

# Decision to modify gas and electricity supply licences for installation of prepayment meters under warrant

## Decision

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### Overview:

We don't want any energy consumers to face disproportionate or inappropriate actions or charges throughout the debt recovery process. We think that domestic consumers, especially those in vulnerable situations, need additional protections in this area. In particular, we think they need specific protections against the use of warrants for the force-fitting of prepayment meters and the associated charges.

Companies are already expected to use warrants only as a last resort, but we think they can do more to avoid warrant usage where possible, including better identifying consumers in vulnerable situations throughout the debt recovery process.

In July 2017, we issued a statutory consultation including draft licence modification Notices and signalled our intent to introduce a range of new protections.

We have considered responses to the statutory consultation and proposed draft licence conditions. This final decision document outlines the reasons for our decision to modify the relevant supply licence conditions, as well as the decision that the licence changes will take effect on and from 8 January 2018.

## Context

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Our Consumer Vulnerability Strategy (2013) sets out Ofgem's approach to identifying and tackling consumer vulnerability in the energy market. It identified prepayment meter (PPM) customers as a key area of focus.

In December 2015, we published initial proposals to improve outcomes for PPM consumers in a number of areas, including where warrants are used to force-fit a PPM to recover debt. In September 2016, we published a policy consultation outlining proposals to protect consumers who have PPMs force-fitted under warrant for debt recovery purposes. Having taken account of the responses received, in July 2017 we published a statutory consultation on revised proposals.

PPMs were also a focus for the Competition and Markets Authority's (CMA's) recent review of the energy market. Its review identified weaker competition in the prepayment sector compared to the rest of the domestic retail market. Following this review, the CMA and Ofgem implemented a number of measures designed to improve outcomes for PPM consumers. These included introducing a price cap on PPM tariffs and overseeing improvements to the process for indebted PPM customers switching to other suppliers. The changes outlined in this document complement these measures and are designed to further improve outcomes for PPM consumers, especially those in vulnerable situations.

We have outlined the reasons for the decisions we have taken and their intended effect in this document. For the sake of brevity, we have not sought to repeat entirely the rationale and evidence base set out in our July 2017 statutory consultation<sup>1</sup> but instead make reference to this document where necessary.

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[https://www.ofgem.gov.uk/system/files/docs/2017/06/prepayment\\_meters\\_installed\\_under\\_warrant\\_-\\_statutory\\_consultation\\_1.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/06/prepayment_meters_installed_under_warrant_-_statutory_consultation_1.pdf)

## Associated documents

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Consumer Vulnerability Strategy (2013) and Progress Report (2015)

<https://www.ofgem.gov.uk/publications-and-updates/consumer-vulnerability-strategy>

<https://www.ofgem.gov.uk/publications-and-updates/consumer-vulnerability-strategy-progress-report>

Prepayment review: understanding supplier charging practices and barriers to Switching (June 2015)

<https://www.ofgem.gov.uk/publications-and-updates/prepayment-review-understanding-supplier-charging-practices-and-barriers-switching>

Initial policy consultation - Proposals to improve outcomes for prepayment customers (December 2015)

<https://www.ofgem.gov.uk/publications-and-updates/proposals-improve-outcomes-prepayment-customers>

Prepayment meters installed under warrant – final proposals (September 2016)

[https://www.ofgem.gov.uk/system/files/docs/2016/09/final\\_proposals\\_consultation\\_document.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/09/final_proposals_consultation_document.pdf)

Prepayment meters installed under warrant – statutory consultation (July 2017)

[https://www.ofgem.gov.uk/system/files/docs/2017/06/prepayment\\_meters\\_installed\\_under\\_warrant\\_-\\_statutory\\_consultation\\_1.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/06/prepayment_meters_installed_under_warrant_-_statutory_consultation_1.pdf)

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## Executive Summary

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Protecting consumers in vulnerable situations and facilitating positive outcomes for all consumers is a key priority for Ofgem. Prepayment meter (PPM) customers are a particular focus for our work, especially where consumers have PPMs force-fitted under warrant to recover debt. This document explains the prescriptive licence modifications we are making to protect these consumers alongside a principle designed to protect all consumers in the debt recovery process.

We are making these modifications to the domestic supply licences to remedy poor outcomes for consumers resulting from current supplier practice. In particular:

- We are concerned about failures to identify vulnerability during the warrant application and execution process, resulting in some consumers in vulnerable situations suffering traumatic experiences.
- We are concerned about suppliers' approaches to charging vulnerable customers for warrant-related costs, particularly where customers' ability to engage with their supplier is impaired due to their vulnerability or where they are already in severe financial difficulty.
- We are concerned about the level and inconsistency of warrant-related charges for all consumers, with different suppliers charging a widely differing range of amounts for conducting the same process and in some cases, levying excessively high charges.

