

**To: All holders of a gas supplier licence ("licensees") who are relevant licence holders for the purposes of section 23(10) of the Gas Act 1986**

**NOTICE OF A STATUTORY CONSULTATION ON A PROPOSED MODIFICATION PURSUANT TO SECTION 23 OF THE GAS ACT 1986 OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 7A(1) OF THE GAS ACT 1986**

**WHEREAS:**

1. Each of the companies to whom this notice is addressed holds a gas supply licence granted or treated as granted pursuant to section 7A(1) of the Gas Act 1986 (the "Act").
2. In accordance with section 23(2), (3) and (4) of the Act, the Gas and Electricity Markets Authority (the "Authority") gives notice ("Notice") that it proposes to modify the standard conditions of the gas supply licence by introducing standard condition 28AA.
3. The reasons why the Authority proposes to make this licence modification relate to the need to protect disengaged vulnerable consumers and are set out in the covering document titled: "[Statutory consultation for a vulnerable customer safeguard tariff](#)".
4. The effects of this proposed modification are described in the document referred to in paragraph 3 of this Notice and the annotated version of proposed standard condition 28AA in schedule 2. In summary, the main effects of the proposals are to extend the price cap provided for in standard condition 28A to domestic customers which have previously received, or currently receive, the Warm Home Discount and are subject to any form of deemed, evergreen or default tariff/contractual arrangement.
5. The envisaged text for the proposed modification to introduce standard condition 28AA is set out in schedule 1 to this Notice.
6. A copy of the proposed modification and other documents referred to in this Notice have been published on our website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)). Alternatively they are available from our Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003).
7. Any representations with respect to the proposed licence modification must be made on or before **09:00 on Monday 13 November 2017** to: Jemma Baker, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to [vulnerability@ofgem.gov.uk](mailto:vulnerability@ofgem.gov.uk)
8. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
9. Subject to responses to the statutory consultation, in the event that the Authority decides to proceed with the proposed modification, it is intended that the modification will take effect on a date which is at least 56 days after the date on which the Authority's decision is published.

**Rachel Fletcher, Senior Partner**

**Duly authorised on behalf of the  
Gas and Electricity Markets Authority**

**11 October 2017**

## Schedule 1 – proposed introduction of standard condition 28AA

The text below constitutes the envisaged modification to introduce standard condition 28AA into the gas supply licence:

### Condition 28AA. Regulation of charges for certain Domestic Customers

#### Prohibition on exceeding the Relevant Maximum Charge

28AA.1 Subject to 28AA.9 and 28AA.10, in respect of each Relevant 28AA Customer and in accordance with the requirements of this condition, the Obligated Licensee must ensure that at all times during the Charge Restriction Period the aggregate Charges for Supply Activities which apply to that customer do not exceed the Relevant Maximum Charge.

#### Domestic Customers already subject to standard condition 28A

28AA.2 This condition will apply to a Relevant 28AA Customer in respect of any periods of time whereby that Relevant 28AA Customer does not benefit from the requirements of condition 28A.

#### Determination of Relevant Maximum Charge

28AA.3 For each Benchmark Metering Arrangement (denoted  $l$ ), for that part of a Charge Restriction Period (denoted  $j$ ) where this condition has effect with resulting length  $t$  months, and for each of the 14 Charge Restriction Regions (denoted  $i$ ), the Relevant Maximum Charge for a given level of consumption  $x$  shall be determined by reference to the Benchmark Maximum Charges applicable during the part of a Charge Restriction Period where this condition has effect at two Benchmark Annual Consumption Levels denoted below as  $nil$  and  $m$ , as follows:

$$ChargeMax_{i,j,l}(x) = \left[ ChargeMax_{i,j,l}(nil) \times \frac{t}{12} \right] + \left[ \frac{ChargeMax_{i,j,l}(m) - ChargeMax_{i,j,l}(nil)}{m} \times x \right]$$

#### Reporting obligation

28AA.4 Subject to paragraph 28AA.5, the Obligated Licensee must provide the Authority, in a format specified by the Authority, with a report containing the following information for each of its Tariffs with a Relevant 28AA Customer to whom this condition applies:

- (a) the Tariff name and any brand name that the Tariff is marketed under;
- (b) the first and (where applicable) last dates on which each Tariff was or will be supplied to Relevant 28AA Customers under a Domestic Supply Contract or a Deemed Contract;
- (c) the Standing Charge(s) and Unit Rate(s) of each Tariff in each Charge Restriction Region;
- (d) to which Metering Arrangement(s) each Tariff applies or will apply;
- (e) the number of Relevant 28AA Customers subject to the Tariff:
  - (i) as at the Modification Date for the first report; and

(ii) as at the date specified by the Authority pursuant to paragraph 28AA.11 for each subsequent report; and

(f) any other information about the Tariff which the Authority may from time to time specify.

28AA.5 For the purposes of paragraph 28AA.4 the first report must be provided five Working Days after the Modification Date, and any subsequent report must be provided five Working Days after a date specified by the Authority in a statement published in writing.

28AA.6 The Obligated Licensee must inform the Authority, in Writing (or in any other format specified by the Authority), of any changes to the information included in the report as soon as reasonably practicable after the implementation of any such changes.

28AA.7 The Obligated Licensee must give the Authority any information that it reasonably requests about the Obligated Licensee's compliance with this condition as soon as reasonably practicable after receiving a request.

#### **Direction for alternative compliance assessment**

28AA.8 Paragraphs 28A.19 and 28A.20 of condition 28A apply to this condition on the basis that:

(a) any reference to "Prepayment Tariff" is to be read as "Tariff subject to the Relevant Maximum Charge in condition 28AA";

(b) any reference to "Prepayment Charge Restriction" is to be read as "paragraph 28AA.1 of condition 28AA";

(c) any reference to "Relevant Customers" is to be read as "Relevant 28AA Customer"; and

(d) any reference to "Relevant Maximum Charge" is to be read as "Relevant Maximum Charge as applied under condition 28AA".

#### **Date for compliance with Relevant Maximum Charge**

28AA.9 Where the Obligated Licensee has identified a Relevant 28AA Customer on a date which is:

(a) 30 days or less before the Modification Date; or

(b) on or after the Modification Date,

the Obligated Licensee must comply with paragraph 28AA.1 of this condition on and from the date which is 30 days after that Relevant 28AA Customer was identified.

28AA.10 Where the Obligated Licensee has identified a Relevant 28AA Customer on a date which is earlier than 30 days before the Modification Date, the Obligated Licensee must comply with paragraph 28AA.1 of this condition on and from the Modification Date.

#### **Termination of condition**

28AA.11 This condition will cease to have effect at 23:59 on 31 December 2019 unless the Authority specifies an earlier date by publishing a statement in Writing.

### **Definitions for condition**

28AA.12 In this condition:

**"Benchmark Maximum Charge"** means the value published by the Authority for the Charge Restriction Period *j* pursuant to paragraph 28A.14 of condition 28A and calculated in accordance with paragraphs 28A.5 to 28A.13;

**"Charge Restriction Region"** has the meaning given to that term in standard condition 28A.24;

**"Charge Restriction Period"** has the meaning given to that term in standard condition 28A.24;

**"Charges for Supply Activities"** has the meaning given to that term in standard condition 22A.9;

**"Core Group Customer"** has the meaning given to that term in regulation 7(2) of the Regulations;

**"28AA Default Fixed Term Contract"** means any type or part of a Domestic Supply Contract or any other contractual arrangement which may apply or be deemed to apply to a Domestic Customer, including by virtue of any law or enactment ("other contractual arrangement") which:

- (a) contains any terms and conditions which apply for a fixed term period; and
- (b) comes into effect automatically or at the discretion of the licensee after the expiry or termination of any type or part of a previous Domestic Supply Contract or, where applicable, other contractual arrangement ("previous contract") either:
  - (i) by virtue of the terms and conditions provided for in that previous contract (and, for the purposes of this definition, it is irrelevant whether or not the Domestic Customer originally agreed to any terms and conditions which purported to permit that automatic effect or discretion of the licensee); or
  - (ii) otherwise by the operation of the law or any provision of an enactment;

**"Modification Date"** means the date specified by the Authority in the modification direction inserting this condition for the purposes of section 23(8) of the Gas Act 1986;

**"Obligated Licensee"** means a Supplier which is a scheme gas supplier for the purposes of regulation 5(5) of the Regulations.

