

Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation

Consultation

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Overview:

Last year we published an open letter on our proposal to introduce automatic compensation for consumers when switches go wrong. We believe this will create incentives to ensure suppliers improve their switching performance and make switching more reliable.

Guaranteed Standards of Performance place service level requirements upon suppliers when they have certain interactions with their customers. In this document, we set out our proposals to extend the scope of the existing Guaranteed Standards to ensure suppliers compensate consumers when switches go wrong.

We are now seeking stakeholder views and additional evidence regarding these proposals. We particularly encourage consumer bodies and suppliers, as well as any other interested parties, to read and respond to our proposals.

Context

Ofgem regulates the gas and electricity markets in Great Britain. Our principal objective is to protect the interests of current and future gas and electricity consumers.

We are leading various initiatives that aim to encourage consumers to engage with the energy market, and to improve their experiences of doing so. The implementation of new switching arrangements enabling reliable and fast switching, the rollout of smart meters, reform of electricity settlement arrangements, work to facilitate a transition to a more flexible energy system and other projects have the potential to transform the retail energy market.

Regulatory measures such as the supplier Guaranteed Standards of Performance ensure that consumers, particularly consumers in vulnerable situations, remain protected and receive an appropriate level of service when they engage in the energy market.

Associated documents

Supplier Guaranteed Standards of Performance: Approach to Impact Assessment on Introducing Switching Compensation; Ofgem, 12 June 2018;
<https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-standards-performance-consultation-switching-compensation>

Open letter: creating incentives for suppliers to improve switching performance, Ofgem, 6 December 2017;
<https://www.ofgem.gov.uk/publications-and-updates/open-letter-creating-incentives-suppliers-improve-switching-performance>

Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015;
<http://www.legislation.gov.uk/ukxi/2015/1544/contents/made>

Supplier Guaranteed and Overall Standards of Performance reforms – consultation response, 10 November 2015
https://www.ofgem.gov.uk/sites/default/files/docs/2015/11/gosp_reforms_-_consultation_response_10th_nov_final_0.pdf

Supplier Guaranteed and Overall Standards of Performance reforms – Final Decision and Statutory Instrument, Ofgem, 28 July 2015;
https://www.ofgem.gov.uk/sites/default/files/docs/2015/07/final_decision_open_letter.pdf

Supplier Guaranteed and Overall Standards of Performance – statutory consultation and proposals, Ofgem, 16 December 2014
https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/gosp_statutory_consultation_.pdf

Gas Act 1986, Standards of Performance provisions contained in section 33A- section 33E;



Supplier Guaranteed Standards of Performance: Consultation on Switching
Compensation

<https://www.legislation.gov.uk/ukpga/1986/44/contents>

Electricity Act 1989, Standards of Performance provisions contained in sections 39-42C;
<https://www.legislation.gov.uk/ukpga/1989/29/contents>

Contents

| | |
|------------------------------------------------------------------------------|-----------|
| Executive Summary | 5 |
| Rationale for Intervention | 5 |
| Proposals for Switching Compensation | 6 |
| Next steps | 8 |
| 1. Introduction | 10 |
| Guaranteed Standards of Performance | 11 |
| Our proposals | 12 |
| 2. Switching Compensation: Proposed new Guaranteed Standards | 17 |
| Service Coverage | 20 |
| Delayed switches | 21 |
| Erroneous switches | 24 |
| Final bills | 27 |
| Credit refunds after a switch | 28 |
| Payments | 29 |
| Approach to dual fuel switches | 29 |
| Who will the Guaranteed Standards apply to and who should pay compensation? | 30 |
| Compensation levels | 32 |
| Payment within 10 working days | 33 |
| Additional compensation payable if fail to make payment promptly | 34 |
| Additional compensation payable if suppliers fail to resolve problem | 35 |
| Consumer coverage | 35 |
| Provision of information to consumers | 35 |
| Record Keeping | 36 |
| Audits | 37 |
| Reporting | 37 |
| Publishing performance data | 38 |
| Dispute Resolution | 39 |
| Payments during the Switching Programme transitional period | 39 |
| 3. Next Steps and Implementation of Regulations | 41 |
| Implementation Period and Date | 41 |
| Longer-term evaluation of our proposals and Guaranteed Standards | 42 |
| Appendices | 44 |
| Appendix 1 – Background: Existing Guaranteed Standards of Performance | 45 |
| Suppliers | 45 |
| Networks | 47 |
| Appendix 2 – Consultation Response and Questions | 50 |
| Appendix 3 - Feedback on this consultation | 53 |

Executive Summary

Rationale for Intervention

We are committed to making the energy market work better for consumers, including by improving their experience of switching, which in turn should lead to greater engagement. Competition is benefiting those who are able and willing to shop around, with customers who switch away from default deals saving around £300 per year.¹ However, more than half of all consumers have never switched supplier or have switched only once,² with many perceiving that the current arrangements are often too slow and unreliable. In 2016, 46% of customers felt switching was a hassle and 41% worried that something would go wrong.³

These perceptions are not wholly unfounded. There are problems in the switching process, such as delayed or erroneous switches (where a customer is switched unexpectedly and without their agreement because incorrect information has been put into industry systems). Customers often also find that it takes too long to close out their relationship with their old supplier. In our 2017 Consumer Engagement Survey, 27% of respondents said they believed the switching process took too long.⁴ In practice, we know that around 9% of switches take longer than 21 days to complete⁵ and 8% of final bills are not sent within six weeks of a switch, despite a licence requirement to do so.⁶ We therefore recently announced our intention to mandate suppliers to compensate customers when their switch goes wrong.