We are therefore introducing the following rules into the domestic supply licence. Some of the new rules will be prescriptive, while another will be in the form of a principle. We have decided that some prescription is necessary to achieve good outcomes for consumers in this particular case, because existing rules and voluntary arrangements do not sufficiently cover the issues we have identified, nor do they sufficiently incentivise suppliers to adjust their approaches.

This approach is consistent with what we have said concerning our wider move to rely more on enforceable principles in our regulation of suppliers, while at the same time being clear that there will be areas where prescription is the most appropriate way to regulate.

We are introducing:

### **A prohibition on suppliers using warrants in certain exceptional cases**

We are requiring that suppliers do not install a PPM under warrant for the purposes of recovering debt where the process would be severely traumatic due to a consumer's mental capacity and/or psychological state. This measure will have the effect of protecting these consumers from having these traumatic experiences. It will also direct suppliers to pursue other, more suitable debt recovery methods.



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### **A prohibition on suppliers levying warrant-related charges in certain other cases**

We are requiring that suppliers do not levy charges associated with the installation of a PPM under warrant where either the consumer's vulnerability has significantly impaired their engagement with the supplier during the debt recovery process or where the charges would exacerbate a consumer's existing financial vulnerability by requiring them to pay additional warrant-related charges. This measure should also incentivise suppliers to pursue other, more suitable debt recovery methods given that they will not be able to recover any warrant-related costs in these instances.

### **A cap on warrant related charges of £150 in all other cases**

We are capping the amount that suppliers can levy for warrant-related costs in all cases where a warrant is used to force-fit a PPM to recover debt to £150. The cap is designed to encourage greater engagement with indebted consumers, to incentivise suppliers to explore alternative debt recovery methods, and to only use warrants as a last resort. Another intended effect of the cap is that all consumers will be protected from facing disproportionate costs where a warrant is used, and will be clear on the maximum amount they may be charged if a warrant is used.

### **Proportionality principle**

We are introducing a principle of proportionality, covering costs and actions of suppliers, for all customers in the debt recovery process. The intended effect of this measure is to ensure that suppliers take actions and levy charges that are proportionate in all cases where they seek to recover debt from consumers.

**Smart meters** can operate in both credit and PPM mode, removing the need to access people's homes and physically change their meter when they move between credit and PPM tariffs and the resultant cost. The smart meter rollout is due to be completed by the end of 2020, so the rules relating purely to warrant-related activities will cease to apply at the end of 2020, unless we later specify another date to reflect any changes to the smart meter rollout timetable.

### **Impact assessment**

We have not received substantive new data that would prompt us to update the Impact Assessment we published alongside our July 2017 statutory consultation. We are therefore using our previously published Impact Assessment as the final version.

### **Next steps**

Licence changes will take effect on and from 8 January 2018.

# 1. Prohibition

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## Chapter Summary

In our July 2017 statutory consultation, we proposed prohibiting suppliers from using a warrant to force-fit a PPM to recover debt where taking this action would result in a severely traumatic experience for the customer due to their mental capacity and/or psychological state. We also proposed prohibiting suppliers from charging for warrant-related costs where a specific set of vulnerability indicators were present. This chapter recaps on the issues we identified and proposals we set out in our statutory consultation, summarises consultation respondents' views on our proposals, and sets out our decision.

## The issues we identified

1.1. In our statutory consultation, we noted our concern around suppliers' failures to identify vulnerability during the warrant application and execution process. We also noted our concerns around inconsistent charging for warrant-related costs where vulnerabilities are discovered.

1.2. As set out in our statutory consultation, there are specific circumstances under which these failures and inconsistencies result in particular consumer detriment. We explained the practical implications these failures can have for consumers.<sup>2</sup>

## July 2017 statutory consultation proposals

1.3. In our statutory consultation, we proposed prohibiting suppliers from using a warrant to force-fit a PPM to recover debt where the process of installing a PPM under warrant would be severely traumatic for the consumer due to their mental capacity and/or psychological state.

1.4. We also proposed prohibiting suppliers from charging for warrant-related costs where either the consumer's vulnerability had significantly impaired their ability to engage with the supplier, or where the charges would exacerbate existing severe financial vulnerability.

1.5. Our proposals also included a 'sunset clause'. Smart meters can operate in both credit and PPM mode, removing the need to access people's homes and physically change their meter when they move between credit and PPM tariffs and the resultant cost. The smart meter rollout is due to be completed by the end of 2020, and so the rules relating purely to warrant-related activities will cease to apply

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<sup>2</sup> See statutory consultation, pages 11-12  
[https://www.ofgem.gov.uk/system/files/docs/2017/06/prepayment\\_meters\\_installed\\_under\\_warrant\\_-\\_statutory\\_consultation\\_1.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/06/prepayment_meters_installed_under_warrant_-_statutory_consultation_1.pdf)

at the end of 2020, unless we later specify another date to reflect any changes to the smart meter rollout timetable.

