and related publications

- 1.3 We previously implemented an MSC in 2022. This was a temporary licence condition. We implemented this as part of a package alongside the Ban on Acquisition-only Tariffs (BAT), which remains in place. These measures were intended to address the risk of sharply falling prices, in a context of exceptional price volatility.
- 1.4 We extended the MSC in 2023, and then allowed the licence condition to lapse in March 2024.
- 1.5 Key publications:
 - [Decision on short-term interventions to address risks to consumers from market volatility](#) (2022)
 - [Decision to extend the MSC and the BAT beyond 31 March 2023](#) (2023)
 - [Decision on technical changes to the Market Stabilisation Charge \(MSC\) to extend its operation beyond 31 March 2023](#) (2023)
 - [Future of Market Stabilisation Charge after March 2024](#) (2023)
 - [MSC guidance version 4](#) (2023)
 - [Market Stabilisation Charge licence condition](#) (2026)

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Overview

- 1.6 Chapter 2 provides the rationale for reintroducing an MSC licence condition. We explain the risk that an MSC seeks to address, and how an MSC would address this.
- 1.7 Chapter 3 sets out our policy intent for the licence modifications and considers stakeholder feedback on the licence drafting.
- 1.8 Chapter 4 discusses our intended process for implementing an MSC. This covers the MSC guidance and parameters, as well as the process for considering whether to activate the MSC.

Decision-making stages

Stage 1 Consultation open: 17 April 2026

Stage 2 Consultation closes (awaiting decision). Deadline for responses: 15 May 2026

Stage 3 Responses reviewed and published: 27 May 2026

Stage 4 Consultation outcome (decision): 27 May 2026

Consultation responses

- 1.9 We received 11 responses to the consultation. We received seven responses from suppliers, two from price comparison websites (PCWs) and two from industry bodies.
- 1.10 We have published non-confidential responses alongside this decision.

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2. Rationale for an MSC

We provide the rationale for reintroducing an MSC licence condition. We explain the risk that an MSC seeks to address, and how an MSC would mitigate this risk.

Background

Purpose of this chapter

- 2.1 In this chapter, we set out the rationale for reinstating an MSC licence condition. The purpose of doing this is to explain why an MSC is an option that we reasonably want to have available.
- 2.2 We consider stakeholder feedback in this context. We focus on comments for and against introducing an MSC licence condition.
- 2.3 As this document does not provide a decision on whether to activate the MSC, we do not respond to all comments about the strength of the case for an MSC. We will consider such feedback as part of any decisions on whether and how we propose to activate the MSC.

What risk does an MSC mitigate?

- 2.4 Future changes in wholesale prices are uncertain given current market conditions. However, one potential scenario is a sharp fall in wholesale prices. While this would generally be positive for consumers, it could pose risks to market stability and investability.
- 2.5 When wholesale prices rise steeply, there is a risk that prices could later fall sharply. For example, this occurred during the 2022 gas crisis.
- 2.6 Fixed tariffs available in the market generally reflect prevailing wholesale market prices. If wholesale prices fall, fixed tariff prices would fall. Suppliers buy energy for their standard variable tariffs (SVTs) gradually over time (as under the default tariff cap (the 'Cap') indexation methodology). Just as this can result in the Cap increasing more slowly than fixed tariffs while wholesale prices are rising, it can also result in the Cap falling more slowly than fixed tariffs when wholesale prices are falling. A sharp fall in wholesale prices would therefore lead to a significant gap between fixed tariff and SVT prices.
- 2.7 Such a gap would be likely to encourage customers to switch to fixed tariffs. This would particularly apply to any engaged customers who had moved to SVTs during an earlier phase of the price shock (for example if there had been a period when the SVT was the cheapest tariff available in the market).
- 2.8 If a supplier's SVT customer base reduced unexpectedly, the supplier would need to sell back the energy that it had already purchased for the customers it had lost.

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The supplier would make a loss on these sales, given that wholesale prices had fallen.

- 2.9 Forecasting demand is a core competency for suppliers. However, this can be challenging when prices are extremely volatile. This creates a risk of suppliers making losses for reasons which could be seen as beyond their reasonable control.
- 2.10 We are not required to, and do not, protect suppliers against any and all losses. However, in exceptional circumstances, risks to market stability and investability might mean that some action was desirable from the perspective of consumers. In this situation, there would be a question about how best to manage the risks to market stability and investability. This includes the question of which consumers should bear the costs of any mitigating action.

