

Ofgem Consultation on the Retail Market Review – final domestic proposals

Response by E.ON

Executive summary

Standards

1. In our response to the October 2012 consultation we said *"the proposals to raise standards, through the Standards of Conduct and steps to standardise communications, are far reaching and likely to be the most significant element of the Retail Market Review in increasing consumer trust in the market."* We strongly supported Ofgem's proposals to raise standards and increase transparency with our only concern the over-prescription arising from Ofgem seeking to design each communication in detail.
2. We therefore greatly welcome the changes Ofgem has made to allow flexibility in standardised communications. We still have some concern that innovation in communication to consumers will be inhibited and recommend Ofgem allow the principles of the innovation concept for tariffs to also be applied to communications.

Tariffs

3. We warned in our response to the October 2012 consultation that *"the revised proposals do not have the same likelihood of additional consumer benefit [as the previous RMR core proposals] ... which would justify the risk of adverse side effects"*. We also noted that the revised proposals had risks *"of extraordinarily complex licence conditions and restriction on innovation."*
4. We are extremely disappointed therefore to find that benefits which our customers appreciate, notably a reward for loyalty, are not to be allowed and that the licence conditions are so hard to follow that we are unable to design with confidence new tariffs. To make matters worse still, the transition process has an unprecedented feature of retrospective regulation, requiring change partway through fixed term contracts.

Licence conditions and clarity

5. Ofgem propose in Para 2.52 that, as part of the rules for simplification of tariffs, open core tariffs must be available to new and existing customers. We understand the rationale for requiring acquisition products to also be available to existing customers, although Ofgem do not provide one. It is fairer and avoids complexity in web-site presentations. However, there is no converse need and our experience is that customers appreciate being rewarded for loyalty. It would be simple to allow exclusive products for existing customers (web-sites always establish who the customer's current supplier is and so could easily not display ineligible products) by amending SLC22B.30.
6. We recommend this change to allow existing customers to be given financial benefit. This is consistent with Ofgem's placing of simple, clear presentation of core tariffs at the heart of the

proposals. However, Ofgem also allow a variety of non-core benefits, through non-cash discounts, bundles and reward points. The licence conditions do not restrict their availability (other than through the general principle of only one mandatory feature per tariff and optional features being uniform across all tariffs), but we would appreciate confirmation that this is intended. For instance, that reward points might be accrued at different rates according to how long a customer had been with a supplier.

7. We also ask for confirmation that there can be preferential products (within the four core tariff cap) for specific groups, for instance for the over 60s.
8. We have expanded on our key issues in the body of our response and attach, at Annex 3, detailed comment on the licence conditions. The licence conditions are extremely complex and we welcome Ofgem making this a preliminary rather than statutory consultation, but urge Ofgem to take more time still to make sure the licence conditions are as simple as possible. Complex licence conditions may themselves be as much a barrier to entry or innovation as any of the issues which they seek to address.
9. A particular concern is the apparent confusion between prepayment as a payment method and as a meter type. We trust this is a drafting error, but the definition on page 79 of 'Relevant Meter Type' as '*using an [Electricity/Gas] Meter on the basis of only one of the following contractual arrangements: (a) Standard Credit; (b) Prepayment; (c) Economy 7; (d) Economy 10 and Variants; (e) Dynamic Teleswitching; or (f) Other Time of Use*' would seem to suggest some difference is envisaged between single rate and time of use products, whereas both can have credit or prepayment terms. It would be most unfortunate if a drafting error made prepayment unavailable for any customer.

Transition arrangements

10. There is no clear statement in the consultation document that fixed term tariffs which are no longer sold can continue to the end of their fixed term without change, even if they do not meet the proposed standards for core tariffs. Moreover SLC22B.2, which is designed to clarify that expired fixed term tariffs and collective switching tariffs are outside of the tariff cap, is opaque and would seem to suggest that expired fixed term contracts have to meet the same standards as collective switching tariffs. The latter would be expected to meet the standards for core tariffs.
11. We trust that this is just opaque drafting and a lack of clarity in the consultation. It is unacceptable for regulation to be retrospective. It would be disproportionate for customers to have to be presented with change with only a few months of their contract left to run. It would seriously undermine the future commercial rationale of fixed price offers if they might be vulnerable to regulatory change.

12. We accept that Ofgem must take reasonable steps to prevent suppliers exploiting a lengthy implementation process, but would suggest this does not mean changes incompatible with customer expectations or that suppliers can be expected to instantly amend their product portfolio. By way of illustration, for our own product portfolio, we would expect to be able to allow one year fixed term contracts signed up to the date of a requirement to implement the core tariffs to continue to the end of their fixed term and two year fixed term contracts signed up to Day 1 to be able to continue to term.
13. It is not reasonable that such matters might be resolved through derogation. Ofgem have rightly suggested that derogations should be exceptional and in any case it would be disproportionate to require derogation to avoid presentational changes (e.g. integrating a discount into a standing charge). We attach at Annex 1 a product summary showing our fixed term products that are potentially affected if there were forced adjustment to fixed term contracts. We have enclosed, separately from this response, a confidential version of this Annex showing the number of customers on each product that would be affected.

Timescales

14. Ofgem's proposals are extremely challenging. The scale of change is large and will fully stretch IT resource, potentially delaying other projects which will improve customer service. We are also very uncomfortable that the deadline for implementation of the structural requirements of the core tariffs, which must involve changes to our standard tariff, is mid-winter. However thoughtful we are, and our communications resource will be fully stretched, an action such as withdrawing our direct debit and dual fuel discounts and integrating them into the standing charge and unit rates will concern many customers.
15. We request that the more complex implementations are allowed to be made in late winter, by April 2014. We attach at Annex 2 proposed revisions to the implementation timetable.
16. We supported Ofgem's proposals to raise standards, but have recommended above that more time is allowed to ensure the tariff licence conditions are right. The external legal advice obtained by Energy UK supports this view, and suggests that another three to four months work is needed on the draft licence conditions.
17. We recommend Ofgem separate the two sets of proposals, with a statutory consultation on standards (and perhaps the business market) ahead of a separate process on tariffs, following a longer period of consultation with stakeholders. This need not unduly delay the simplification of energy tariffs if Ofgem are able to provide clarity and guidance from Ofgem on their policy intentions.