## Summary of consultation responses

### **Prohibition on installation where it would be severely traumatic due to the customer's mental capacity and/or psychological state**

1.6. Consumer groups remained unanimously supportive of this proposal. They highlighted the detriment that force-fitting of PPMs under warrant can have on the most vulnerable consumers, and shared some information on how suppliers can identify certain vulnerabilities and support consumers potentially facing a warrant situation.<sup>3,4</sup>

1.7. Suppliers presented mixed views. Two expressed support for our proposal, agreeing that force-fitting of a PPM under warrant is inappropriate where it would result in an 'unacceptable level of stress' to the customer. By contrast, four suppliers and a trade body remained concerned about perceived negative consequences from this proposal.

1.8. They reiterated, in similar terms, a number of issues they had previously raised in response to our September 2016 policy consultation. In particular, they expressed concerns that:

- (i) prohibiting installation of PPMs under warrant for the most vulnerable consumers could lead to increasing levels of bad debt as they would no longer be able to recover debt from a rump of 'won't pay' consumers, who would 'game' the system to avoid paying.
- (ii) the definition of 'severely traumatic' was in their view too broad and subject to individual interpretation and action.

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<sup>3</sup> See the practical guidance developed by the Money Advice Trust in partnership with Energy UK for suppliers on identifying and supporting customers with mental health problems. The guidance outlines the relationship between vulnerability, debt and mental health issues, with tools aimed at helping companies and their frontline advisors identify, handle and understand vulnerability, and shares lessons from the financial sector, which has faced similar change and challenges.  
<http://www.moneyadvicetrust.org/training/creditsector/Documents/Energy%20UK%20report.pdf>

<sup>4</sup> See research by the Money and Mental Health Policy Institute on the relationship between mental health and financial capability and guidance on how products and services could be adapted to ensure everyone has fair access.  
<https://www.moneyandmentalhealth.org/fincap/>



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- (iii) No alternative debt recovery options are available in some circumstances.<sup>5</sup>
- (iv) the prohibition on installation under warrant could lead to a rise in disconnections being used as an alternative.
- (v) that current licence obligations already provide the necessary protection.

1.9. We responded to each of these issues in our July 2017 statutory consultation document, emphasising among other things that we anticipated that only a small number of cases would be covered by this prohibition, and that suppliers could reasonably be expected to identify and engage appropriately with consumers to identify vulnerability. We consider that our response and reasoning at that stage applies in the same way to the latest round of responses. Please see pages 15-17 of our July 2017 statutory consultation for details.<sup>6</sup>

#### *Setting an absolute obligation to identify relevant vulnerabilities*

1.10. Four suppliers and a trade body suggested that Ofgem should clarify its expectations regarding compliance with the licence obligation where suppliers have been unable, despite a number of attempts, to engage with a customer before installing a PPM under warrant. They also raised concerns that if the risk of non-compliance with the licence condition was felt too high, some suppliers might either resort to using more punitive measures (eg court action or disconnections) or stop the use of warrants altogether for a significant minority of consumers. The latter action could ultimately increase industry-wide bad debt for a rump of consumers whose debt could not be recovered.

#### *Installation of a PPM under warrant with customer consent*

1.11. Two suppliers and a trade body felt more clarity was needed regarding situations where a PPM was installed with customer consent. (In our statutory consultation we proposed expanding the prohibition licence drafting to cover any instance where a supplier relies on their statutory powers to install a PPM to recover debt, including instances where the supplier seeks the customer's consent to enter the premises and install a PPM).

1.12. They also raised concerns that expanding the condition in this way would increase their compliance burden as suppliers would be required not only to check for

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<sup>5</sup> We explain in our recent report *Vulnerable consumers in the retail energy market: 2017* that we expect suppliers to do more to ensure vulnerable consumers are protected. This includes exploring innovative ways of engagement and setting up debt repayment plans ahead of applying for a warrant. This particularly applies to small and medium suppliers, who should be doing more to communicate with customers early in the debt path as identified in our report. <https://www.ofgem.gov.uk/publications-and-updates/vulnerable-consumers-retail-energy-market-2017-0>

<sup>6</sup> <https://www.ofgem.gov.uk/publications-and-updates/prepayment-meters-installed-under-warrant-statutory-consultation>

relevant vulnerabilities before exercising a warrant but also to do the same at the customer's doorstep. One supplier also questioned whether installation in this scenario could ever lead to a level of stress that would justify prohibition.