We know that many problems with delayed and erroneous switches are caused, or exacerbated by poor industry data. The Faster and More Reliable Switching Programme will address many of those structural data issues, but will not be operational until after 2020, and suppliers could now take additional steps to validate data and ensure they are switching the right customer. Furthermore, we are know

¹ For more information on the price differential between default tariffs and market cheapest tariff see

<https://www.ofgem.gov.uk/data-portal/retail-price-comparison-company-and-tariff-type-domestic-gb>

² State of the energy market report, Ofgem, 31 October 2017;

https://www.ofgem.gov.uk/system/files/docs/2017/10/state_of_the_market_report_2017_web_1.pdf

³ Ofgem Consumer Engagement Survey, 2017; percentage agreeing with questions “switching is a hassle that I’ve not got time for” and “I worry that if I switch things will go wrong”;

https://www.ofgem.gov.uk/system/files/docs/2017/10/consumer_engagement_survey_2017_report.pdf

⁴ Ofgem Consumer Engagement Survey, 2017; percentage agreeing with question “switching energy suppliers takes too long”;

https://www.ofgem.gov.uk/system/files/docs/2017/10/consumer_engagement_survey_2017_report.pdf

⁵ Percentage of switches delayed more than 21 days for invalid reasons, Ofgem’s retail market monitoring data for 2017 calendar year

⁶ Ofgem’s retail market monitoring data for 2017 calendar year

from work with some individual suppliers that many erroneous switches are due to suppliers' inadequate processes, rather than data issues. It is important that all suppliers make proactive efforts to avoid poor consumer outcomes in switching.

We believe that compensation for consumers is an important tool for strengthening consumer confidence in engagement with the energy market. Over the past 18 months we have asked industry to develop its own proposals for compensation in relation to switching problems. The response has been disappointing. A dual fuel industry Erroneous Transfer Working Group (ETWG) was established and has come forward with some proposals, including two relating to compensation around failures to resolve erroneous switching. However, they concluded that this compensation would sit better within the Guaranteed Standards of Performance regime than within the industry codes. The Energy Switch Guarantee is a voluntary industry initiative which provides consumers with assurances around the switching process when switches involve Guarantee signatories. Whilst we support the aims of the Guarantee, signatories have taken the view that offering compensation as part of the Guarantee would harm consumer confidence and undermine its purpose. It is therefore clear to us that if consumer compensation in relation to switching problems is to be introduced, it must be an Ofgem-led rather than an industry led initiative.

We are committed to promoting competition and consumer engagement in the market. At the same time, it is essential that vulnerable consumers should be protected. Vulnerable consumers can be disproportionately impacted by problems that occur with switching as they may find it difficult and stressful to engage with putting things right, especially when suppliers fail to take responsibility for rectifying problems. Delays in credit refunds are also particularly problematic for consumers who are financially vulnerable.

Proposals for Switching Compensation

This consultation sets out our proposals to introduce a set of new Guaranteed Standards for a range of switching problems. Our objectives are to protect customers, to reduce the direct detriment experienced by customers when switches go wrong, to help improve all household consumers' confidence in the process of switching supplier, and to create sharper incentives on suppliers to make sure their practices, processes, data and IT systems ensure switches go right first time. We anticipate that suppliers will be able to improve outcomes by collecting and maintaining more accurate customer data and by proactively identifying situations that might lead to an erroneous switch and taking steps to avoid them. An automatic compensation scheme will provide some recompense for inconvenience, time or financial detriment to customers who encounter problems while switching.

We propose to introduce automatic compensation for switching problems through creating a number of new Guaranteed Standards. These are summarised in Table 1 below. In addition to these new Guaranteed Standards, we are also proposing to explore ways of making the Guaranteed Standards regime work more effectively, in particular in relation to record-keeping, reporting and compliance.