Detailed comments

Tariffs

Core tariffs

18. In September 2012, we introduced our 'Best Deal for You' product range, which offered customers a choice of no more than five, simpler tariffs, and sought to build trust with our customers by rewarding loyalty, through a discount depending on the time a customer has been with E.ON. In a recent survey of our customer panel, 82% agreed that energy companies should reward loyalty.
19. We support Ofgem's proposal that tariffs available to new customers should also be available to a supplier's existing customers. This is key to restoring trust in the energy market and we welcome that draft licence condition 22B.30 makes it clear that new customer exclusives are no longer allowed. However, we are extremely disappointed to see that this restriction has also been applied in reverse. It is reasonable for a supplier to want to treat its existing customers well and it would be consistent with Ofgem's reasoning for the RMR proposals to allow it.
20. We therefore ask for draft licence condition 22B.30 to be reworded to make it clear that exclusive offers to existing customers are allowed. We propose the following simple change to proposed licence condition 22B.30:

22B.30 Subject to paragraph 22B.31, the licensee must ensure (or, where there are any Affiliate [Electricity/Gas] Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees must collectively and individually ensure) that all its Core Tariffs are available to, and are capable of being entered into by, both new and existing Domestic Customers.
21. We expected that in order to continue to offer our Age UK product, it would need to be changed to bring it in line with the RMR proposals (to apply the winter payment on a continuous basis rather than at a point in time, and to remove the small additional benefit for pensioners over 80), but we believed we would be able to retain the customer benefit of a preferential product for the over 60s.
22. However, whilst there is nothing in the draft licence conditions to prevent an age limited product, there are comments in the consultation document that suggest that Ofgem's intentions are to prohibit it (para 2.09, which says that '...there can be no other criteria indicating how customers may or may not access any core tariff', and para 2.23, which states that 'core tariffs have to be available to all customers within the region where the tariff is offered').
23. We believe it is consistent with the RMR principles to allow products which have restricted availability on simple, transparent criteria (as would be required by the Standards of Conduct). This does not add complexity: a customer who is not 60 (or 50, and disabled), can have no

expectation of being able to access such a product. For transparency, we ask that Ofgem clarify the intention of Paras 2.09 and 2.23.

Bundles, discounts and reward points

24. Ofgem propose that the core energy tariffs are simple and that suppliers' flexibility to differentiate is through a range of associated bundles, reward point schemes and non-cash discounts for customers to choose from.
25. We believe that the licence is drafted to allow suppliers much more scope in terms of the bundles, discounts and reward points that they offer, provided they do not amount to cash. We believe that these additional features are not subject to the same access restrictions as are core tariffs.
26. This means that, whilst we believe we should have the option to offer additional benefits to our loyal, or older, customers through a specific tariff (as discussed above), if we are prohibited from doing so, we would be able to do so through additional features, such as a reward points scheme that offers more points to customers who have been with us longer, or to the over 60s. Similarly, we believe we would be able to offer additional reward points to encourage customers moving house to remain with E.ON, for example. If this is not Ofgem's intent we ask for clarification in a supplementary policy document.

Licence conditions and clarity

27. The proposed licence modifications for RMR are far more lengthy and complex than the existing licence, and as we state in the executive summary to this response, we believe Ofgem must now ensure that sufficient time and resources are dedicated to getting them right. Many sections of the licence require the reader to refer to several other conditions in order to understand the one at hand; this intertwining (some defined terms only appear in other defined terms e.g. Energy Discount) makes the draft very difficult to interpret, and means that the risk of unintended consequences is significant.
28. We raise in this response several fundamental problems with the current drafting, and have also attached, at Annex 3, a more comprehensive list of drafting issues. We aim to raise additional issues as we come across them.

Prepayment meters

29. A particular concern with the drafting relates to the proposed treatment of prepayment meters. We assume the complexity arises from a desire to cover a situation where there is both a prepayment meter (single rate or E7) and a credit meter (for the heating supply), but this is very unusual and the resultant drafting is extraordinarily difficult to follow. We ask that Ofgem publish a comprehensive explanation of what is intended. At present we are not sure that we can accept the current drafting.

30. Prepayment functionality is an additional feature of some meters, be they simple unrestricted meters, or more complex, time of use variants; it is not the primary function of the device (cf Schedule 7 of the Electricity Act). Prepayment is a payment method and should be dealt with through a standardised payment adjustment, as defined in 22B.7 of the draft licence conditions. This would also be consistent with existing SLC27.
31. We raised this issue at a face to face meeting with Ofgem on 27 November and were assured that the intention was to treat prepayment as a payment method. However, the revised drafting of the licence modifications remains complex and, we believe, confused.
32. The problem stems from the need (presumably for heating tariffs) to define 'Relevant Arrangements' on page 18 of the draft licence conditions as '*one of each Time of Use Arrangement and one Non- Time-of-Use Arrangement*'. The draft then goes on to define 'Time of Use Arrangement' as '*using an Electricity Meter on the basis of one of each of the following four contractual arrangements: (a) Economy 7; (b) Economy 10 and Variants; (c) Dynamic Teleswitching; or (d) Other Time of Use*', which seems to be a reasonable approach.
33. However, 'Non Time of Use Arrangement' is defined as '*using an [Electricity/Gas] Meter on the basis of contractual arrangements for Standard Credit and Prepayment.*' This would seem to mean that prepayment customers could no longer access Economy 7 tariffs, Heatwise heating tariffs, or indeed anything other than a product designed for an unrestricted meter. It also has the unintended consequence (we assume) that it is no longer clear that a single rate evergreen product (which is a mandatory requirement for suppliers to offer) being paid through prepayment is the same core tariff as a single rate evergreen standard tariff as it raises a question of whether a change in payment method is a change in tariff type.
34. The drafting becomes even harder to follow on page 78 (definitions), where 'Prepayment' is defined as '*Prepayment means, excluding a Security Deposit and any Time-of-Use Arrangement, any contractual arrangements whereby the Domestic Customer is exclusively or mainly required to pay for the Charges for the Supply of [Gas/Electricity] in respect of each Unit Rate in advance, but excludes contractual arrangements whereby the main payment method is direct debit*' as this would seem to suggest that an Economy 7 prepayment meter is treated as two contractual arrangements rather than one with a prepayment payment method.
35. Further confusion is added by the definition on page 79 of 'Relevant Meter Type' as '*using an [Electricity/Gas] Meter on the basis of only one of the following contractual arrangements: (a) Standard Credit; (b) Prepayment; (c) Economy 7; (d) Economy 10 and Variants; (e) Dynamic Teleswitching; or (f) Other Time of Use*'. This definition now has five contractual arrangements in it, compared to the four in the earlier definition of 'Relevant Arrangements'; neither of them appears to allow prepayment meter customers access to a range of meter types, and neither is correct.