### **Prohibition on charging due to significantly impaired ability to engage or severe existing financial vulnerability**

1.13. Consumer groups remained unanimously supportive of this aspect of our proposals, believing that it would greatly benefit a segment of the most vulnerable consumers.

1.14. Two suppliers agreed that where a relevant vulnerability is present, the customer should be protected from warrant costs. Three suppliers and a trade body remained concerned with this proposal, repeating in similar terms some of the issues raised in response to our September 2016 consultation. In particular, they expressed concern that:

- (i) prohibiting warrant charges for some consumers in vulnerable situations would end up protecting 'won't pay' customers, as distinguishing those customers from people in genuinely vulnerable circumstances would be difficult.
- (ii) the scope of the term 'severe financial vulnerability' is in their view unclear and could potentially cover all consumers reaching the warrant stage.
- (iii) similar obligations under the 'Ability to Pay' licence requirements already exist.

1.15. We responded to each of these issues in our statutory consultation, emphasising that suppliers can reasonably be expected to identify and engage appropriately with consumers in vulnerable situations. We consider that our response and reasoning at that stage applies in the same way to the latest round of responses. Please see pages 17-18 of our July 2017 statutory consultation for details.<sup>7</sup>

## **Our decision**

### **Prohibition on installation where it would be severely traumatic due to the customer's mental capacity and/or psychological state**

1.16. We have decided to proceed with a prohibition on the force-fitting of a PPM using a warrant where the installation process would be severely traumatic for the consumer due to their mental capacity and/or psychological state.

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<sup>7</sup> <https://www.ofgem.gov.uk/publications-and-updates/prepayment-meters-installed-under-warrant-statutory-consultation>

*Setting an absolute obligation to identify relevant vulnerabilities*

1.17. We acknowledge the challenges associated with identifying vulnerabilities relevant to this prohibition. We also recognise the absolute nature of this requirement meaning that suppliers must identify relevant vulnerabilities where they are present, and the resultant level of burden this carries.

1.18. In our statutory consultation we provided examples of situations where this condition would be relevant. We have also signposted suppliers to our Consumer Vulnerability Strategy and to the approach we expect suppliers to take when attempting to identify vulnerability more broadly.<sup>8</sup> In our recently published report: *Vulnerable consumers in the retail energy market:2017*<sup>9</sup>, we have also set out our expectation that suppliers can do more to engage with consumers in vulnerable situations.

1.19. All of this is designed to guide suppliers while also encouraging suppliers to deal with each case on its merits, leading to a higher probability of the right outcome for consumers. In contrast, we have discounted using a 'tick-box' approach as this would increase the risk of suppliers not taking a holistic approach and cases where the consumer outcome is not as intended by the policy.

*Installation of a PPM under warrant with customer consent*

1.20. As to the issue raised that there can be no cause for concern where a consumer consents to entry, we disagree. The amended licence drafting includes an expanded prohibition to guard against scenarios where the supplier attempts to enter the premises peacefully by telling the customer that they can also enter forcefully using a warrant if necessary. We believe that customers with issues concerning their mental capacity and/or psychological state may easily feel pressure to agree to peaceful entry when fearful or anxious and that the threat of force-fitting during a face-to-face interaction on the doorstep could easily lead to significant trauma for these customers. We have therefore decided that the prohibition should also apply in these situations.

1.21. As to the issue raised that this will add to suppliers' compliance burden, we expect suppliers to have their workforces trained to be able to identify relevant vulnerabilities even at a late stage in the debt recovery process. Our expectations are outlined in our Consumer Vulnerability Strategy, in our recent decision to introduce a vulnerability principle into the supply licence<sup>10</sup>, and also in the requirements suppliers have to adhere to when identifying vulnerability in the context of the priority service register (PSR). Accordingly, we consider that the


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<sup>8</sup> Please refer to p.13 of our statutory consultation.

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[https://www.ofgem.gov.uk/system/files/docs/2017/10/consumer\\_vulnerability\\_report\\_web\\_003.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/10/consumer_vulnerability_report_web_003.pdf)

<sup>10</sup> [https://www.ofgem.gov.uk/system/files/docs/2017/08/final\\_decision\\_-\\_standards\\_of\\_conduct\\_for\\_suppliers\\_in\\_the\\_retail\\_energy\\_market.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/08/final_decision_-_standards_of_conduct_for_suppliers_in_the_retail_energy_market.pdf)



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proposed amendment would be reasonably practicable, and not unduly burdensome, to suppliers.

**Prohibition on charging due to significantly impaired ability to engage or severe financial vulnerability**

1.22. We have decided to proceed with a prohibition on levying charges for warrant-related costs where the affected customer's ability to engage with their supplier is significantly impaired due to a vulnerability, in line with our previously stated rationale that charging in these circumstances would be unfair. We have also decided to proceed with a prohibition of charging where the customer already has severe financial vulnerability that would be exacerbated by the levying of additional charges. For further detail about the practical implications of these scenarios, please refer to page 11 of our July 2017 statutory consultation.