**"Regulations"** means the Warm Home Discount Regulations 2011 (SI 2011/1033) (as amended).

**"Relevant 28AA Customer"** means a Domestic Customer supplied by virtue of the Gas Supply Licence held by the Obligated Licensee and which:

- (a) is subject to a Deemed Contract, an Evergreen Supply Contract or a 28AA Default Fixed Term Contract; and
- (b) falls into at least one of the following categories:

(i) has, in respect of the current Scheme Year which corresponds with the Charge Restriction Period, already been identified by the Obligated Licensee as a Core Group Customer for the purposes of the Regulations; or

(ii) was, in respect of the preceding Scheme Year, previously identified as a Core Group Customer by the same Obligated Licensee for the purposes of the Regulations; or

(iii) has, in respect of the current Scheme Year which corresponds with the Charge Restriction Period, already been identified by the Obligated Licensee as meeting at least one of the descriptions of persons in the Obligated Licensee's eligibility criteria as determined by the supplier and approved by the Authority in accordance with Chapter 2 of the Regulations; or

(iv) was, in respect of the preceding Scheme Year, previously identified by the same Obligated Licensee as meeting at least one of the descriptions of persons in the Obligated Licensee's eligibility criteria as determined by the supplier and approved by the Authority in accordance with Chapter 2 of the Regulations;

**"Relevant Maximum Charge"** means for each Relevant 28AA Customer the maximum charge amount (in pounds sterling, excluding value added tax) for any consumption level, calculated in accordance with paragraph 28AA.3;

**"Scheme Year"** has the meaning given to that term in paragraph 2 of the Regulations.

## **Schedule 2 – annotated version of proposed standard condition 28AA with explanations of policy intent**

### **Condition 28AA. Regulation of charges for certain Domestic Customers**

#### Overall policy intention

*Ofgem's overall policy intention is to apply, for a temporary period, price regulation extending the values of the prepayment safeguard tariff in SLC 28A to domestic customers which have previously received, or currently receive, the Warm Home Discount. Our intention is to apply this price regulation to suppliers that are obliged to offer Warm Home Discount. For the avoidance of doubt, it is not Ofgem's intention to apply this interim price regulation to suppliers that participate in the Warm Home Discount scheme on a voluntary basis.*

### **Prohibition on exceeding the Relevant Maximum Charge**

#### Policy intention

*The intended effect of the policy is that, if a Domestic Customer meets criteria relating to the Warm Home Discount, that Domestic Customer would benefit from price regulation if they are subject to any form of deemed, evergreen or default (including, if permitted by other standard conditions, default fixed term) tariff/ contractual arrangement. This means that:*

- (a) the metering or payment arrangement that applies to the domestic customer is not a relevant factor (unless that means the customer already benefits from SLC 28A); and*
- (b) the contractual/tariff arrangement would only result in a customer falling outside the scope of the price regulation if the customer has already entered into, or subsequently enters into, a fixed term contract (excluding any default fixed-term tariffs).*

*The policy intention is also that white label arrangements will not be a relevant factor and will not result in a Domestic Customer falling out of scope.*

*For the avoidance of doubt, nothing in this condition is intended to change a supplier's obligations in relation to the Warm Home Discount.*

#### Proposed legal drafting (to be read in conjunction with the definitions)

28AA.1 Subject to 28AA.9 and 28AA.10, in respect of each Relevant 28AA Customer and in accordance with the requirements of this condition, the Obligated Licensee must ensure that at all times during the Charge Restriction Period the aggregate Charges for Supply Activities which apply to that customer do not exceed the Relevant Maximum Charge.