Transition arrangements

36. The transition arrangements lead to four major concerns:
- a. Almost every customer will see some change. Just managing this transition will fully stretch our IT and communications capability. Any lack of transparency could undermine consumer confidence in the benefits of the Retail Market Review.
 - b. Our experience of launching 'Best Deal for You' (BDFY) last year is that even simple products take nine months to design and implement. We already have less time than this to 31 December 2013 and there may be further changes in the detail of the proposals.
 - c. Even if we could introduce core tariffs earlier, the restrictions on declaring a tariff to be dead mean that this has to be much sooner (before Day 1) or that all existing customers must be migrated simultaneously. We expand on this below.
 - d. Whether we are expected to make changes to fixed term contracts before they come to their natural end. We expand on this below.

Migration of standard customers

37. A ban on new dead tariffs from day one will unnecessarily add to the customers affected by RMR changes and increase costs. Due to this restriction we would be unable to launch a fully compliant evergreen contract (for customers whose fixed term contracts are ending) in advance of the making the RMR changes to our "standard product", yet these changes will be a challenge to organise and to communicate.
38. We can see no reason not to be able to make our standard product dead at the point of introducing a new evergreen product. We would then be able to manage the changes to the standard product (notably a withdrawal of payment method discounts, consolidating them into the standing charge and unit rates, and adjustment to the dual-fuel discount) on a timescale consistent with providing good customer service. There would need to be one further change, to proposed SLC22D.3(d), to allow the dead tariff to be "as similar a possible in price to" rather than "cheaper than" the Relevant Cheapest Evergreen Tariff. There is obviously no customer financial disadvantage in the price being the same, but expressed as a discount, and we suggest an acceptable variation for the transition period if one is a percentage and the other pounds.

Expired fixed term contracts

39. We are extremely concerned that, whilst the policy document is not explicit, Ofgem's revised proposals appear to mean that we will have to make changes to existing fixed term contracts that do not meet the RMR requirements before they come to their natural end. Licence

condition 22B.2, although complex and difficult to understand, appears to set out reasonably to exclude both expired fixed term tariffs and collective switching tariffs from the tariff cap; however, in its apparent attempt to require collective switching tariffs to be compliant with RMR, it also appears to have the effect of catching expired fixed term contracts.

40. This is effectively retrospective regulation. Suppliers offered these fixed term contracts in good faith, and customers signed up to them expecting not to have to make any further decisions until the contract reached its natural end. These contracts were compliant at the point in time when they were sold, and they should be allowed to conclude naturally. In the absence of an explicit policy statement setting out Ofgem's reasons for such a drastic approach in either the policy document or the impact assessment, we believe this to be a drafting error.
41. It would be complex to restructure non-compliant fixed term contracts part way through their term. Customers would need to reconsider the energy market, and for many, prices have risen since they thought they fixed their prices. As a result, it is likely that any changes would be purely presentational – for example, a non-compliant £10 loyalty discount might be represented as a lower standing charge, but conversion of a percentage direct debit discount into a lower unit rate may be harder for customers to understand. There seems to be no benefit to customers in doing this, and the risk of confusing them and further undermining confidence in the industry is high.
42. We have a significant number of customers on fixed term, fixed price contracts, including more than nine hundred thousand accounts supplied on one of our 'Best Deal for You' products, which we launched only last September. Our BDFY products are compliant with RMR in that they have a standing charge and unit rate structure, but they have some discounts that do not meet the new requirements. We also have customers on products that predate BDFY, and some of these products have a primary/secondary unit rate structure, as well as non-RMR compliant discounts. At Annex 1 we attach a table showing the extent of the changes that would need to be made to our existing fixed term portfolio; we also enclose a confidential version of the same Annex showing the number of customers that would be affected.
43. It is our belief that other suppliers will be in the same position as E.ON, and, whilst Ofgem may have intended to use the derogation approach for these products, we do not believe it to be reasonable to use derogations to resolve an issue of this scale that is common to most, or all suppliers, and that affects enormous numbers of customers. Instead, Ofgem should revisit the licence drafting to ensure that fixed contracts, up to a reasonable date, should be allowed to reach their natural end.
44. We do not intend this to be a means to allow suppliers to lock customers in to lengthy contracts in advance of the RMR proposals coming into effect, and would expect Ofgem to

take reasonable steps to prevent suppliers from exploiting a lengthy implementation process. We would, however, expect one year fixed term contracts agreed up to Day 1 to reach their natural end, and for two year fixed term contracts agreed up to 23 April 2013 to be allowed to run their course.

Timescales for implementation

45. Ofgem's proposals are extensive, and very challenging. The amount of change that will be required is significant, and will fully stretch our IT and communications resources, and will inevitably mean delays to other projects which might otherwise have improved customer service. In addition, the proposed timetable requires us to launch our new products mid-winter, and we will have to make changes at that time to our standard evergreen tariff to make it compliant.
46. Our resources will be even more pressured if we are required to reopen significant numbers of fixed price contracts before they come naturally to an end. Doing this in the middle of the winter will be very unsettling and confusing for our customers, and it is unlikely they will understand the reasons that their contracts are being changed.
47. In view of the significant amount of changes that are required, even assuming that fixed term contracts are excluded as we believe they should be, we ask that Ofgem defer the more complex aspects of RMR until the end of the winter, to April 2014. We attach at Annex 2 a table setting out our proposed changes to Ofgem's implementation timescales. Our proposals are still challenging, but are more realistic, and we believe will cause less disruption to customers.
48. As discussed earlier in this response, the licence drafting is highly complex. It is clearly vital that the licence is robust, and that any inconsistencies are removed before it can be implemented. We therefore suggest that a phased approach is adopted, with the Standards of Conduct taking effect this autumn as planned after a statutory consultation, but with more time being given to resolving the drafting issues with the remaining conditions, which could be consulted on separately later.
49. We suggest that Ofgem should work with the industry to improve the drafting to ensure that it effectively delivers Ofgem's intentions, and that formal implementation be delayed a little to get the drafting right. This need not unnecessarily delay the effect of the RMR proposals; if Ofgem's policy intent is clear, suppliers will be able to begin work to deliver the necessary changes in advance of formal implementation of the licence conditions.