What is an MSC?

- 2.11 We implemented an MSC in 2022, during the last period of high gas prices. The MSC is no longer in place, as we allowed the temporary licence condition to lapse.
- 2.12 An MSC involves a payment from a supplier who gains a customer to a supplier who loses a customer, in circumstances where wholesale prices fall significantly. This compensates the losing supplier for part (but not all) of the losses that they would have incurred on selling back energy that they had already purchased.

Consultation questions

- 2.13 In the consultation, we asked the following questions:

Questions

- Q1. Do you agree that an MSC could help to manage the impact of falling wholesale prices?
- Q2. Do you have any comments on the consumer impacts of an MSC?

Decision

- 2.14 We have decided that an MSC is an option that we want to have available for swift implementation if required. We have therefore decided to reintroduce an MSC licence condition.

Rationale

- 2.15 We set out below why we consider that an MSC is a measure that we might reasonably want to introduce. Given that any introduction would be in response to volatile market circumstances, we would want to be able to respond quickly to mitigate the risk of harm to consumer interests. Having the MSC licence condition

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in place will allow us to act more quickly than if we had to carry out a licence modification, on statutory timescales, at the point we wanted to use the MSC.

- 2.16 The MSC, if activated, would mitigate some of the losses that suppliers could experience from falling wholesale prices. We could activate the MSC if we thought it was to the ultimate benefit of consumers by reducing risks to the financial stability of suppliers and supporting the investability of the market.
- 2.17 By mitigating the extent of losses under falling wholesale prices, an MSC can mitigate risks to suppliers' financial stability. This can be in the interests of consumers given that they can end up bearing some of the costs of supplier failure (through the Supplier of Last Resort (SoLR) levy).
- 2.18 In the longer term, providing confidence to suppliers that we would take a reasonable approach to managing risks in extreme market circumstances could also contribute to making the supply market investable, in line with our [Markets Vision and Strategy](#). Investment and innovation can ultimately generate benefits for consumers, such as improved customer service.
- 2.19 By mitigating risks under falling wholesale prices, a MSC could also provide suppliers with more confidence to hedge. To the extent that suppliers hedge a greater proportion of their expected demand (than in the absence of an MSC), they would be less exposed to risks if wholesale prices increased further.
- 2.20 We recognise that an MSC reduces the savings available for customers who switch supplier. This could be seen as delaying customers from accessing some of the benefits of a wholesale price reduction. However, the design of the MSC ensures that there would still be significant gains from switching to a fixed tariff in a falling market.

Stakeholder responses and considerations

Rationale for an MSC and consumer impacts

Overall comments

- 2.21 Three suppliers provided support for the rationale for an MSC. One of these suppliers said that the MSC could help to protect consumers from market instability when risks were materially beyond those that suppliers were expected to manage through normal market allowances.
- 2.22 Two suppliers agreed that the MSC is a proven intervention. One supplier noted that in other markets firms would be able to use exit fees for customers moving off an SVT, but that this was not an option here.
- 2.23 One supplier said that the risks of an MSC to consumer benefits from switching could be mitigated by the design. Another supplier said that the MSC should be used proportionately.

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- 2.24 One industry body agreed that the MSC could manage the impact of rapidly changing wholesale prices, but said that the benefits needed to be balanced against the impacts on switching savings, competitive pressure and consumer engagement. Similarly, one supplier said that the MSC should be reserved for extreme market conditions where the benefits of implementing an MSC outweighed the adverse impacts.
- 2.25 One supplier accepted the case for an MSC in principle, but said that it was not required in the current market.
- 2.26 Two PCWs raised concerns about the consumer impacts of an MSC. One PCW said that an MSC could only have a role in genuinely extreme market conditions and said that it should not be necessary given financial resilience work. One PCW said that there was not a credible case for introducing a MSC licence condition, given the changes introduced since 2022 (we discuss changes since the previous MSC in the subsequent section on ‘Changes since previous MSC’).
- 2.27 While we recognise that these comments show a range of views on the rationale for reintroducing an MSC licence condition, we do not consider that they change the rationale that we consulted on. We respond to specific pieces of feedback below, focussing in particular on points that did not agree with our rationale.