Table 1: Summary of proposed new Guaranteed Standards

| Service area | Proposed new performance standard | Customer coverage | Who makes payment? | Payment amount |
|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------|-----------------------|
| Delayed switches | (A) To ensure a switch is completed within 21 calendar days from the date the consumer enters into contract with gaining supplier, or from date an erroneous switch is agreed, unless there are valid reasons for delay to switch | Domestic consumers only | Gaining supplier | £30 |
| | | | Losing supplier | £15 |
| Erroneous switches | (B) To agree whether a switch is valid or erroneous within 20 working days of identification of the possible erroneous switch | Domestic consumers only | Gaining supplier | £30 |
| | | | Losing supplier | £30 |
| | (C) To ensure a consumer is not erroneously switched | Domestic consumers only | Gaining supplier | £30 |
| | | | Losing supplier | £15 |
| (D) To send the Erroneous Transfer Customer Charter "20 working day letter" to an erroneously switched consumer | Domestic consumers only | Contacted supplier | £30 | |
| Timing of final bill | (E) To issue final bills within six weeks of a switch | Domestic consumers only | Losing supplier | £30 |
| Credit refunds after a switch | (F) To refund credit balances within two weeks of sending the final bill | Domestic consumers only | Losing supplier | £30 |

We have sought to identify the various stages of a switch, or erroneous switch, at which things go wrong. In order for it to be practical to create a Guaranteed Standard for a particular part of the customer journey, we must identify an objective requirement that is clearly met or not met and that, when not met, means that something has gone sufficiently wrong to cause harm to a consumer or cause wider damage to attitudes to the switching process. We believe that this is the case in relation to the six proposed new Guaranteed Standards and we explain this in more detail in this document.

It is intrinsic to the nature of a switch that two suppliers (gaining and losing) are involved in many of the processes around it. This provides a specific challenge for the design of the proposed Guaranteed Standards in that it is not immediately evident that either the gaining or the losing supplier is always solely responsible for

the problem that has occurred. We recognise that this problem of attribution of fault is likely to be a major concern for suppliers. This would be straightforward if it were easy to identify the responsible party for any individual problem that occurs. We therefore consider it likely that any solution that requires individual attribution of responsibility for each switching problem would be impractical and disproportionately expensive to operate. Our proposed approach to this, set out in more detail in the document, is to look to agree the ratio in which responsibility divides across all switching problems of a particular type, and then require both gaining and losing suppliers to pay compensation to the affected consumer in that ratio.

We recognise that there are both advantages and disadvantages to this approach. The primary advantage is that it provides a mechanism to apply automatic compensation without the need for agreement on, or an investigation into, the causes of each switching problem that occurs. The primary disadvantage is that for any given switching problem it is likely that a supplier who has not contributed to the problem will be paying an element of compensation (although this will not always be the case as sometimes both suppliers will be at fault). However, if the responsibility split is accurate then we consider that across a large number of switches, suppliers are likely to pay compensation in proportion to the problems that they cause. The sharing of responsibility between gaining and losing suppliers should also incentivise the industry to look for collective or systemic ways to reduce the volume of switching problems that occur. This is particularly important because the quality of centrally held industry data is often advanced as a contributory cause of switching problems.

On each Guaranteed Standards with shared responsibility, we have proposed a proportionate split. In every case this is a starting point for consideration, not a hard position. We are looking for responses to this consultation to provide evidence for what that split should be in relation to each Guaranteed Standard. If the consensus of opinion over any proposed Guaranteed Standard is that responsibility can be safely apportioned to one party, we will be happy to take that on board. If stakeholders are strongly opposed to the principle of shared responsibility, then it would be helpful if they could articulate a practical alternative approach that they would support. We do not think it is credible for industry to argue that the difficulty of attributing responsibility for problems with switches should mean that it is not possible to act to improve outcomes for consumers, nor to compensate them when poor outcomes do occur.

These proposals set out our view of the best way to achieve our stated objectives of improving consumers' experience of switching and reducing the detriment experienced by consumers when switches go wrong. If respondents have views on alternative ways to achieve the same objective we would be interested to hear them.

Next steps

Responses to this consultation are invited by 31st July 2018.

After we have considered the responses to this consultation, including data provided in response to our proposed request for information, we will publish our decision and



Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation

issue a draft version of the proposed changes to The Electricity and Gas (Standards of Performance) (Supplier) Regulations 2015 together with a statutory consultation in late summer 2018. We expect that the final version of the regulations would be made by the Authority, subject to receiving the consent of the Secretary of State. Our current ambition is to make the regulations by the end of autumn 2018.

As suppliers and other bodies may need to adjust some of their internal processes to ensure they comply with the new Guaranteed Standards, we will ensure suppliers and other bodies have an appropriate period of time to make necessary adjustments. Therefore, we aim for the revised supplier Standards to take effect from 31 December 2018.

1. Introduction

Chapter Summary

This chapter explains the current problem regarding unreliable switching and introduces our proposals to add new Guaranteed Standards of Performance.

Question Box:

Question 1: Do you agree that the aims of the Guaranteed Standards are aligned with and complementary to the industry-led operation of the Energy Switch Guarantee? We would be interested to see any proposals that you think would better support a continued combination of voluntary industry action and regulatory incentives to deliver better switching outcomes to consumers.