### **Domestic Customers already subject to standard condition 28A**

#### Policy intention

*It is intended that Domestic Customers that already benefit from standard condition 28A would not be within the scope of this condition for as long as they benefit from standard condition 28A. For example, this means that if a domestic customer was no longer supplied via a prepayment meter which is within the scope of SLC 28A, that customer*

would benefit from this condition if they fell within the definition of Relevant 28AA Customer.

#### Proposed legal drafting

28AA.2 This condition will apply to a Relevant 28AA Customer in respect of any periods of time whereby that Relevant 28AA Customer does not benefit from the requirements of condition 28A.

### **Determination of Relevant Maximum Charge**

#### Policy intention

*It is intended that, subject to one difference, this condition would apply the same substantive approach and methodology for the Relevant Maximum Charge as taken in SLC 28A. The difference is that the Relevant Maximum Charge will apply to part of a Charge Restriction Period (eg from the period between the proposed introduction in February and the end of that Charge Restriction Period on 31 March 2018).*

#### Proposed legal drafting

28AA.3 For each Benchmark Metering Arrangement (denoted  $l$ ), for that part of a Charge Restriction Period (denoted  $j$ ) where this condition has effect with resulting length  $t$  months, and for each of the 14 Charge Restriction Regions (denoted  $i$ ), the Relevant Maximum Charge for a given level of consumption  $x$  shall be determined by reference to the Benchmark Maximum Charges applicable during the part of a Charge Restriction Period where this condition has effect at two Benchmark Annual Consumption Levels denoted below as  $nil$  and  $m$ , as follows:

$$ChargeMax_{i,j,l}(x) = \left[ ChargeMax_{i,j,l}(nil) \times \frac{t}{12} \right] + \left[ \frac{ChargeMax_{i,j,l}(m) - ChargeMax_{i,j,l}(nil)}{m} \times x \right]$$

### **Reporting obligation**

#### Policy intention

*The policy intent is to have similar reporting requirements as in condition 28A (paragraphs 28A.21-28A.23 in the gas version). Aside from amending references to "Prepayment", a main difference is that we are not including an equivalent to 28A.29(d) (gas version) on customer criteria, as this does not appear relevant for a condition which only limits charges for certain consumers on a given tariff.*

*The intention is that reporting will only apply to Tariffs used by Relevant 28AA Customers, rather than all a supplier's tariffs. On this basis, the equivalent to 28A.21(e) (in the gas version) is intended to include only those customers that are covered by the cap – ie Relevant 28AA Customers where this condition applies.*

*Another difference is with the timeframe for reporting, including in respect of providing a snapshot of information about Relevant 28AA Customers at a particular point in time. The policy intent is to set an initial timeframe on the face of the licence condition (based on the date the licence modification comes into effect) in order to cover the first portion of the Relevant Charge Restriction Period, along with a power to give Ofgem the flexibility to set further dates for reporting in respect of each subsequent Charge Restriction Period that may be applicable.*



### Proposed legal drafting

28AA.4 Subject to paragraph 28AA.5, the Obligated Licensee must provide the Authority, in a format specified by the Authority, with a report containing the following information for each of its Tariffs with a Relevant 28AA Customer to whom this condition applies:

- (a) the Tariff name and any brand name that the Tariff is marketed under;
- (b) the first and (where applicable) last dates on which each Tariff was or will be supplied to Relevant 28AA Customers under a Domestic Supply Contract or a Deemed Contract;
- (c) the Standing Charge(s) and Unit Rate(s) of each Tariff in each Charge Restriction Region;
- (d) to which Metering Arrangement(s) each Tariff applies or will apply;
- (e) the number of Relevant 28AA Customers subject to the Tariff:
  - (i) as at the Modification date for the first report; and
  - (ii) as at the date specified by the Authority pursuant to paragraph 28AA.11 for each subsequent report; and
- (f) any other information about the Tariff which the Authority may from time to time specify.

28AA.5 For the purposes of paragraph 28AA.4 the first report must be provided five Working Days after the Modification date, and any subsequent report must be provided five Working Days after a date specified by the Authority in a statement published in writing.

28AA.6 The Obligated Licensee must inform the Authority, in Writing (or in any other format specified by the Authority), of any changes to the information included in the report as soon as reasonably practicable after the implementation of any such changes.