Impact on hedging and risk management

- 2.28 One supplier said that the MSC could provide suppliers with confidence for sustainable hedging strategies. However, one industry body, while recognising this point, noted that it would depend on suppliers having sufficient confidence that the MSC would be activated. We agree that the impact of an MSC on suppliers’ hedging strategies depends on their expectations about when the MSC would be active.
- 2.29 One supplier said that an MSC would reduce the incentives for suppliers to build resilience through their capitalisation and hedging. We do not agree that there is a concern about discouraging prudent behaviour (in other words a moral hazard effect), as we have financial resilience requirements in place. To the contrary, we consider that in some circumstances an MSC would improve both incentives to hedge responsibly (through partially insuring those hedges) and investors’ willingness to hold capital in businesses (through reducing the risks to that capital).

Impact on investability

- 2.30 One PCW disagreed with our consideration that a MSC could support investability. Rather, they said that an MSC would be a barrier to entry and growth, given that new and growing suppliers would be likely to pay an MSC. They said that the potential implementation of an MSC would make investors less likely to put capital into such firms.

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2.31 We recognise that entrants and growing suppliers may see a falling wholesale market as an opportunity for growth. Competitive pressure can help to deliver benefits for consumers. However, in extreme wholesale market circumstances, we continue to consider there is a question about whether consumers' interests would be best served by protecting market stability, rather than by encouraging changes in market shares which were based on temporary market circumstances. Switching in these circumstances would not represent a supplier outcompeting others because it had a better underlying product. We therefore consider that the overall impact of an MSC on market investability could be positive, even if individual suppliers may have different preferences. When we consider investability we should consider the investability of the market overall and not just one specific constituent of the market.

Impact on switching

2.32 One PCW said that switching savings were important as the main way for consumers to control their energy bills and to discipline supplier pricing behaviour. Another PCW said that switching volumes fell sharply in 2022 when the MSC was active.

2.33 We agree that gains from switching are an important incentive for customers to engage in the market. Consumers may also engage for other reasons, such as to move to a supplier with new products or better service. However, we must consider the overall interests of consumers, including market stability and investability. The MSC (as previously designed) would ensure that consumers would still see significant gains from switching when prices fall.

2.34 Switching was lower in 2022 than historically. However, this reflected periods where the Cap was cheaper than fixed tariffs, limiting incentives to switch. Furthermore, the MSC was only triggered for a short period in late 2022, meaning that the MSC could have had no impact on switching for most of 2022. We therefore do not consider that the decline in switching observed in 2022 was a result of the MSC being active.

2.35 One PCW said that a measure funded by consumers trying to reduce their bills "actively punishes the kind of behaviour the Government and regulator should incentivise during a price shock". Another PCW said that we should be seeking to encourage consumers to engage.

2.36 While we recognise that individual consumers would benefit from switching, we must also consider the aggregate impact on consumers. Switching during a sharp wholesale price fall may lead to negative impacts on consumers' interests in resilience and investability. This means that switching can create negative externalities on other consumers. We therefore need to balance interests across consumers.

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- 2.37 One PCW said that dividing customers into engaged and disengaged customers is outdated, and that consumers who switch are not a small group. We recognise that consumers will show different levels of engagement. We also recognise that the proportion of customers engaging by selecting a fixed tariff had returned to around pre-crisis levels ([State of the Market: energy retail highlights January 2026](#), page 9). However, it remains the case that the benefits from switching in a falling wholesale market accrue to customers who actually switch, and that any negative consequences for market stability and investability would be distributed more widely. We therefore continue to consider that potential distributional consequences across consumers are relevant.
- 2.38 One supplier said that clear communication around an MSC was important to maintain consumer trust. Relatedly, one PCW said that a loss of confidence in switching could have a persistent effect, even after a crisis ended.
- 2.39 We agree that, if we activated the MSC, we would need to consider our communications. However, a consumer would not need to directly consider the MSC when making switching decisions, as any MSC costs would be factored into fixed tariffs and therefore the savings available. Given that substantial savings would remain available when the MSC was active (under the previous design), we do not consider that there would be a substantial deterrent effect on switching. We also note that the proportion of customers on fixed tariffs returned to pre-crisis levels, which does not suggest that the previous MSC had a persistent impact on switching.