Switching protection window

50. We do not agree with the proposals for a revised SLC23.6, as this would seem unfair to many customers who will subsidise the most savvy customers who wait until the last minute to switch product or supplier. This may also be a particularly difficult change to implement,

requiring substantial change to current processes to hold prices and with an additional complexity in that bills issued after the price effective date, but before the end of the switching window, will need to be replaced. This change should be implemented no earlier than April 2014.

Other issues

White labelling and other commercial partnerships

51. Suppliers have a variety of commercial relationships and partnerships of various forms with other companies and organisations. Ofgem's RMR proposals go some way to recognising that commercial relationships inevitably take time to change, or even end, in that they have allowed additional time for white label products to be brought in to line with RMR.
52. However, there are other commercial relationships that are equally impacted by the RMR proposals, for instance offers of reward points. We have stressed above that retrospective regulation requiring change to fixed term products is unacceptable and trust that this means there need be change to existing fixed term products which offer reward points as an alternative to pounds.

Credit card charges

53. We can see no complication for consumers in being able to pay by credit card for a cost reflective charge, but there can be no certainty that a customer would always pay by credit card and hence this offered as a distinct payment method. We suggest therefore that credit card charges be included in the list of allowed separate charges in the definitions to licence condition 22A.6 on page 8 of the draft licence conditions.
54. Such a charge would also avoid a potential side effect of SLC22A.6 that credit cards might not offered as a means of avoiding charges for late payment of bills.



Annex 1 - Expired Fixed Term Contracts post 31st December 2013

| Product | Product | Term/ End Date | Change to s/c structure | Reflect payment method adjustment in price | Remove Loyalty Discount | Change Dual Fuel discount to £ | Remove Cold Weather Payment | Change Tesco Points Structure |
|----------------------------------|-------------|---|-------------------------------|--|-------------------------------|--|--------------------------------------|-------------------------------------|
| Age UK Fixed 1 Year v1 | Fixed Price | 12 Month Contract/ to 03/02/2014 | | ✓ | ✓ | | ✓ | |
| Age UK Fixed 1 Year v2 | Fixed Price | 12 Month Contract/ to 09/03/2014 | | ✓ | ✓ | | ✓ | |
| Age UK Fixed 1 Year v3 | Fixed Price | 12 Month Contract/ still on sale | | ✓ | ✓ | | ✓ | |
| Age UK Fixed April 2014 | Fixed Price | 01/04/2014 | ✓ | ✓ | | ✓ | ✓ | |
| E.ON Price Protection April 2014 | Capped | 01/04/2014 | ✓ | ✓ | | ✓ | | ✓ |
| E.ON Price Protection May 2014 | Capped | 01/05/2014 | ✓ | ✓ | | ✓ | | ✓ |
| E.ON Reassurance Pack | Fixed Price | 01/04/2014 | ✓ | ✓ | | ✓ | | ✓ |
| Energy Discount 1 Year v1 | Variable | 12 Month Contract/ Still on sale | | ✓ | ✓ | | | ✓ |
| Energy Fit | Variable | 24 Months Contract/ to 14/05/2014 | ✓ | | | ✓ | | ✓ |
| Fixed 1 Year v1 | Fixed Price | 12 Month Contract/ to 03/02/2014 | | ✓ | ✓ | | | ✓ |
| Fixed 1 Year v2 | Fixed Price | 12 Month Contract/ to 09/03/2014 | | ✓ | ✓ | | | ✓ |
| Fixed 1 Year v3 | Fixed Price | 12 Month Contract/ Still on sale | | ✓ | ✓ | | | ✓ |
| Fixed 2 Year v1 | Fixed Price | 24 Months Contract/ to 03/02/2015 | | ✓ | ✓ | | | ✓ |



| Product | Product | Term/ End Date | Change to s/c structure | Reflect payment method adjustment in price | Remove Loyalty Discount | Change Dual Fuel discount to £ | Remove Cold Weather Payment | Change Tesco Points Structure |
|--------------------------|-------------|---|-------------------------------|--|-------------------------------|--|--------------------------------------|-------------------------------------|
| Fixed 2 Year v2 | Fixed Price | 24 Months Contract/ to 09/03/2015 | | ✓ | ✓ | | | ✓ |
| Fixed 2 Year v3 | Fixed Price | 24 Months Contract/ Still on sale | | ✓ | ✓ | | | ✓ |
| Fixed April 2013 | Fixed Price | 01/04/2013 | ✓ | ✓ | | ✓ | | ✓ |
| Fixed April 2014 | Fixed Price | 01/04/2014 | ✓ | ✓ | | ✓ | | ✓ |
| Prepayment Reward 1 Year | Variable | 12 Month Contract/ Still on sale | | | ✓ | | | ✓ |
| StayWarm | Fixed Bill | 12 Month Contract/ existing StayWarm customers still being renewed | | ✓ | | ✓ | | |