1.1 Ofgem is committed to making the energy market work better for consumers by improving their experience of switching, leading to greater engagement in the retail energy market. Competition is benefiting those who are able and willing to shop around, with customers who switch away from default deals saving around £300 per year.⁷

1.2 Although switching rates have been increasing, the current lengthy and unreliable arrangements can mean that consumers' switching experience is not always satisfactory. We know that fears about the reliability of switching prevent consumers engaging in the market. In response to Ofgem's Consumer Survey, 46% of customers felt switching was a hassle and 41% were worried that something would go wrong.⁸ In the same survey, of those that had not switched supplier, 10% cited concerns about reliability as the reason for not doing so. This is consistent with our qualitative research which found that "negative experiences made customers view the suppliers they dealt with more dimly than before" and the customers' "likelihood to engage and switch again was greatly reduced".⁹

⁷ For more information on the price differential between default tariffs and market cheapest tariff see

<https://www.ofgem.gov.uk/data-portal/retail-price-comparison-company-and-tariff-type-domestic-gb>

⁸ Ofgem Consumer Engagement Survey, 2017; percentage agreeing with questions "switching is a hassle that I've not got time for" and "I worry that if I switch things will go wrong"; https://www.ofgem.gov.uk/system/files/docs/2017/10/consumer_engagement_survey_2017_report.pdf

⁹ Qualitative research completed on the consumer impact of unreliable switching, Ofgem, 2017; https://www.ofgem.gov.uk/system/files/docs/2017/09/consumer_research_unreliable_switching.pdf

1.3 The rates of erroneous and other unreliable switches have not fallen substantially since 2014, which means that the absolute number of consumers experiencing bad switching outcomes has increased as the overall volume of consumer switching has risen. We estimate that around 0.96% of domestic gas and electricity switches were erroneous in 2016, which is equivalent to 74,000 erroneous switches per year.¹⁰ We also estimate that 9% of switches were delayed for invalid reasons; based upon the total annual volume of switches in 2017 (9.3 million) this is equal to 837,000 delayed switches. Also, 8% of final bills were issued more than six weeks after a switch took place in 2017.¹¹

1.4 These figures are supported by wider market research, such as a public survey conducted by Which?,¹² which found that of all consumers who said switching energy supplier was difficult, the switch being slow was the most common reason cited by 23% of consumers. Difficulty in paying a previous suppliers' bills (15%) and difficulty in getting a refund from their previous supplier (15%), were the next most common reason. This reaffirms that measures are needed to substantially reduce the rate of these unreliable switching outcomes in order to reduce the absolute number of poor consumer switching experiences as overall switching rates increase.

1.5 Switching problems often occur because centrally-held industry meter point data is inaccurate or misleading. Our wider reforms as part of our Faster and More Reliable Switching Programme aim to address these problems by bringing together gas and electricity switching and creating a single central register with responsibility for ensuring the accurate identification of each meter point with the correct standard address. However, the Switching Programme reforms will only address those problems that occur as a result of poor quality centrally-held data, and will not come into effect before the end of 2020.

1.6 Problems also occur because of poor supplier systems or processes, or human error. These problems need to be addressed by the suppliers concerned. We believe it is necessary to encourage suppliers to ensure that switching goes smoothly.

Guaranteed Standards of Performance

1.7 The Electricity Act 1989 and Gas Act 1986 gives Ofgem, with the consent of the Secretary of State, the power to create regulations that prescribe individual standards of performance ('Guaranteed Standards of Performance') in connection with electricity and gas suppliers' activities which affect customers, or potential

¹⁰ Estimated market ET rate calculated from responses to the Switching Programme RFI in March 2017

¹¹ Ofgem's retail market monitoring data for 2017 calendar year

¹² [Which? online survey of 8,397 energy customers among the GB general public in September 2017](#)

customers.¹³ Suppliers breaching these Guaranteed Standards provides individual consumers with a right to compensation.

1.8 Existing supplier Guaranteed Standards are outlined under The Electricity and Gas (Standards of Performance) (Supplier) Regulations 2015.¹⁴ These currently prescribe standards in:

- Making and keeping appointments
- Fixing faulty credit meters
- Fixing faulty prepayment meters
- Reconnection after disconnection for unpaid charges.

1.9 In our 2014 consultation on the Supplier Guaranteed and Overall Standards of Performance,¹⁵ we stated that coverage of the existing Guaranteed Standards could be expanded to other areas, such as erroneous switches, in the future.¹⁶

Our proposals

1.10 On 6 December 2017, we announced proposals to introduce automatic compensation for consumers when their switches go wrong.¹⁷ This letter stated our objectives are to:

- protect these customers

¹³ Section 39 of the Electricity Act 1989 and section 33A of Gas Act 1986; “The Authority may make regulations prescribing such standards of performance in connection with the activities of gas suppliers, so far as affecting customers or potential customers of theirs, as in the Authority’s opinion ought to be achieved in individual cases.”

¹⁴ [The Electricity and Gas \(Standards of Performance\) \(Supplier\) Regulations 2015](#). These were last amended in July 2015. These amended Guaranteed Standards regulations came into force on 1 January 2016. For more detail regarding the existing arrangements, see appendix 1. This appendix also contains some detail about the operation of the existing Guaranteed Standards scheme for network companies.