Impact on competition

- 2.40 One supplier said that, in addition to avoiding harm from unplanned exits, an MSC could also avoid consolidation, barriers to investment and impaired service.
- 2.41 One supplier said that the MSC should not be treated as a normal feature of the retail market given the impacts on competitive dynamics. It therefore said that it should only be activated for material risks to market stability which cannot be addressed by other means. An industry body made a similar comment. This industry body also said that weakening the price signal to consumers could affect both retail competition and the transition to a low carbon system. One PCW said that the MSC would dampen competitive pressure, and that the impact would be greater given the coexistence of the BAT.
- 2.42 We agree that the MSC would have some impact on how suppliers compete for customers. However, provided that the impact on the number of customers switching is not large, at this stage we would not expect material negative impacts on the process of competition. We will consider the circumstances in which an MSC might be appropriate further should we consider activation. As set out in Chapter 3, the licence condition also allows for deactivation. We would therefore be able to respond as appropriate, with an opportunity for stakeholder input through consultation.

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2.43 We recognise that the BAT has impacts on how the market operates. The BAT has been the subject of several previous consultations and decisions. For the purpose of this decision, we therefore treat the BAT as an existing feature of the regulatory framework.

Changes since previous MSC

Policy changes

- 2.44 In the consultation (paragraph 2.13), we recognised that the current circumstances were different to when we previously implemented an MSC, including due to the implementation of a quarterly Cap and financial resilience requirements.
- 2.45 Four stakeholders referred to these and other changes as factors affecting the need or role for an MSC.
- 2.46 As an overall position, we recognise that the policy context has changed over time, but do not consider that this has eliminated the underlying issue that the MSC was introduced to respond to. Policy changes therefore may conceivably have an impact when we consider whether MSC activation is required, but do not, in our view, remove the case for having in place an MSC licence condition which can be activated. We respond to feedback on particular policy developments below.
- 2.47 One supplier said that the financial resilience regime improves suppliers' ability to absorb losses without further intervention. Similarly, one PCW said that the Enhanced Financial Responsibility Principle and the Capital Target "place the obligation to absorb hedging losses on supplier capital". Another PCW said that resilience requirements should avoid unsustainable pricing. However, one supplier said that there were several suppliers not meeting the capital adequacy requirements.
- 2.48 We have developed a financial resilience regime to protect consumers. This financial resilience regime helps to mitigate the risks to consumers from market instability, but does not remove them. We therefore do not consider that the financial resilience regime removes the case for an MSC option. The ability to activate and deactivate the licence condition allows us to react to market circumstances and consider the case for an MSC, taking into account the potential impacts of an MSC. We also agree that it is relevant to take into account the actual financial position of the market when considering whether further risk mitigation through an MSC may be appropriate in some circumstances. Moreover, costs to suppliers may still pose risks to investability, even where the financial resilience regime mitigates the risk of supplier failure.
- 2.49 We further note that the existence of costs to suppliers in a falling wholesale price scenario does not depend on some suppliers pricing unsustainably. If wholesale

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prices fall sufficiently, this can lead to significant savings being available against the cap, even if all suppliers priced their fixed tariffs sustainably.

- 2.50 One PCW said that the introduction of a backwardation allowance within the Cap was a relevant development to support hedging. This PCW also said that our last ex post review of wholesale costs ([February 2024 decision](#)) concluded that wholesale costs between October 2022 and September 2023 did not systematically differ from the Cap allowances.
- 2.51 We agree that the introduction of a backwardation allowance helps to support the recovery of efficient costs in general, but we do not agree that it is relevant to the risk that the MSC is intended to manage. In addition, the February 2024 wholesale decision was specific to the circumstances over the period under consideration. We do not consider that this proves that suppliers will recover their efficient wholesale costs in future situations.
- 2.52 One PCW said that the introduction of a [Supplier of Last Resort \(SoLR\) levy offset](#) was a measure which reduces the risks of consumers bearing mutualised costs from supplier failure. We agree that the SoLR levy offset is part of our work to strengthen financial resilience. However, while our SoLR levy offset decision (paragraph 2.13) indicated that the SoLR levy offset would provide a route to recover some costs from the failed supplier, we noted that the amount that would be recovered in future supplier failures is uncertain and would depend on the circumstances. We therefore do not consider that the SoLR levy offset eliminates the risk of consumers bearing costs in the event of supplier failure.
- 2.53 One supplier referred to the continued existence of the BAT. Given that the BAT was in place alongside the previous MSC, this is not a point of difference from the policy context for the previous MSC.
- 2.54 As an overarching point, one PCW said that, as we had removed the MSC previously on the basis of the developing post-crisis framework, we would now need to explain why we considered this framework insufficient. We consider that the change in wholesale market conditions is a sufficient explanation for why we consider that a MSC could now have value. However, we agree that that careful consideration of these conditions is required before any decision regarding activation.
- 2.55 This PCW also said that the post-crisis framework had been tested when Rebel Energy failed in 2025. We do not consider that the failure of this small supplier necessarily demonstrates what would happen under more widespread challenges to market stability. (For completeness, we note that Tomato Energy also failed in 2025, but this does not alter our conclusion on this point).