Annex 2 - Changes to implementation timescales

| Policy proposal | Policy details | Main Legal Provisions | Proposed implementation |
|---------------------------------------|---|--|---|
| Tariff simplification | All proposals relating to the tariff cap, the structure of tariffs, allowed discounts/payment adjustments, and associated bundles, discounts and reward points. | 22A 22B Schedule to 22B SLC1 Amended definitions | Implemented by 31 Dec 2013 31 March 2014 |
| Ban on expensive dead tariffs | Suppliers will be required to 'transfer' consumers from dead tariffs, where it would save them money, to the supplier's cheapest evergreen tariff given their payment method, meter and online/offline access. | 22D.6 | Implemented by 31 March 2014 |
| | Suppliers are required to make dead tariffs compliant with licence conditions in advance of comparing the tariffs with the cheapest evergreen tariff. The number of dead tariffs cannot be increased and that the terms and conditions of the dead tariff are as similar as possible to the original terms. They are required to notify customers about what will happen with their tariff, except where the dead tariff is not changed and is cheaper. | 22D.2 to 22D.4 22D.5 22D.9 | Day 1 implementation Implemented by 31 March 2014 |
| | Suppliers are prohibited from introducing any new dead evergreen tariffs (consumers on an open tariff that is withdrawn need to be transferred onto another open tariff). | 22D.1 | Day 1 implementation 31st December 2013 |
| | When moving the customers on expensive dead tariffs by terminating the contract, suppliers will have to apply a deemed contract whose T&Cs are the same as those of the cheapest evergreen tariff. | 22D.11 | Implemented by 31 March 2014 |
| | Suppliers are required to provide an annual check of whether consumers on dead tariffs would be better off being transferred to their cheapest equivalent evergreen tariff. The annual check must be completed within 6 months of the Annual Statement being issued. | 22D.7 & 22D.8 | Implemented by 31 March 2015 |
| Supplier and tariff protection window | The supply licence will be amended to make it easier for customers to switch supplier or change tariff without being affected by a price increase or other adverse unilateral variations. | 23.6 | Day 1 implementation |
| | For customers to avoid prices increase/other adverse unilateral variations: a) They will no longer need to inform their current supplier of their intention to switch. b) If they wished to switch supplier the deadline for the new supplier to notify the old supplier will be increased from 15 to 20 business days, applying from the date the price increase / adverse unilateral variation is scheduled to take effect. c) They will be able to do so if they enter in a new contract with the same supplier and the new contract comes into effect no later than 20 business days from the date the price increase adverse unilateral variation is scheduled to take effect. | 23.6 | Day 1 implementation Implemented by 31 March 2014 |



Annex 3 - Specific Comments on Draft Licence Conditions

Please note that the following comments are only the issues we have been able to identify since 27 March. If we identify further issues we will forward the separately, to assist the process of developing clear and succinct licence conditions.

| SLC | Draft | Comment |
|---------|---|--|
| General | Quality of drafting | Poor drafting, repetition, different drafters, not plain and intelligible. Entwined drafting adds complexity and increases risk of unintended consequences as need to refer to several other sections to make sense of one |
| 1 | <p>Alternative Cheapest Tariff means, in comparison with each specific Domestic Customer’s Tariff, the cheapest Tariff available from the licensee (or, where there are any Affiliate Licensees, the licensee and any Affiliate Licensees) for that Domestic Customer based on:</p> <p>(a) their Estimated Annual Costs applied in respect of the cheapest Tariff, rather than the Tariff the Domestic Customer is currently subject to;</p> <p>(b) where the Domestic Customer is not subject to a Prepayment Meter, the cheapest Tariff compatible with the [Electricity/Gas] Meter installed at the Domestic Customer’s premises;</p> <p>(c) where the Domestic Customer is subject to a Time of Use Tariff, either a Time of Use Tariff or a Non-Time of Use Tariff; and</p> <p>(d) where the Domestic Customer is subject to a Non-Time of Use Tariff, only a Non-Time of Use Tariff.</p> | (c) - What about ToU tariffs where metering is hard-wired, e.g. Heatwise? Should this relate to just E7 and E10? |
| 1 | <p>Collective Switching Scheme means a scheme which has:</p> <p>(a) the primary purpose of seeking offers from more than</p> | What are the definitions of ‘attractive feature’ and ‘bulk number’? |



| SLC | Draft | Comment |
|-----|---|--|
| | one [Gas/Electricity] Supplier for Tariffs with attractive features, with a view to ensuring that at least one of those offers is likely to result in a bulk number of Domestic Customers transferring to that Tariff; | |
| 1 | Discount means, excluding a Dual Fuel Discount and an Online Account Management Discount, an Energy Discount that applies to a Core Tariff and which is not dependant on any of the following: (a) the occurrence of an event or period of time; (b) the actions or omissions of a Domestic Customer after they have entered into a Domestic Supply Contract; | Should this be a Non-Contingent Discount? There is already a definition for Discount. |
| 1 | Energy Discount means a Discount which is a monetary amount of a precise financial value and which is applied directly to a Unit Rate or a Standing Charge; | But according to 22B.4 (c) Discounts can't be applied to unit rates or standing charge. |
| 1 | Online Account Management means any arrangement whereby a Domestic Customer does not receive a paper version of a Bill or statement of account and would need to access the internet and use a computer or communication device; | Online Account Management is used for the purposes of a paperless bill discount. However customers could still want online account management and want to continue to receive a paper bill |
| 1 | Dynamic Teleswitching means any contractual arrangement whereby the Domestic Customer is required to pay for the Charges for the Supply of Electricity on the basis of two separate Unit Rates in circumstances where, during each period of 24 hours, one Unit Rate applies to different periods of time which are determined by the licensee and/or a Licensed Distributor and activated via the use of radio signals during that period of 24 hours and the other Unit Rate applies to the remaining separate periods of time during that period of 24 hours; | Issue for Heatwise tariff, where there are more than two separate Unit Rates (afternoon (3 hrs), evening and night (7hrs) and boost (up to 24hours)) |
| 1 | Economy 7 means any contractual arrangement whereby the Domestic Customer is required to pay for the Charges | 'continuous' – some of our E7 meters have split periods of 7 hours |