¹⁵ See paragraph 2.16 on page 16, Guaranteed Standards consultation published 2014, https://www.ofgem.gov.uk/sites/default/files/docs/2014/06/gosp_final_version_v1_0.pdf

¹⁶ Please note that erroneous transfers have been renamed erroneous switches as per Switching Programme reforms.

¹⁷ <https://www.ofgem.gov.uk/publications-and-updates/open-letter-creating-incentives-suppliers-improve-switching-performance>



Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation

- to help improve all household consumers' confidence in the process of switching supplier
- and to create sharper incentives on suppliers to make sure their data and IT systems make switches go right first time.

1.11 Typically, Guaranteed Standards aim to reflect consumer inconvenience. Gaining suppliers have inadequate incentives to validate switch requests, and losing suppliers are not adequately incentivised to maintain accurate meter point details so that a switch is reliable. Consumers are, sometimes substantially, inconvenienced by the things that can go wrong with switches. We therefore believe that expanding the coverage of the existing supplier Guaranteed Standards will help to deliver this consumer-focused initiative.

1.12 A reliable, quick and efficient switching process is fundamental to a well-functioning competitive market that provides good outcomes for consumers. By reducing the number of unreliable switches, not only will those consumers who would have been affected be spared the inconvenience, but more broadly consumers will be encouraged to engage in the market and switch more frequently between energy suppliers, making the market more competitive. We also believe this will contribute to creating the conditions for competition, which is an essential condition for the eventual removal of the temporary tariff cap for consumers on Standard Variable (SVT) and default tariffs ('the default tariff cap').

1.13 In determining whether to create a new performance standard, we have considered the same principles used to amend the standards in 2014,¹⁸ which assessed:

- whether a failure in the service area is likely to impact on an individual customer's supply;
- whether there is clear evidence or risk of significant consumer detriment due to delivery failures in the service area, both in terms of the frequency of failures across the industry and the impact of failure on an individual customer; and
- whether other rules or commitments adequately cover the specific service area covered under the existing arrangements.

1.14 To do this, we propose to add new individual Guaranteed Standards of Performance to the Electricity and Gas (Standards of Performance) (Supplier) Regulations 2015. Although we do not propose to change the coverage of existing

¹⁸ See paragraph 3.1 on page 18, Supplier Guaranteed Standards and Overall Standards of Performance consultation published 2014;
https://www.ofgem.gov.uk/sites/default/files/docs/2014/06/gosp_final_version_v1_0.pdf

Standards of Performance, we have reviewed the supporting requirements (for example, on recordkeeping and reporting) that apply to the regulations and are proposing several measures to strengthen that regime for both the existing Guaranteed Standards and the proposed new standards to ensure that there is robust compliance with the regulations. Full detail of our proposals is in chapter 2.

1.15 As our proposals are to amend the existing supplier Guaranteed Standards scheme, this is the primary focus of this consultation. However, we are keen to ensure consistency with the existing networks Guaranteed Standards schemes where it is appropriate, and have referred to these where relevant. Some background on these Guaranteed Standards schemes is in appendix 1.

1.16 The next steps for our proposals are in chapter 3.

1.17 We will also carry out an impact assessment to inform our decision on these proposals. Our initial understanding of, and approach to considering, the benefits and costs of our proposals is in an annex to this paper, the Approach to Impact Assessment on Introducing Switching Compensation, which is published with this consultation. We are also developing a request for information to develop our understanding of the costs and benefits of our proposals.

Interaction with the Energy Switch Guarantee

1.18 The Energy Switch Guarantee is a set of 10 commitments made by its signatories to promote customer confidence in the switching process. Energy suppliers need to be able to demonstrate compliance with the commitments to become, and continue to be, accredited to the scheme. The standards include areas that go beyond the current licence conditions, including the requirement to switch customers within 21 days, and to issue a credit refund within 14 days of a Final Bill.

1.19 The number of signatories has grown from 9 at the time of its launch in June 2016 to 24 today, which has moved the market coverage of the Guarantee beyond 90%. Major suppliers have introduced system changes in order to meet the standards set out in the Guarantee, underlining its effectiveness in improving the switching experience for thousands of energy customers.

1.20 Public awareness of the Guarantee has reached 36% in less than two years. Its promotional activity seeks to reassure customers about the switching process. During the past year we understand that the Guarantee has been strengthened by a tougher non-compliance escalation procedure that was consulted on with Citizens Advice. This provides a framework for escalation in the event that a supplier does not meet its thresholds.

1.21 The Guarantee has also developed to provide a new and unique forum for suppliers to work together to resolve switching issues. As its membership continues to grow, bi-monthly Board meetings and monthly Operations Group meetings provide a space in which suppliers can identify systemic risks to the customer experience and

explore ways of improving the switching process. The customer experience of a switch depends heavily on the quality of supplier-to-supplier communication behind the scenes, and this is an area that we understand the Guarantee is increasingly working to address.