## 2. Cap

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### Chapter Summary

In our July 2017 statutory consultation, we proposed capping the charges suppliers can levy when they use a warrant to force-fit a PPM to recover debt. This chapter recaps on the issues we identified and proposals we set out in our statutory consultation, summarises consultation respondents' views on our proposals, and sets out our decision.

### The issues we identified

2.1. In many cases, suppliers are charging large and inconsistent amounts when applying for and executing a warrant. In our September 2016 consultation we set out how such high and inconsistent charges could present consumers with large unexpected bills, and in some cases with charges that far exceeded the average level of warrant-related costs incurred by suppliers.<sup>11</sup>We noted that costs and charges were inconsistent across suppliers, with warrant charges for a dual fuel consumer ranging from £200 to over £900. This created uncertainty for consumers who would not know what to expect when facing a warrant situation with regard to warrant-related charges.

### July 2017 statutory consultation proposals

2.3. We proposed capping the level of charges suppliers can levy for the costs they incur when applying for and executing a warrant to force-fit a PPM. We proposed setting the cap at £150 and reserving the power to increase this amount in future. These levels compare to the indicative cost of applying for and executing a warrant that stands at £210, according to the data we received from suppliers in response to our May 2016 request for information.

2.4. We said that implementing this cap would incentivise suppliers to use alternative debt recovery methods because they would only be able to recover some of the costs incurred. To incentivise dual fuel suppliers to operate the warrant application and execution process efficiently, we proposed limiting these suppliers to only charging once where they were force-fitting both an electricity and a gas PPM.

2.5. We acknowledged the risk that some suppliers who previously waived charges or levied relatively low charges might choose to charge up to the level of the cap with a resulting increase in costs for some consumers.

2.6. We described how a cap, as opposed to a complete ban on charging, would retain a degree of incentive for consumers to engage with their supplier to avoid

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<sup>11</sup> In response to an RFI issued in 2015, we found that in some cases, the charges applied for the whole process can exceed £600 with extreme cases of charges over £1000.

incurring warrant-related costs. We described how this would also protect suppliers' ability to recover a meaningful proportion of the reasonable costs of the warrant application and execution process.

2.7. Our proposals also included a 'sunset clause'. Smart meters can operate in both credit and PPM mode, removing the need to access people's homes and physically change their meter when they move between credit and PPM tariffs and the resultant cost. The smart meter rollout is due to be completed by the end of 2020, and so the rules relating purely to warrant-related activities will cease to apply at the end of 2020, unless we later specify another date to reflect any changes to the smart meter rollout.

## Summary of consultation responses

2.8. Consumer groups remained unanimously supportive of a cap. They agreed that setting the cap below the level of the average warrant cost will encourage suppliers to exhaust alternative debt recovery methods first.

2.9. Suppliers remained concerned with our proposals and repeated some of the issues they raised in response to our September 2016 consultation. Three suppliers and a trade body expressed doubt over whether Ofgem has the legal right to implement a cap on warrant charges. Seven suppliers and a trade body suggested that the proposed level of the cap at £150 would not be cost-reflective (especially for non-standard warrant cases) leading to cost socialisation (ie suppliers passing on costs to consumers generally). Three suppliers and a trade body also repeated previously raised concerns that setting a cap may encourage some customers to reduce their engagement with their supplier leading up to the execution of a warrant.

2.10. We responded to each of these issues in our statutory consultation, emphasising in particular that the level of the proposed cap should incentivise both suppliers and consumers to engage with one another in relation to debt recovery issues, while allowing suppliers to recover a significant proportion of their reasonable costs directly from PPM customers. Please see pages 21-23 in our statutory consultation for details.

### *'Relevant Warrant'*

2.11. Two suppliers wanted clarity on the cost that can be recovered when executing a warrant. In their view, a 'Relevant Warrant', as defined in draft licence condition 28B.2, should only relate to the application for and the execution of the warrant, and not relate to any charges that may have been incurred prior to that point.

2.12. One supplier considered that the licence drafting lacked clarity on the definition of a 'Relevant Warrant' for gas. The proposed drafting included any warrant to "remove, inspect and re-install any meter" to ensure the meter is in proper order.



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They were concerned that the breadth of this definition could lead to scenarios in which the supplier would not be able to remedy potential safety issues.

### *Cap to be applied per premises*

2.13. Two suppliers suggested that the cap should be applied per premises rather than, as in the draft licence condition, per Domestic Customer. They were concerned that a customer who has multiple properties could only be charged one capped fee of £150 in a 12-month period.