| SLC | Draft | Comment |
|-------|--|--|
| | for the Supply of Electricity on the basis of two Unit Rates in circumstances where, during each period of 24 hours, one Unit Rate applies continuously for a specified period of 7 hours during that period of 24 hours and the other Unit Rate applies continuously to the remaining 17 hours during that period of 24 hours; | |
| 1 | Staggered Charging Tariff means a Tariff for a Fixed Term Supply Contract which, in accordance with subparagraph 22C.11(b) of standard condition 22C or subparagraph 23.8(b) of standard condition 23, has precise variation or variations to the Charges for the Supply of [Electricity/Gas] which are scheduled to occur automatically by a precise amount (or precise amounts) and on a precise date (or precise dates) which is not subject to the licensee's discretion. | Sometimes referred to in SLCs as Staggered Charges Tariff |
| 1 | Tariff means the Charges for the Supply of [Electricity/Gas] combined with all other terms and conditions that apply, or are in any way linked, to a particular type of Domestic Supply Contract or particular type of Deemed Contract; | Should say 'means, subject to SLC S22B.1, ...' |
| 22A.2 | 22A.2 In respect of supplying [electricity/gas] to a Domestic Customer under a Deemed Contract or Domestic Supply Contract, the licensee must ensure that all Charges for Supply Activities are incorporated within: (a) where the Domestic Supply Contract or Deemed Contract is for a Non-Time of Use Tariff: (i) a single Standing Charge; and/or (ii) a single Unit Rate; and (b) where the Domestic Supply Contract or Deemed Contract is for a Time of Use Tariff: | Would be useful to make it clear that the Standing Charge can be zero. |



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| | (i) a single Standing Charge; and/or (ii) Time of Use Rates. | |
| 22A.6 | 22A.6 In this condition: "Charges for Supply Activities" means, excluding Separate Charges, any charges or costs relating to activities that could reasonably be considered as being directly related to the supply of (gas /electricity) to premises, including (but not limited) to: (a) Customer billing; (b) meter reading and data processing; (c) the provision of a [Gas Meter/Electricity Meter]; (d) [electricity only] the transmission and distribution of electricity; [gas only] the transportation and shipping of gas; and (e) [electricity only] any form of electricity generation. | Should also include charges for payment by credit card |
| 22B.1 | 22B.1 The licensee must ensure (or, where there are any Affiliate [Electricity/Gas] Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees must collectively and individually ensure) that at all times all of their Domestic Supply Contracts and Deemed Contracts collectively comply with the following requirements: (a) the licensee must (or, where there are any Affiliate [Electricity/Gas] Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees must collectively and individually) only supply Domestic Premises on the basis of the Relevant Arrangements; (b) subject to paragraph 22B.2, in any Region, the licensee | (d) - Transition allows for a white label tariff identical to a Core Tariff, differing in name only |



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| | <p>must not use (or, where there are any Affiliate [Electricity/Gas]Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees must not collectively use) more than four Core Tariffs at any time in relation to the Relevant Arrangements;</p> <p>(c) in any Region, the licensee must not use (or, where there are any Affiliate Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees must not collectively use) more than one Tariff Name for each Core Tariff at any time;</p> | |
| 22B.2(a) | <p>22B.2 Except for the purposes of paragraphs 22B.3 to 22B.11, sub-paragraph 22B.1(b) does not:</p> <p>(a) apply to a Tariff for a Fixed Term Supply Contract once it becomes an Expired Fixed Term Tariff;</p> <p>(b) apply to a Collective Switching Tariff; and/or</p> <p>(c) limit or otherwise affect the licensee’s obligations under paragraphs 27.1 and 27.2 of standard condition 27 in respect of offering a wide choice of payment methods.</p> | would like 'entered into after [August 2013]' after 'Fixed Term Supply Contract' (allow existing tariffs to continue to end of their fixed term without conversion) |
| 22B.4(d) | <p>22B.4 The licensee must not use (or, where there are any Affiliate [Electricity/Gas] Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees must not collectively or individually use) any Discount which is:</p> <p>(a) pounds sterling or any currency of any other country;</p> <p>(b) capable of being redeemed for pounds sterling or any currency of any other country;</p> <p>(c) in any way applied to a Unit Rate or Standing Charge; and</p> | capital letters for Standing Charge |



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| | (d) in any way capable of being applied to a Unit Rate, standing charge or a Bill. | |
| 22B.5(b) | <p>22B.5 The licensee must ensure (or, where there are any Affiliate [Electricity/Gas] Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees must collectively ensure) that any Dual Fuel Discount is:</p> <p>(a) a Discount of a precise monetary amount that is Continuously Applied to a Domestic Customer’s Tariff on a daily basis;</p> <p>(b) (if the licensee (or, where there are any Affiliate [Electricity/Gas] Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees) wishes to offer a Dual Fuel Discount) offered and available with all the licensee’s (or, where there are any Affiliate [Electricity/Gas] Licensees, by the licensee and any Affiliate [Electricity/Gas] Licensees”) Tariffs;</p> <p>(c) subject to the same terms and conditions throughout Great Britain;</p> <p>(d) of the same monetary amount throughout Great Britain;</p> <p>(e) not expressed as a percentage; and</p> <p>(f) subject to paragraph 22B.24, only presented as a monetary amount in pounds sterling per year.</p> | Delete opening bracket |
| 22B.2 | <p>22B.2 Except for the purposes of paragraphs 22B.3 to 22B.11, sub-paragraph 22B.1(b) does not:</p> <p>(a) apply to a Tariff for a Fixed Term Supply Contract once it becomes an Expired Fixed Term Tariff;</p> | 22B.3 to 22B.11 do not have a direct link back to 22B.1(b), so suggest the exception is removed and a new clause be added to make it clear that 22B.3 and 22B.11 applies to all Tariffs, not just Core Tariffs. |



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| | <p>(b) apply to a Collective Switching Tariff; and/or</p> <p>(c) limit or otherwise affect the licensee's obligations under paragraphs 27.1 and 27.2 of standard condition 27 in respect of offering a wide choice of payment methods.</p> | |
| 22B.4 | <p>22B.4 The licensee must not use (or, where there are any Affiliate [Electricity/Gas] Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees must not collectively or individually use) any Discount which is:</p> <p>(a) pounds sterling or any currency of any other country;</p> <p>(b) capable of being redeemed for pounds sterling or any currency of any other country;</p> <p>(c) in any way applied to a Unit Rate or Standing Charge; and</p> <p>(d) in any way capable of being applied to a Unit Rate, standing charge or a Bill.</p> | <p>The licence condition is structured in terms of supplier must not "use" discounts which don't comply. The implementation plan refers to customers not "offering" discounts which don't comply.</p> |
| 22B.13 | <p>22B.13 The licensee may (or, where there are any Affiliate [Electricity/Gas] Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees may collectively) apply a particular Optional Bundle (including a Bundled Product which constitute a Discount) to all their Tariffs throughout Great Britain without that Optional Bundle being treated as an additional Core Tariff for the purposes of sub-paragraph 22B.1(b).</p> | <p>Insufficiently clear whether Optional Bundles have to be available on ALL tariffs – and should this relate to just Core Tariffs, or to all Tariffs?</p> |
| 22B.28 | <p>22B.28 The licensee may (or, where there are any Affiliate [Electricity/Gas] Licensees, the licensee and any Affiliate [Electricity/Gas] Licensees may collectively) provide any Discounts (including Bundled Products which constitute a</p> | <p>In what way is this an exception for Discounts? Part e) mirrors the requirements for Discounts in 22B.4</p> <p>(f) – needs to be reworded to account for customers who switch tariff but</p> |