1.22 We support the aims of the Guarantee, and continue to believe that it is valuable in order to improve confidence amongst consumers. However, the Guarantee should not be considered as a substitute for the proposed Guaranteed Standards, nor should the proposed Guaranteed Standards, be considered to supersede or undermine the value of the Guarantee. Both initiatives seek to improve consumer switching outcomes, but for the most part they do so in different ways. There is, however, a direct overlap in respect of three of our proposed Guaranteed Standards and three of the ten commitments in the Guarantee. These relate to delayed switches, timing of final bills and timing of credit refunds.

1.23 In relation to timing of final bills, both the Guarantee and the Proposed Guaranteed Standard relate directly to a specific supply licence condition. We consider that all suppliers, whether or not they have signed up to the Guarantee, should be operating in conformity with that licence condition. As noted above, we estimate that 8% of final bills are not sent within 6 weeks. This suggests that, notwithstanding the progress made by the Guarantee, overall the industry is not achieving acceptable levels of compliance with this requirement.

1.24 In relation to delayed switches our proposed Guaranteed Standard is more ambitious than the current licence condition, and in relation to credit refunds we are attempting to put an explicit requirement in place where the licence provides a much more general one. In both instances we are proposing a Guaranteed Standard that is aligned to the relevant Guarantee Commitment. It is not our intention to undermine the Guarantee in any way by taking this approach and we would be interested in views as to how we can ensure that does not happen.

1.25 We consider that the aims of the Guarantee are consistent and complementary with the Guaranteed Standards. The Guarantee is specifically a consumer facing product, whilst consumers are unlikely to be widely aware of the Guaranteed Standards unless they find themselves being compensated under them. The high profile branding of the Guarantee should provide up-front reassurance to consumers in a manner which Guaranteed Standards are not intended to do. Adherence to the Guarantee therefore represents a standard that suppliers should aspire to and membership should hold value, alongside the existence of the proposed Guaranteed Standards.

1.26 We note that membership of the Guarantee is subject to adequate performance in line with the commitments against agreed key performance indicators. This means that signatories to the Guarantee might be performing in line with the key performance indicators but a proportion of their customers may still be impacted by the poor outcomes we are seeking to address. The introduction of Guaranteed Standards will provide a vehicle for some redress to be provided to these consumers who suffer poor outcomes as well as those switching to, or from,



Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation

suppliers who are not yet signed up to the Guarantee. We therefore consider that our proposals are complementary with, and reinforce the aims of, the Guarantee.

1.27 We are keen to explore how the use of Guaranteed Standards can be integrated with the aims of the Guarantee to ensure that regulatory and industry-led initiatives work harmoniously.

Question 1: Do you agree that the aims of the Guaranteed Standards are aligned with and complementary to the industry-led operation of the Energy Switch Guarantee? We would be interested to see any proposals that you think would better support a continued combination of voluntary industry action and regulatory incentives to deliver better switching outcomes to consumers.

2. Switching Compensation: Proposed new Guaranteed Standards

Chapter Summary

This chapter details, and seeks stakeholders' views on, our proposals to amend the existing Guaranteed Standards regulations and introduce new supplier Guaranteed Standards for switches that go wrong.

Question box

Question 2: Do you agree with our proposed new performance standard for delayed switches?

Question 3: Beyond the licence definition of "valid switches", do you believe any additional exemptions are necessary to cover scenarios whereby a switch cannot be completed within 21 calendar days?

Question 4: Do you agree with our approach for losing suppliers compensating consumers?

Question 5: Do you agree with our proposal to revise this performance standard to align to new faster switching requirements in the future?

Question 6: Do you agree with our proposed new performance standard for failure to agree whether a switch is erroneous or not?

Question 7: Do you agree with our proposed new performance standard to ensure a consumer is not erroneously switched?

Question 8: Do you agree with our proposed new performance standard for sending the "20 working day letter", as currently required by the ET Customer Charter?

Question 9: Do you agree with our proposed new performance standard for sending final bills?

Question 10: Do you believe any explicit exemptions are necessary for scenarios whereby suppliers are unable to issue a final bill within six weeks?

Question 11: Do you agree with our proposed new performance standard for refund of credit balances? Views would be welcome on whether it is reasonable to consider that a customer deciding to switch supplier should be considered to have requested any outstanding credit balance from their losing supplier, and that refunding that credit balance within two weeks of a final bill would be timely.

Question 12: Do you believe we should add any other new performance standards?

Question 13: Do you agree with our approach to dual fuel switches?

Question 14: Do you agree that where both gaining and losing suppliers are involved in the process covered by a Guaranteed Standard then both should pay compensation where the standard is breached?

Question 15: Do you believe additional safeguards are needed to ensure suppliers are not liable for payments if consumers have acted in bad faith?

Question 16: Do you agree with the proposed two-thirds to one-third ratio of compensation payments between gaining and losing supplier in the cases of Guaranteed Standards A and C, and an equal share in the case of Guaranteed Standard B? Please provide any evidence you have to support your views.

Question 17: Do you agree that compensation payments where both suppliers are involved should be £30 or £15 in the cases of Guaranteed Standards A and C, and £30 for both suppliers in the case of Guaranteed Standard B?