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Market conditions

- 2.56 We also recognised in the consultation (paragraph 2.13) that the extent of the price shock at this point was smaller than in 2022. One PCW and one supplier highlighted this point.
- 2.57 We have not reached a view on whether we would activate the MSC at current market prices. However, market prices can change quickly, so we consider that there is value in being able to respond quickly if required.
- 2.58 One supplier said that many suppliers had weak levels of financial resilience when the original MSC was introduced, and one PCW described the limitations of financial resilience requirements at that point.
- 2.59 We agree that the financial situation of suppliers was worse at the point when we implemented the original MSC than it is today. We considered the situation in the context of the financial resilience regime above.
- 2.60 One supplier noted that the number of customers on, or moving onto, SVTs was higher in 2022. We agree that the number of customers on SVTs is a relevant factor for suppliers' potential losses under a wholesale price fall. However, the duration of the current wholesale market volatility is uncertain, and therefore the proportion of customers on SVTs could change over time.
- 2.61 One supplier said that the context for an MSC had been exacerbated by the previous crisis, referring to the scale of consumer debt. We agree that debt is a factor which affects suppliers' financial situations, and therefore their potential resilience to a shock.
- 2.62 To conclude, we agree that there are a number of relevant considerations for any decision on whether to activate the MSC. However, the decision at this stage is whether to reintroduce an MSC licence condition, and we do not consider that market conditions require a change from our proposal.

Alternative options

- 2.63 In the consultation (paragraph 2.19), we said that, compared to alternative options to manage risks from falling wholesale prices like an ex post adjustment through the Cap, an MSC has the advantage that it is paid by customers who switch supplier, rather than by the SVT customer base. This is more targeted and avoids distributional effects on consumers who do not engage.
- 2.64 One supplier agreed with this rationale. Another supplier also considered that the MSC was preferable to ex post adjustments through the cap.
- 2.65 One PCW said that, in the event of a major wholesale price event that would exceed the capacity of existing resilience measures, there would be alternative tools available to an MSC. It said that these would be "upstream strengthening of the capital framework, one-off cap interventions, and government action".

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- 2.66 We do not seek to express a view on the full set of measures which might be required in such circumstances. However, we consider that an MSC could contribute to market stability, even if this was in conjunction with other measures. The alternatives mentioned also have potential disadvantages. For example, it may be hard to raise additional capital after a shock has occurred, and one-off cap interventions could prove more costly and affect more consumers.
- 2.67 One supplier said that we should take actions to reduce the likelihood that the MSC needed to be activated. It called for robust application of the Financial Resilience and Controls regime, compliance action on the BAT and win-back activity, and clarity to suppliers that they would still be expected to manage risks prudently.
- 2.68 We agree that suppliers remain responsible for managing their risks prudently. We will continue to monitor and implement our financial resilience regime and other regulations.

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3. Licence drafting

We set out our decision on the licence modifications.

Background

3.1 Although not currently active, the previous MSC licence condition (standard condition 24A of the [gas and electricity supply licences](#)) remains as part of the licence text. This means that we did not propose to draft a full licence condition, but rather amend the text of standard condition 24A. We also did not propose to change the structure of the MSC licence condition. The consultation therefore focused on amending the existing text of the provision.

Consultation question

3.2 In the consultation, we asked the following question:

Question

Q3. Do you agree with our proposed licence drafting?

Decision

3.3 We have decided to maintain our licence drafting as proposed. We have published the modification notices alongside this decision.

Rationale

3.4 We consider that the drafting delivers our policy intent, which has two parts.

3.5 First, we want the flexibility to decide whether and when to activate the MSC. This is instead of the MSC taking effect automatically once the licence modification comes into force. This flexibility is to allow us to consider wholesale market conditions nearer the time of taking the decision to activate the MSC. We consider that this is necessary in fast-moving circumstances.

3.6 On a practical level, flexibility over the implementation date will also allow us to ensure that the MSC was only activated once the relevant arrangements are in place under the Retail Energy Code (REC) to transfer money between suppliers.