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| | <p>Discount and, for these purposes, Reward Points Discounts) if all of the following requirements are satisfied:</p> <p>(a) the Discount is not of a type which is subject to paragraphs 22B.5, 22B.6, or 22B.7;</p> <p>(b) the Discount is provided on the basis that a Domestic Customer has entered into a Domestic Supply Contract;</p> <p>(c) the Domestic Customer is not required to make any form of payment;</p> <p>(d) the Domestic Customer is not required to pay back or otherwise return the Discount; Page 16 of 126</p> <p>(e) the Discount is not:</p> <p>(i) pounds sterling or any currency of any other country;</p> <p>(ii) capable of being redeemed for pounds sterling or any currency of any other country;</p> <p>(iii) in any way applied to a Unit Rate or Standing Charge; and</p> <p>(iv) in any way capable of being applied to a Unit Rate, standing charge or a Bill;</p> <p>(f) the Discount is fully received by the Domestic Customer before the licensee begins to supply the Domestic Customer's premises under the Domestic Supply Contract;</p> <p>(g) the Discount is subject to the same terms and conditions and is of the same monetary amount (or where</p> | <p>not supplier</p> |



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| | <p>paragraph 22B.26 applies, of the same methodology) throughout Great Britain:</p> <ul style="list-style-type: none"> (i) for every Discount with similar features (and for these purposes a Discount would not be regarded as having similar features where the Discount also includes distinct additional features); (ii) for each separate Discount with distinct additional features; and (iii) for each Discount with unique features; (h) the Discount is not expressed as a percentage; and (i) subject to paragraph 22B.24, the Discount (excluding a Reward Points Discount) is only expressed as a monetary amount in either: <ul style="list-style-type: none"> (i) pounds sterling per year; or (ii) pence per kWh. | |
| Schedule S22B and other schedules | general | There is a great deal of repetition of what is in the main SLC – should appear either in the SLC or the schedule |
| 22C.3(d) | <p>22C.3 The licensee must prepare a statement (hereafter referred to as an “SLC 22C Statement of Renewal Terms”) which:</p> <ul style="list-style-type: none"> (a) is set out in Writing; (b) is drafted in plain and intelligible language; (c) presents the information in: <ul style="list-style-type: none"> (i) text of a colour which is readily distinguishable from the background medium; and | remove semi-colon after 'end' |

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| | <p>(ii) subject to sub-paragraph 22C.3(e)(ii), text of an equal size and prominence except that headings may be afforded more prominence whether by capital letters, underlining, larger or bold print or otherwise;</p> <p>(d) contains a prominent title which clearly informs the Domestic Customer that the fixed term period of their existing Fixed Term Supply Contract is due to end; and they need to consider their options;</p> | |
| 22C.3(e)(ii), 22C.4(b) and 22C.5(a)(iv) | <p>(e) without prejudice to Supplier and Customer Information, the information required by sub-paragraph 31C.5(e) of standard condition 31C, the requirements of paragraph 23.1A of standard condition 23, and the Notice referred to in sub-paragraph 5(a), is not provided in conjunction with any other information (including, but not limited to, a Bill, statement of account or marketing material) and only contains the following information:</p> <p>(i) the date the fixed term period of the existing Fixed Term Supply Contract is due to end;</p> <p>(ii) the following statement, presented in a manner which is readily distinguishable from the other text presented in the Statement of Renewal Terms: "Remember – it might be worth thinking about switching your tariff or supplier";</p> | add 'SLC22C' before 'Statement of Renewal Terms' |
| 22C.12(c)(iii) | <p>22C.12 Where pursuant to paragraph 22C.3 the licensee provides a Domestic Customer with information about their Relevant Cheapest Tariff and/or an Alternative Cheapest Tariff, the licensee must provide, in close proximity:</p> <p>(a) a statement (in plain and intelligible language) to the effect that changing to a Relevant Cheapest Tariff and/or to an Alternative Cheapest Tariff changing tariffs may involve changing to materially different terms and conditions; Page 26 of 126</p> <p>(b) where applicable, a statement (in plain and intelligible language) to the effect that the Relevant Cheapest Tariff and/or Relevant Cheapest Tariff is subject to limited availability and/or will only be available for a limited period</p> | there could be other reasons why there are restrictions to changing the meter, e.g. risk of getting into debt |

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| | <p>of time; and</p> <p>(c) where the Domestic Customer has a Prepayment Meter and changing to the Alternative Cheapest Tariff would require the [Electricity/Gas] Meter to be changed:</p> <p>(i) a statement (in plain and intelligible language) to the effect that changing to the Alternative Cheapest Tariff would require the [Electricity/Gas] Meter to be changed; and</p> <p>(ii) an estimate of the costs (in pounds sterling), if any, of changing the [Electricity/Gas] Meter; and</p> <p>(iii) a statement (in plain and intelligible language) to the effect that there may be restrictions on changing the [Electricity/Gas] Meter if the Domestic Customer has Outstanding Charges.</p> | |
| 22CA | | first condition is numbered 31CA.1 - should be 22CA.1 and 31CA.2 should be 22CA.2. |
| 22CA.1 | 31CA.1 Until paragraphs 22C.3 and 22C.4 o standard condition 22C come into effect, the following paragraphs are to be inserted in standard condition 22C: | 'o' should be 'of' |
| 22CA - 22C.3(d) | (d) ensure that the Notice provided pursuant sub-paragraph 22C.3(b) informs the Domestic Customer that the fixed term period has ended and that the Domestic Customer has become subject to an Evergreen Green Supply Contract. | 'Green' should be removed from 'Evergreen Green Supply Contract'. |
| 22D.1 | | 22D16' should be '22D.16' |
| 22D.4 | 22D.4 This paragraph applies where: (a) the Dead Tariff can be unilaterally changed by the licensee to fully comply with the requirements of standard condition 22A and standard condition 22B (excluding sub-paragraph 22B.1(b)) in a manner which seeks to ensure | What's the difference between 22D.4(a) and 22D.4(b)? |