## **Our decision**

2.14. In line with our statutory consultation proposals, we have decided to introduce a cap on charges for warrant application and execution. We will set the cap at £150, the higher of the two amounts on which we consulted in September 2016.

2.15. We acknowledge that this may result in some additional cost for suppliers as set out in our Impact Assessment. However, a cap of £150 will still enable suppliers to recover a meaningful proportion of their reasonable warrant-related costs. Suppliers will need to decide how to manage those costs which cannot be recovered directly from the relevant PPM customer, and we acknowledge that some suppliers may choose to socialise these cost across their customer base. We have estimated that the impact of the policy on an annual dual fuel consumer bill could be on average between 28 and 48 pence.<sup>12</sup>

2.16. The number of customers in the warrant process is low compared to the number of overall customers, so the likely increased cost for consumers outside the warrant process is small.<sup>13</sup> We also expect that the cap (as well as the prohibition on charges and installations) will provide suppliers with an incentive to avoid using warrants in the first place which should result in lower warrant-related costs.

### *'Relevant Warrant'*

2.17. The drafting of the proposed licence condition, which refers to the "costs associated with" a Relevant Warrant, encompasses only the costs of applying for and


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<sup>12</sup> See Impact Assessment page 34

[https://www.ofgem.gov.uk/system/files/docs/2017/06/prepayment\\_meters\\_installed\\_under\\_warrant\\_-\\_impact\\_assessment.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/06/prepayment_meters_installed_under_warrant_-_impact_assessment.pdf)

<sup>13</sup> This aligns with Ofgem's regulatory stances which state that we would consider potential interventions and permit industry cross-subsidy where there is evidence that consumers in vulnerable circumstances are disproportionately affected and the benefits to a target group are significant and the impact of redistributed costs low.

[https://www.ofgem.gov.uk/system/files/docs/2016/12/ofg930\\_ofgems\\_regulatory\\_stances\\_document\\_web.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/12/ofg930_ofgems_regulatory_stances_document_web.pdf). While, as set out above, we are also bringing in specific provisions in relation to PPMs that are targeted at protecting some of the most vulnerable customers, there will be other customers who are also vulnerable to whom those provisions will not apply, and who will benefit from the cap.



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executing a warrant. Any other costs prior to warrant application are not covered by this drafting. We think the licence condition is sufficiently clear in this respect.

2.18. As to the issue raised concerning the definition of a 'Relevant Warrant' for gas, we have amended the draft licence condition set out in our July 2017 consultation to account for potential safety concerns, in light of responses. The amended licence condition which defines a Relevant Warrant in accordance with paragraph 23(2)(c) of Schedule 2B to the Gas Act 1986 for the purposes of paragraph 7(3)(a) of Schedule 2B to the Gas Act 1986. Suppliers will be permitted to use a warrant for the purpose of paragraph 3(5)(a) of Schedule 2B to the Gas Act 1986, ie to remove, inspect and re-install any meter to ensure the meter is in proper order, without engaging the cap provisions (as well as the other restrictions in licence condition 28B).

*Cap to be applied per premises*

2.19. We have amended the licence condition to allow for the cap to be applied multiple times in situations where the customer is the Domestic Customer at multiple premises and the execution of a warrant is justified for more than one premises.



## 3. Proportionality principle

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### Chapter Summary

In our July 2017 consultation, we included proposals for the addition of a proportionality principle to cover suppliers' actions when recovering debt, with or without the use of a warrant to force-fit a PPM. This chapter recaps on the issues we identified and proposals we set out in our statutory consultation, summarises consultation respondents' views on our proposals, and sets out our decision.

### The issues we identified

3.1. Our statutory consultation covered a number of issues we wished to tackle by introducing a proportionality principle covering all supplier actions when recovering debt, including the use of a warrant to force-fit a PPM. In relation to warrant usage and costs, we are concerned that suppliers escalate the warrant process too rapidly, that warrant charges sometimes exceed the level of energy debt, and that suppliers charge for multiple warrants when only using one in practice. We are particularly concerned that suppliers may shift debt recovery charges upstream of the warrant process because they would be restricted from recovering the full amount of warrant-related costs directly from the relevant PPM customer due to other features of our proposals.

### July 2017 statutory consultation proposals

3.2. We proposed introducing a proportionality principle to protect consumers from some suppliers taking disproportionate action or levying disproportionately high charges in the course of recovering debt. In particular, we consulted on introducing the principle to guard against suppliers potentially levying disproportionate charges for debt recovery actions upstream of the warrant process to help them recover costs they would no longer be able to recoup directly from the relevant PPM customer because of the cap on warrant charges.

3.3. We proposed removing transfer objections from the scope of the proportionality principle to enable suppliers to continue to object to indebted customers switching, and to assist them to recover debt from the relevant PPM customer that might otherwise be passed onto other consumers.