3.7 Second, we want to provide future flexibility to reactivate the MSC without a further licence modification. This is to provide optionality to respond quickly to future wholesale market shocks.

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Stakeholder responses and considerations

Policy intent

- 3.8 Seven stakeholders gave support for the proposal to reintroduce the MSC. Two PCWs and one supplier were opposed to the proposal for an MSC licence condition. The supplier said that it was not appropriate to have a dormant mechanism in the licence, saying that this created regulatory complexity. One industry body did not express a view.
- 3.9 We covered general views on the MSC in Chapter 2. We continue to consider that an MSC is a measure that we would like to have available at pace to support the interests of consumers. Our policy intent therefore remains unchanged.
- 3.10 We consider that having a licence provision which can be activated when required is an appropriate way of responding to market developments in this case. We consider that it is appropriate for us as a prudent regulator to have measures in place which can take effect quickly when circumstances warrant action.

Licence drafting

General drafting comments

- 3.11 Several suppliers expressed general support for the licence drafting or agreed that it achieved the policy intent.

Sunset clause

- 3.12 We considered including a date on which the proposed licence condition would lapse (a 'sunset clause'). We previously included this in 2022. We did not propose to include a sunset clause as part of the licence modification, because if activated, the MSC would not remain in force permanently as it can be deactivated (following consultation) and to maintain flexibility in utilising an MSC in the future without the need for licence modification.
- 3.13 One supplier supported removing the sunset clause, while two PCWs disagreed. One of the PCWs said that a sunset clause would ensure an opportunity for consultation ahead of any extension, and would provide a period of predictability to stakeholders. They therefore considered that we should include a sunset clause of no more than 24 months. The other PCW said that the lack of a time limit for the MSC raised regulatory certainty concerns.
- 3.14 We have decided to maintain our consultation position and not include a sunset clause. In line with the overall purpose of this consultation, we consider that it is necessary to have the flexibility to implement an MSC at pace if required, in response to market events. A sunset clause would limit the ongoing availability of this tool.

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3.15 We recognise that sunset clauses can provide an opportunity to reconsider the need for a regulatory measure and for stakeholders to comment. However, the licence condition includes the ability to deactivate the MSC following consultation. We therefore consider that the licence condition provides suitable opportunities to comment on the question of whether the MSC should be active. If we included a sunset clause as well, we would need to hold additional consultations if we wanted to extend the licence condition. Such consultation points could create uncertainty about the future regulatory framework, so would not necessarily improve predictability or regulatory certainty. While sunset clauses can have a role, there is no general principle that regulatory measures must have a sunset clause.

Notice period

3.16 Two stakeholders said that we should include a notice period for the time between an activation decision and the MSC becoming active. One supplier also made a similar comment, but said that we could provide this clarity through the decision document or guidance. They considered that a minimum 24 hour period would be required, unless there was a clear rationale otherwise. An industry body also commented on the desirability of a notice period.

3.17 The main reasons given for a notice period were that suppliers would need time to reflect MSC activation in their commercial decisions, third party intermediaries would need to manage changes in tariff offerings and industry bodies would need to activate the MSC arrangements.

3.18 We recognise that some degree of notice would be required. However, as the MSC is a measure to deal with urgent market circumstances, we do not want to specify an excessive notice period through the licence. We will be in a better position to consider an appropriate minimum notice period after any subsequent consultations. The appropriate notice period in a particular situation may also depend on the specific circumstances at the time. However, we accept that any notice period should consider the time required for re-pricing.

Activation criteria

3.19 One PCW said that the licence drafting should “cross-refer to a published set of activation criteria, with a duty on Ofgem to have regard to those criteria when making any activation decision”.

3.20 We have decided not to adopt this suggestion. We do not consider that this is a necessary part of the licence drafting. Any consultation proposing to activate the MSC would need to provide sufficient information on our rationale. Chapter 4 sets out our consideration of comments about when we should engage stakeholders.

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Consultation

- 3.21 One PCW said that the same principles of consultation should apply to the initial activation as proposed for the deactivation and reactivation in paragraph 24A.3 of the proposed licence condition.
- 3.22 As set out in the consultation (paragraph 3.14), we have said that we would consult if we were minded to activate the MSC. We reiterate this commitment, and consider that this provides sufficient clarity to stakeholders, without a change to the licence condition.

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4. Process

We discuss our process for implementing an MSC. This covers the MSC guidance and parameters, as well as the process for considering whether to activate the MSC.