28AA.7 The Obligated Licensee must give the Authority any information that it reasonably requests about the Obligated Licensee's compliance with this condition as soon as reasonably practicable after receiving a request.

### **Direction for alternative compliance assessment**

#### *Policy intention*

*It is intended that the same substantive approach would be taken as for paragraphs 28A.19 and 28A.20 of condition 28A. In particular, the policy intention is to provide for the possibility of alternative compliance arrangements for zero standing charge tariffs.*

### Proposed legal drafting

28AA.8 Paragraphs 28A.19 and 28A.20 of condition 28A apply to this condition on the basis that:

- (a) any reference to "Prepayment Tariff" is to be read as "Tariff subject to the Relevant Maximum Charge in condition 28AA";

- (b) any reference to "Prepayment Charge Restriction" is to be read as "paragraph 28AA.1 of condition 28AA";
- (c) any reference to "Relevant Customers" is to be read as "Relevant 28AA Customer"; and
- (d) any reference to "Relevant Maximum Charge" is to be read as "Relevant Maximum Charge as applied under condition 28AA".

## **Date for compliance with Relevant Maximum Charge**

### *Policy intention*

*It is intended that every Obligated Licensee will have at least 30 days to comply with the Relevant Maximum Charge for the purposes of this Licence Condition and apply it to each Relevant 28AA Customer. However, the intention is to take into account situations whereby Relevant 28AA Customers have already been identified by their supplier (e.g. for the purposes of the previous Warm Home Discount Scheme Year) and for the safeguard tariff protection to come into effect without any delay beyond the minimum statutory 56 day period for implementation.*

28AA.9 Where the Obligated Licensee has identified a Relevant 28AA Customer on a date which is:

- (a) 30 days or less before the Modification Date; or
- (b) on or after the Modification Date,

the Obligated Licensee must comply with paragraph 28AA.1 of this condition on and from the date which is 30 days after that Relevant 28AA Customer was identified.

28AA.10 Where the Obligated Licensee has identified a Relevant 28AA Customer on a date which is earlier than 30 days before the Modification Date, the Obligated Licensee must comply with paragraph 28AA.1 of this condition on and from the Modification Date.

## **Termination of condition**

### *Policy intention*

*Government announced to introduce an energy price cap. According to current time planning this price cap will be implemented beginning of 2020. However in order to avoid a situation where two price caps exists in parallel it is intended that the sunset period would be set at 31 December 2019 with the possibility for Ofgem to set the sunset date of the safeguard tariff further into the future.*

### Proposed legal drafting

28AA.11 This condition will cease to have effect at 23:59 on 31 December 2019 unless the Authority specifies an earlier date by publishing a statement in Writing.

## **Definitions for condition**

### *Policy intention*

*Most of the definitions are intended to link to the existing requirements of Standard Condition 28A or to reproduce an requirement in an adapted form to work in the context*

*of this condition, e.g. by removing references to "Prepayment". However, we have provided an explanation of the policy intent for any definitions that have a more substantive effect.*

Proposed legal drafting

28AA.12 in this condition:

*Policy intention Benchmark Maximum Charge*

*The intention is to cross-refer to the values for the Benchmark Maximum Charge published under SLC 28A, rather than carrying out separate calculations for the purpose of this condition 28AA.*

Proposed legal drafting for Benchmark Maximum Charge

**"Benchmark Maximum Charge"** means the value published by the Authority for the Charge Restriction Period *j* pursuant to paragraph 28A.14 of condition 28A and calculated in accordance with paragraphs 28A.5 to 28A.13;

**"Charge Restriction Region"** has the meaning given to that term in standard condition 28A.24;

**"Charge Restriction Period"** has the meaning given to that term in standard condition 28A.24;

**"Charges for Supply Activities"** has the meaning given to that term in standard condition 22A.9;

**"Core Group Customer"** has the meaning given to that term in regulation 7(2) of the Regulations;

**"28AA Default Fixed Term Contract"** means any type or part of a Domestic Supply Contract or any other contractual arrangement which may apply or be deemed to apply to a Domestic Customer, including by virtue of any law or enactment ("other contractual arrangement") which:

- (a) contains any terms and conditions which apply for a fixed term period; and
- (b) comes into effect automatically or at the discretion of the licensee after the expiry or termination of any type or part of a previous Domestic Supply Contract or, where applicable, other contractual arrangement ("previous contract") either:
  - (i) by virtue of the terms and conditions provided for in that previous contract (and, for the purposes of this definition, it is irrelevant whether or not the Domestic Customer originally agreed to any terms and conditions which purported to permit that automatic effect or discretion of the licensee); or
  - (ii) otherwise by the operation of the law or any provision of an enactment;

**"Modification date"** means the date specified by the Authority in the modification direction inserting this condition for the purposes of section 23(8) of the Gas Act 1986;

*Policy intention for Obligated Licensee*

*It is intended that this licence condition would apply to all suppliers mandated to provide the Warm Home Discount, i.e. compulsory electricity scheme supplies and scheme gas suppliers which are connected to a compulsory scheme electricity supplier .*

#### Proposed legal drafting for Obligated Licensee

**“Obligated Licensee”** means a Supplier which is a scheme gas supplier for the purposes of regulation 5(5) of the Regulations.

**“Regulations”** means the Warm Home Discount Regulations 2011 (SI 2011/1033) (as amended).

#### Policy intention for Relevant 28AA Customer

*The intention is to capture vulnerable consumers on any form of evergreen or default fixed term contract. Our policy intention is that a default fixed term contract would cover, but not be limited to, any type of fixed term contract that a customer would become subject to when an existing fixed term contract expires or is terminated (this policy intention is reflected in the above definition of “28AA Default Fixed Term Contract”).*

*As a means of capturing vulnerable customers our intention is that this temporary licence condition would cover customers which, in respect of the current or previous Warm Home Discount Scheme Year, are identified as Core Group or Broader Group customers by the Obligated Licensee for the purposes of the Warm Home Discount Regulations 2011. For the avoidance of doubt, the definitions of Core Group and Broader Group Customers would be the same as those set out in the Warm Home Discount Regulations. This means, for example, Broader Group Customers are those meeting the Obligated Licensee’s eligibility criteria as determined by the supplier and approved by the Authority in accordance with Chapter 2 of the Regulations.*

*Following the identification of Relevant 28AA Customers, the policy intent is that the supplier will have a period of at least 30 days before it has to comply with the charge restriction for that customer. The policy intention and proposed legal drafting on this element is set out above under the subheading “Date for compliance with Relevant Maximum Charge”.*

#### Proposed legal drafting for Relevant 28AA Customer

**“Relevant 28AA Customer”** means a Domestic Customer supplied by virtue of the Gas Supply Licence held by the Obligated Licensee and which:

- (a) is subject to a Deemed Contract, an Evergreen Supply Contract or a 28AA Default Fixed Term Contract; and
- (b) falls into at least one of the following categories:
  - (i) has, in respect of the current Scheme Year which corresponds with the Charge Restriction Period, already been identified by the Obligated Licensee as a Core Group Customer for the purposes of the Regulations; or
  - (ii) was, in respect of the preceding Scheme Year, previously identified as a Core Group Customer by the same Obligated Licensee for the purposes of the Regulations; or
  - (iii) has, in respect of the current Scheme Year which corresponds with the Charge Restriction Period, already been identified by the Obligated Licensee as

meeting at least one of the descriptions of persons in the Obligated Licensee's eligibility criteria as determined by the supplier and approved by the Authority in accordance with Chapter 2 of the Regulations; or

(iv) was, in respect of the preceding Scheme Year, previously identified by the same Obligated Licensee as meeting at least one of the descriptions of persons in the Obligated Licensee's eligibility criteria as determined by the supplier and approved by the Authority in accordance with Chapter 2 of the Regulations;

**"Relevant Maximum Charge"** means for each Relevant 28AA Customer the maximum charge amount (in pounds sterling, excluding value added tax) for any consumption level, calculated in accordance with paragraph 28AA.3;

**"Scheme Year"** has the meaning given to that term in paragraph 2 of the Regulations.