3.4. We adjusted the proposed licence drafting to clarify our intention that suppliers should ensure that any action and costs associated with warrant application and execution are proportionate in the context of the amount of debt a consumer has accrued due to the customer not paying for energy they have used at the time the supplier takes action.

## Summary of consultation responses

3.5. While responses relating to this proposal were limited, those who commented on the proportionality principle supported our proposal. Both consumer groups and suppliers highlighted that a proportionality principle would be an effective mechanism for ensuring customers are not disadvantaged by excessive debt recovery and warrant costs. The principle was particularly welcomed as part of Ofgem's move towards principle based regulation.

## Our decision

3.6. In line with our statutory consultation, we have decided to introduce a proportionality principle covering the actions suppliers take to recover debt whether or not a warrant is used.

3.7. We will implement the proportionality principle in conjunction with the other aspects of the policy. We are doing this primarily to mitigate the risk of suppliers increasing the amount they charge customers for the debt recovery process upstream of the warrant process because of suppliers being restricted in the amount they can recover for warrant-related costs due to the cap and prohibition. More broadly, the prohibition will encourage suppliers to ensure that any debt recovery activities they undertake are proportionate.

3.8. We have retained the proposal in our statutory consultation to exclude transfer objections from the scope of the proportionality principle. This will enable suppliers to recover debt from the relevant PPM customer that might otherwise be passed onto other consumers if that customer was more easily able to transfer to another supplier.

3.9. In line with existing obligations under standard licence condition 27.8 of both the gas supply licence and electricity supply licence, suppliers would also need to continue having regard to a customer's ability to pay when recovering debt.

## 4. Monitoring

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### Chapter Summary

This chapter sets out our plans for monitoring the impact of our proposals and supplier compliance with them.

### Social Obligations reporting

4.1. We will continue to use our Social Obligations Reporting data (SOR)<sup>14</sup> as a key mechanism for monitoring the scale of warrant usage for force-fitting PPMs for debt recovery, including any industry-wide or supplier-specific trends. The current SOR arrangements already capture key data points concerning the use of warrants, and we will be proposing new indicators as part of our upcoming consultation revising the SOR more broadly. We will use our consumer vulnerability report as a tool for publicising good practice where this is possible to help suppliers identify potential process improvements.

#### *Disconnections*

4.2. We are concerned about any impacts changes in the usage of warrants may have on the volume of disconnections, given the severe consumer detriment that can be caused by a disconnection and resulting loss of supply. We are conscious of the risk that the volume of disconnections may rise as an unintended consequence of implementing restrictions on the use of warrants for the force-fitting of a PPM to recover debt as suppliers look for alternative debt recovery options.

4.3. The proportionality principle should help guard against this risk – suppliers will need to consider whether taking the significant step of disconnecting supply as part of a debt recovery process would meet the requirements of this principle in the same way as for other debt recovery actions.


4.4. We have also reserved the option to extend the scope of the definition of a 'Relevant Warrant' to include disconnections in the licence conditions so that warrants obtained for the purpose of disconnecting supply due to unpaid charges can be restricted in the same way as the use of warrants for the force-fitting of a PPM due to unpaid charges, to help protect some of the most vulnerable customers.<sup>15</sup>

4.5. We will follow up on disconnection cases to understand the reasons behind them and take action as necessary as we do now. We have been encouraged to see a

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<sup>14</sup> <https://www.ofgem.gov.uk/about-us/how-we-work/working-consumers/protecting-and-empowering-consumers-vulnerable-situations/consumer-vulnerability-strategy/consumer-vulnerability-strategy-social-obligations-reporting-sor>

<sup>15</sup> The power to do this would be subject to consultation, and could be exercised by either publishing a statement in writing or issuing a direction to one or more suppliers.



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reduction in the number of disconnections by suppliers over a number of years to the point where many suppliers no longer disconnect customers for unpaid charges. We do not expect to see suppliers reverse this downward trend as a result of the restrictions we are placing on warrant usage.

## **Consumer representatives and third parties**

4.6. We work closely with consumer representatives and third parties to gain information to enrich our evidence base on a range of issues. We will continue to gather information from these sources on warrant usage by suppliers, including utilising our tripartite agreement with Citizens Advice and the Energy Ombudsman and consulting with the Magistrates Association (England and Wales), the Scottish Justice Association and other interested parties.

## Appendices

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## Appendix 1 – July 2017 statutory consultation: question and respondents

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1.1. We issued a statutory consultation in July 2017. We asked for stakeholders' views, including any views on our draft licence condition.