Question 18: Do you agree with our proposals that all other proposed Guaranteed Standards (D), (E) and (F) should be subject to compensation payments of £30, in line with existing guaranteed standards?

Question 19: Do you agree suppliers should be required to make all payments in 10 working days?

Question 20: Do you agree with our proposals to require additional payments to be made for failure to compensate consumers promptly?

Question 21: Do you agree with our proposals to require additional payments to be made by suppliers if they fail to resolve problem?

Question 22: Do you agree that the new Guaranteed Standards should be introduced for domestic suppliers only?

Question 23: Do you agree that no changes are needed to requirements regarding the provision of information to consumers?

Question 24: Do you agree that we should expressly require suppliers to keep accurate records of their Guaranteed Standards performance?

Question 25: Do you agree that Ofgem should have the power to request an audit of individual suppliers' Guaranteed Standards performance?

Question 26: Do you agree that we should mandate quarterly Guaranteed Standards performance reporting from all suppliers?

Question 27: Do you agree with our plans to publish individual supplier Guaranteed Standard performance?

Question 28: Do you agree with our proposal to retain the existing dispute resolution procedure within the Regulations?

Question 29: Do you support the option of higher compensation payments for switches that go wrong where the supplier has attempted to switch the customer faster than five working days during the Switching Programme transitional phase?

2.1 As set out in the previous chapter, Ofgem's consumer engagement survey in 2017 and research into the consumer impact of unreliable switching has demonstrated that a key barrier to consumer switching is the expectation that something might go wrong.¹⁹ We also know that when things do go wrong it causes inconvenience and stress to those consumers affected.²⁰ We therefore believe that suppliers should be incentivised to take action to ensure good switching outcomes for consumers. In order to do this, we propose to add new individual Guaranteed Standards of Performance to the Electricity and Gas (Standards of Performance) (Supplier) Regulations 2015.

2.2 We have considered the range of possible undesirable switching outcomes that impact consumers' switching experience and believe that new Guaranteed Standards should specifically focus on delayed switches, erroneous switches, final bills and credit refunds. Requiring suppliers to pay compensation for delayed and erroneous switches will incentivise them to ensure that switches do not go wrong in first place. Introducing incentives to promptly send final bills and process credit refunds to consumers after switching will help to ensure consumers have a good switching experience, and compensate them for the inconvenience faced if their experience is poor.

2.3 Fewer poor switching outcomes, and compensation for consumers if and when they do happen, should together improve consumers' experience and perceptions of switching and, ultimately, increase consumer engagement in the market.

2.4 We also initially considered whether other negative consumer switching outcomes could be compensated for, such as switches that are objected to by the losing supplier without good reason, or consumer switch requests that are abandoned or 'lost' and therefore never submitted. However, we have concluded that it would be particularly difficult to design a workable automatic compensation scheme for such switching outcomes, where identification of the breach may be difficult. For example, by their very nature, it is very hard to track switch requests that are abandoned and never submitted.

2.5 We are therefore proposing six new Standards of Performance, as summarised in table 2 below (proposals (A) – (F)). We believe these standards focus on clear

¹⁹ See Ofgem consumer engagement survey 2017 and Ofgem's qualitative research completed on the consumer impact of unreliable switching, 2017

²⁰ See qualitative research completed on the consumer impact of unreliable switching, Ofgem, 2017;
https://www.ofgem.gov.uk/system/files/docs/2017/09/consumer_research_unreliable_switching.pdf

consumer outcomes during the switching process, are objective measures, straightforward to monitor and therefore strong bases upon which to compensate consumers. These proposals are explained in more detail throughout the rest of this chapter.

Table 2: Summary of proposed new Guaranteed Standards

| Service area | Proposed new performance standard | Customer coverage | Who Makes payment? | Payment amount |
|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|--------------------|----------------|
| Delayed switches | (A) To ensure a switch is completed within 21 calendar days from the date the consumer enters into contract with gaining supplier, or from date an erroneous switch is agreed, unless there are valid reasons for delay to switch | Domestic consumers only | Gaining supplier | £30 |
| | | | Losing supplier | £15 |
| Erroneous switches | (B) To agree whether a switch is valid or erroneous within 20 working days of identification of the possible erroneous switch | Domestic consumers only | Gaining supplier | £30 |
| | | | Losing supplier | £30 |
| | (C) To ensure a consumer is not erroneously switched | Domestic consumers only | Gaining supplier | £30 |
| | | | Losing supplier | £15 |
| (D) To send the Erroneous Transfer Customer Charter "20 working day letter" to an erroneously switched consumer | Domestic consumers only | Contacted supplier | £30 | |
| Timing of final bill | (E) To issue final bills within six weeks of a switch | Domestic consumers only | Losing supplier | £30 |
| Credit refunds after a switch | (F) To refund credit balances within two weeks of sending the final bill | Domestic consumers only | Losing supplier | £30 |

2.6 Many suppliers do already compensate consumers as part of their customer service approach to handling customer complaints. Mandating additional consumer compensation via Guaranteed Standards does not prevent suppliers going further by compensating consumers for additional distress they face in individual cases, and we continue to encourage suppliers to consider doing so.