Introduction

4.1 This chapter covers the wider scope of future work on the MSC, beyond the scope of this decision. We therefore do not set out decisions in this chapter. We also do not respond exhaustively to stakeholder feedback, although we are grateful to stakeholders for providing initial comments on these areas. At this stage, we focus in particular on feedback in relation to our process, rather than the substantive question of whether to activate the MSC.

Consultation question

4.2 In the consultation, we asked the following question:

Question

Q4. Do you have any comments on our intended process?

MSC guidance and parameters

Context

4.3 SLC 24A.2 provides for MSC guidance, stating that “following consultation, the Authority may issue and may from time-to-time revise”. We published [the latest version of the MSC guidance](#) on 20 March 2023.

Next steps

4.4 We will consult on the MSC guidance before any decision to activate the MSC.

4.5 As part of the MSC guidance, we specify the MSC parameters. These determine the scale of the price fall which triggers the MSC, and the proportion of hedging losses beyond this point which feed into the value of the MSC. We will consult on these parameters through any guidance consultation.

Stakeholder responses and considerations

General feedback

4.6 One supplier supported our proposed process, and said that consultations on the design parameters would be important.

4.7 Four stakeholders said that we should consult promptly on the guidance and parameters, so that there was as much time as possible to consider these. One supplier said that having clarity on the circumstances in which the MSC would be

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triggered would support hedging decisions. They further said that we could not prejudge what parameters we would decide on.

- 4.8 We recognise the interest from stakeholders in this area, and appreciate that stakeholders would like clarity on the design of the MSC. We will consider how best to engage stakeholders on the guidance and parameters. This could include informal engagement prior to any consultations. For the avoidance of doubt, we have made no decisions on the guidance or parameters.
- 4.9 One PCW said that we should engage with PCWs and consumer-facing stakeholders as well as suppliers on the design of guidance and parameters. We welcome input from a range of stakeholders as we continue to progress our work in this area.

MSC parameters

- 4.10 We received comments suggesting that the MSC parameters should be revised in either direction – to cover either a greater or a smaller proportion of hedging losses. One supplier also said that the MSC should be triggered less frequently, but should cover the full value of the hedge when it was triggered. Two stakeholders said that the parameters were based on a previous environment which had changed. One supplier agreed that the design used during the previous MSC was a sensible starting point.
- 4.11 We have summarised this feedback for information only. We have not reached a decision on the MSC parameters. As set out in our consultation (paragraph 3.12), retaining the same parameters as previously would have the benefit of speed, and these parameters have already been consulted on. Nevertheless, we will consider views received through this consultation and further stakeholder engagement.
- 4.12 We also received specific design suggestions. Two suppliers said that we should consider whether the format of the MSC parameters should be in absolute rather than percentage terms, so that the size of the price fall that triggered the MSC did not depend on the level of wholesale prices. One supplier said that we should include additional lagged costs in the calculation of an MSC.
- 4.13 We will consider these design suggestions as we continue our work.

Activating the MSC licence condition

Context

- 4.14 Under the process set out in the reintroduced licence condition, we would need to activate the MSC licence condition so that it would take effect.

Next step

- 4.15 Should we be minded to activate the MSC, we would consult separately on the case for doing so. Such a consultation would not be subject to the same statutory

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timing requirements or standstill period as for a licence modification – but we would endeavour to ensure enough time for stakeholder input and consideration, while maintaining responsiveness to market circumstances.

- 4.16 We intend to consider whether to activate the MSC licence condition based on our analysis of market circumstances. These may include (for example and non-exhaustively): the observed wholesale prices which have fed into the Cap calculations, the wholesale forward curve, our monitoring of suppliers' financial circumstances, and any other policy developments which might impact market stability in a falling market. We will continue to develop our thinking in this area.

Stakeholder responses and considerations

Early views on activation

- 4.17 We received mixed early views as to whether the MSC should be activated now. For example, one supplier said that it considered that bringing the MSC into force would be the best decision, and another supplier agreed with activation at the earliest possible opportunity. In contrast, another supplier said that the MSC should only be activated when the impact of market instability would clearly outweigh the downsides of an MSC.
- 4.18 We are not making a decision at this stage on activation, so we have included these comments for information only.

Consultation

- 4.19 One supplier welcomed our position that we would consult on the activation of the MSC.