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| | <p>that the terms and conditions are as similar as possible to the terms and conditions of the original Dead Tariff;</p> <p>(b) the licensee will be able to ensure that the Dead Tariff is unilaterally changed to fully comply with the requirements of standard condition 22A and standard condition 22B (excluding sub-paragraph 22B.1(b)) in manner which seeks to ensure that the terms and conditions are as similar as possible to the terms and conditions of the original Dead Tariff;</p> | |
| 22D.5(c)(xii) | | 22D.10 to 22D.13' should be '22D.13 to 22D.16' |
| 22D.5(c)(xiv(3)) | <p>(xiv) where the licensee is increasing the Charges for the Supply of [Gas/Electricity] for the Dead Tariff by increasing any Unit Rate or Standing Charge (including, where applicable, where the licensee is making any reduction in the amount of a Discount which is applied to a Unit Rate or Standing Charge), must provide the Domestic Customer with the following information:</p> <p>(1) their Estimated Annual Costs using their current Charges for the Supply of [Gas/Electricity];</p> <p>(2) their Estimated Annual Costs using the new Charges for the Supply of [Gas/Electricity]; and</p> <p>(3) the amount in pounds sterling of the difference between (i) and (ii);</p> | (i)(ii) should be (1), (2) |
| 22D.9(d) | | 22D.18' should be '22D.22' |
| 22D.9(i), | <p>(i) where the licensee is terminating the Evergreen Supply Contract for the Dead Tariff in order to ensure that the Domestic Customer would become subject to their SLC 22D Relevant Cheapest Evergreen Tariff on the basis of a Deemed Contract (in the event that the Domestic Customer continued to consume [gas/electricity]), provides the following information:</p> <p>....</p> | Remove 'the Evergreen Supply Contract for' |



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| | (ii) the date the Evergreen Supply Contract for the Dead Tariff is due to be terminated; | |
| 25C.3(b) | 25C.3 For the purposes of this condition, the licensee or any Representative would not be regarded as treating a Domestic Customer fairly if their actions or omissions: (a) significantly favour the interests of the licensee; and (b) give rise to a likelihood of detriment to the Domestic Customer. | Add 'undue' before 'detriment' (disconnection could be seen as detrimental) |
| 31B.4 | 31B.4 If the licensee or any Affiliate Licensees have a Website, the licensee must publish each Tariff Information Label prepared pursuant to paragraph 31B.1 on that Website in a position that is capable of easily being accessed by any person and which does not require a person to input any information apart from their address or postcode. | So does this mean we have to provide multiple TILs on the website when customer inputs address or postcode, or just a default TIL? |
| 31C.6(a) | 31C.6 Where any change or changes will take place that affect the calculation of any Tariff Comparison Rate that continues to be used by the licensee or any Representative, the licensee must take all reasonable steps to ensure that each Tariff Comparison Rate is updated on the following basis: (a) in the case of a Fixed Term Supply Contract which complies with sub-paragraph 11(a) of standard condition 22C or sub-paragraph 8(a) of standard condition 23, within one day of the time the change or changes take effect: (i) in respect of information displayed on a Website or other website, within one working day of the time the change or changes take effect; and (ii) in respect of information displayed or provided in any other manner, within five working days from the time the change or changes take effect; and | Confusing. Not clear why a TCR provided verbally only needs to be updated within 5 working days, rather than within one day/working day? (b) - how long before? Potential to mislead, e.g. price decrease not happening for 3 months |

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| | (b) in the case of any other Tariff, before the change or changes take effect. | |
| 31A.5(a)(ii) | <p>(aa) ensure that the Annual Statement is not combined with any other document (including, but not limited to, a Bill or statement of account) and is provided to the Domestic Customer separately from any other document (including, but not limited to, a Bill or statement of account) with the exception of the following distinct documents which may be provided to the Domestic Customer in the same envelope as the Annual Statement:</p> <p>(i) an Annual Statement in respect of [electricity/gas];</p> <p>(ii) any document that is required by paragraph 37.7 of an Electricity Supply Licence;</p> <p>(iii) any document setting out any Energy Literacy Information specified in directions which, following consultation, the Authority may issue and may from time to time revise (following further consultation).</p> | What does 'paragraph 37.7' relate to - no SLC 37? |
| 31A S4.11(d)(i) | <p>S4.11. The licensee must populate Zone C with: ...</p> <p>(d) a bar chart or other graph, diagram or infographic displaying:</p> <p>(i) a comparison of the amount of energy (in the format of kWh) used by the Domestic Customer during two separate periods; and</p> | 'two separate periods' - this is vague, could mean two months. Assume intention is comparison between that period and the same period in the previous year, where available? |
| 31D.21 and 31D.22 | 31D.21 In respect of White Label Tariffs, the definition of "Relevant Cheapest Evergreen Tariff" in standard condition 22C is replaced with the following definition: | What if there is no Evergreen Tariff for that White Label Provider? |



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| | <p>“Relevant Cheapest Evergreen Tariff” means, in comparison with each specific Domestic Customer’s White Label Tariff, the cheapest White Label Tariff for an Evergreen Supply Contract (which has the same White Label Provider) for that Domestic Customer based on their:</p> <ul style="list-style-type: none">(a) current payment method;(b) Annual Consumption Details;(c) current Relevant Meter Type; and(d) Relevant Account Management Arrangement. | |
| 31D.30 | <p>White Label Tariff Provider means the person that owns the brand name used for a White Label Tariff.</p> | <p>'White Label Tariff Provider' is defined, but 'White Label Provider' is used throughout</p> |