1.2. Below is a list of respondents:

British Gas  
Christians Against Poverty  
Citizens Advice  
Coventry Citizens Advice Bureau  
E.ON  
EDF Energy  
Energy UK  
Extra Energy  
Feeding Britain  
Flow Energy  
Iresa  
Member of the public  
NEA  
npower  
OVO Energy  
Scottish Power  
Spark Energy  
SSE  
Utilita  
Utility Warehouse

## Appendix 2 – Licence Condition 28B

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We have double underlined and ~~struck through~~ amendments to the draft licence conditions compared to those published alongside our statutory consultation in July 2017.

### **Condition 28B. Warrants relating to Pre-payment Meters and other supplier actions to recover debts**

#### **Prohibitions on exercising a warrant and recovering costs**

28B.1 The licensee must not exercise a Relevant Warrant (or otherwise exercise a statutory power which would give rise to the grounds for obtaining a Relevant Warrant) in respect of a Domestic Customer’s premises where such action would be severely traumatic to that Domestic Customer due to an existing vulnerability which relates to their mental capacity and/or psychological state and would be made significantly worse by the experience.

28B.2 The licensee must not charge a Domestic Customer in respect of any costs associated with a Relevant Warrant where:

- (a) that Domestic Customer has a vulnerability which has significantly impaired their ability to engage with the licensee or a Representative in relation to the recovery of a Relevant Payment; or
- (b) that Domestic Customer has a severe financial vulnerability which would be made worse by charging them any costs associated with a Relevant Warrant.

#### **Cap on warrant costs**

28B.3 Subject to 28B.3A, where the licensee or any Affiliated Licensee obtains and/or exercises one or more Relevant Warrants ~~(including in relation to premises of Domestic Customers subject to Tariffs which use the brand name of a person that does not hold a Gas Supply Licence and/or Electricity Supply Licence)~~ in respect of particular Domestic Premises of a particular Domestic Customer, the total amount of charges they recover (or seek to recover) at any time from the same Domestic Customer in relation to any costs associated with those Relevant Warrants and incurred within the Specified Period, must not exceed the Specified Amount (and, for the avoidance of doubt, no additional costs that were incurred within the Specified Period may be recovered during any other period of time).

28B.3A Where the licensee or any Affiliated Licensee obtains and/or exercises one or more Relevant Warrants in respect of more than one Domestic Premises of the same Domestic Customer, paragraph 28B.3 applies separately to each of those Domestic Premises.

#### **Proportionality principle for debt recovery activities**

28B.4 The licensee must only exercise a Relevant Warrant where such action would be proportionate in the context of the amount of the Outstanding Charges.

28B.5. In relation to the recovery of Outstanding Charges, Other Outstanding Charges or any other debt ('the charges') from a Domestic Customer, the licensee must ensure that:

- (a) any action it or a Representative takes (including, but not limited to, the exercise of statutory powers); and
- (b) the costs which they seek to recover from that Domestic Customer as a result,

are proportionate in the context of the amount of the charges.

28B.6 Paragraph 28B.5 does not apply in relation to a Transfer Objection.

### **Duration of the restrictions**

28B.7 Paragraphs 28B.1 to 28B.4 will cease to have effect on 31 December 2020 unless the Authority specifies a later date by publishing a statement in Writing.

28B.8 The power to specify a later date in paragraph 28B.7 may be exercised by the Authority on more than one occasion (before, on, or after the expiry of any later date specified by the Authority).

### **Application to white label tariffs**

28B.9 In this licence condition any reference to "premises" covers the premises of Domestic Customers supplied under or by virtue of the licence held by the licensee, including where those premises are subject to Tariffs which use the brand name of a person that does not hold a Gas Supply Licence and/or an Electricity Supply Licence.

### **Definitions for condition**


28B.10 For the purposes of this condition:

**"Relevant Warrant"** means:

- (a) a warrant pursuant to paragraph 23(2)(c) of Schedule 2B to the Gas Act 1986 for the purposes of paragraph 7(3)(a) of Schedule 2B to the Gas Act 1986;
- (b) a warrant pursuant to paragraph 7(4) of Schedule 6 to the Electricity Act 1989; and
- (c) any other type of warrant specified or described by the Authority by publishing a statement in writing (or by issuing a direction to the licensee), following consultation.

**"Specified Amount"** means £150 or such higher amount as may be designated by the Authority from time to time by publishing a statement in Writing.





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**“Specified Period”** means twelve months or such other (shorter or longer) period which may be specified by the Authority by publishing a statement in writing (or by issuing a direction to the licensee), following consultation.

**“Transfer Objection”** means to prevent a Proposed Supplier Transfer on grounds permitted by standard condition 14.

**“Relevant Payment”** has the meaning given in paragraph 7(1A) of Schedule 2B to the Gas Act 1986 and paragraph 2(1A) of Schedule 6 to the Electricity Act 1989.