Timing for an activation consultation

- 4.20 Two suppliers said that we should consult on activation of the MSC as soon as possible. Another supplier said that we should give as much notice as possible so that they could input. Four stakeholders said that we should have more stakeholder engagement before considering activation.
- 4.21 As in relation to the MSC parameters, we recognise the interest from stakeholders and will consider how best to engage them further.
- 4.22 In relation to the length of the consultation, one PCW said that any activation consultation should last for at least four weeks, unless circumstances clearly required a shorter period. One supplier said that we should have an appropriate consultation on any activation decision.
- 4.23 We do not consider that setting an expectation for a consultation of a certain length is appropriate for an intervention which may need to be activated at pace in response to market circumstances. We need to maintain responsiveness to

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deliver the benefits of an MSC. However, we confirm that we would use best efforts to leave enough time for stakeholder input and consideration.

Considerations for activation

- 4.24 Six stakeholders said that we should have a published framework for considering when the MSC should be active. One PCW said that the considerations published in the consultation were too general, while recognising that there would be regulatory judgement. Another PCW said that we should have quantitative metrics.
- 4.25 The risks that suppliers face in a falling price scenario would depend on a combination of factors, with interactions between them. We therefore do not consider that there would be a simple or mechanistic approach possible to determining whether the MSC was required. However, we will consider how we can develop our thinking in this area, recognising the interest from stakeholders.
- 4.26 Four stakeholders said that we should provide transparency on the indicators we were using to assess the need for activation.
- 4.27 Some of the information that could be relevant to a proposal to activate the MSC is already public (for example through our [data portal](#) and [State of the Market](#) report). We recognise that there may be interest from stakeholders in more frequently updated data, to understand whether an MSC could be activated. However, at this stage we are not in a position to commit to further publications, given that there may be practical or commercial constraints.
- 4.28 One PCW said that we would need a full consumer-focussed evidence base before activation. They said that this should include consideration of the impact of the MSC per customer who switches. Another PCW said that we should publish a full impact assessment for any activation consultation.
- 4.29 At the point of proposing to activate the MSC, there would be a trade-off between the speed of responsiveness to market circumstances (in order to protect the interests of consumers) and the extent of information that we could provide in a consultation. We therefore do not consider that we can make a general commitment to publish any specific level of analysis, as the appropriate information will depend on the circumstances at the time.
- 4.30 While we recognise the importance of impact analysis as part of the decision making process, any information on impacts for the MSC would always be subject to significant uncertainty. This is because impacts would depend on a large range of macroeconomic and behavioural parameters and assumptions, as well as on an unknown counterfactual. Therefore, while we will always seek to make evidence-based decisions, there are limitations on how definitive any analysis of impacts could be. This leaves an inherent role for judgement.

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4.31 One industry body said that a predictable process for activation would benefit all stakeholders.

Retail Energy Code impacts

Context

4.32 The MSC relies on the REC to deliver the process for payments between suppliers.

Next steps

4.33 We will continue to engage with the Retail Energy Code Company (RECCo) on the steps required to put the MSC in place.

Stakeholder responses and considerations

RECCo impacts

4.34 We received a response from RECCo. This highlighted the dependency on RECCo infrastructure and arrangements, and noted that set-up would require appropriate time. RECCo said that set-up would take less time than for a new scheme, but noted that the “the systems infrastructure was re-purposed following the closure of the scheme and would therefore need to be rebuilt”.

4.35 We will continue to engage with RECCo as they continue to prepare for MSC readiness.

Costs

4.36 One PCW said that “set-up and ongoing costs should be transparent and reported, and proportionate to the contingent nature of the licence condition”.

4.37 Reporting of costs is a matter for RECCo, as this will depend on their commercial arrangements with service providers. We agree with the general sentiment that costs should be proportionate.

Data

4.38 Two industry bodies referred to previous data challenges about confirming which premises are domestic and non-domestic, and therefore which suppliers should be in scope of the scheme. One industry body said that the introduction of market-wide half-hourly settlement had changed the data required for electricity.

4.39 We note this feedback and will work with industry bodies on preparing for MSC readiness.

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Send us your feedback

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this decision. We would also like to get your answers to these questions:

- Do you have any comments about the quality of this document?
- Do you have any comments about its tone and content?
- Was it easy to read and understand? Or could it have been better written?
- Are its conclusions balanced?
- Did it make reasoned recommendations?
- Do you have any further comments?

Please send your feedback to stakeholders@ofgem.gov.uk.