Service coverage

Delayed switches

2.7 Delayed switches are switches that, without valid reason (such as objection or the customer requesting a later switch date), are not completed within 21 calendar days.²¹ There are many reasons for these delays, but we understand that they are often caused by poor validation of switch requests by gaining suppliers or poor meter point data quality as a result of inadequate data maintenance by losing suppliers.

2.8 When we refer to delayed switches, we include any switches back to an original supplier after an erroneous switch is agreed that take longer than 21 calendar days.

2.9 Delayed switches cause considerable consumer inconvenience, especially when they are delayed through no fault of the consumer. The consumer's switching journey can be frustrating when things do not go as they expect, and it will often involve further unexpected communication and effort from them. Our previous research into the consumer impact of negative switching experiences revealed that delays with switches can sometimes be very protracted, as consumers have "had to make numerous attempts to resolve or mitigate the issues involving regular chasing of the suppliers".²² This highlights the immediate inconvenience caused to consumers, but also deters consumers from re-engaging in the energy market.

2.10 As 9% of switches were delayed for invalid reasons in 2017,²³ it is clear new measures are needed to reduce the number of delayed switches and compensate consumers for the inconvenience suffered when they do happen.

New Performance Standard (A): Compensation for delayed switches

2.11 We are therefore proposing a new performance standard to complete a switch between any suppliers within 21 calendar days from the date the consumer enters into a contract with a gaining supplier, or from the date an ET is agreed. This will also include switches between a supplier and their white label. We propose that compensation be paid by both the gaining and losing suppliers when a switch is not completed within 21 calendar days from date the consumer entered into a contract due to invalid reasons.

2.12 This also includes the requirement to complete a switch back within 21 calendar days after an erroneous switch is agreed between suppliers. This option for consumer compensation has been recently discussed within the ETWG who agreed it was appropriate to take this consumer compensation proposal forward. As the ETWG

²¹ Supply licence requirement 14A.1 requires suppliers to complete a switch within 21 calendar days from the "relevant date"

²² Ofgem 2017 research on unreliable switching;
https://www.ofgem.gov.uk/system/files/docs/2017/09/consumer_research_unreliable_switching.pdf

²³ Ofgem's retail market monitoring data for 2017 calendar year

subsequently decided that this consumer compensation would sit more appropriately as part of Guaranteed Standards, we are proposing its inclusion within Guaranteed Standards rather than industry code.

2.13 Firstly, we propose to define the start of 21 calendar day switching from the date the consumer enters into the contract with the gaining supplier, or from the date an ET is agreed. We have chosen to start from the date the consumer enters into the contract with the supplier because, from a consumer's point of view, this is the start of their switch. It is also consistent with the existing approach adopted by our retail market monitoring reports, the existing commitment on switching speed in the Energy Switch Guarantee and the Switching Programme's proposed licence drafting on switching speed.²⁴ Although the supply licence requires 21-day switching from the "relevant date",²⁵ which can mean the end of the cooling-off period,²⁶ many suppliers already start their switch during the 14-day 'cooling off' window in order to complete their switch within 21 calendar days.

2.14 The requirement to transfer a customer back within 21 calendar days after an erroneous switch is agreed was also recently developed by the ETWG to ensure consistency with the existing supply licence requirements on switching speed²⁷.

2.15 Secondly, we are proposing compensation in relation to switches that take longer than 21 calendar days due to invalid reasons. We believe this will cover many scenarios where consumers' switching speed expectations are not met. For example, switches that are rejected when they are first processed and have to be reprocessed and end up resulting in a delay to the consumers' switch being finalised; where a consumer has requested a switch but their switch request has been delayed, or has not been processed, because another customer has been erroneously switched; or where suppliers take more than 21 calendar days to complete a switch after they confirm a switch to a consumer via the Debt Assignment Protocol.

2.16 This does not include switches that are delayed for valid reasons. Our proposed definition of valid reasons for switches taking longer than 21 days will be consistent with the supply licence.²⁸ This includes switches delayed because a losing supplier objected to the switch, instances where a customer requests a switch be completed at a later date (i.e. an advanced registration), or switches where the

²⁴ See Switching Programme Outline Business Case; https://www.ofgem.gov.uk/system/files/docs/2018/02/switching_programme_outline_business_case_and_blueprint_phase_decision.pdf

²⁵ See supply licence condition 14A. "Relevant date" is also defined in 14A.12.

²⁶ The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 establish the right of domestic customers to cancel a service contract at any time up to 14 days after entering the contract. For fuller details on cooling off and energy switching, see policy paper from September 2016; https://www.ofgem.gov.uk/system/files/docs/2017/01/bpd_i01_cooling_off_summary_paper.pdf

²⁷ As per supply licence condition 14A.1

²⁸ As per supply licence condition 14A.1 and 14A.3

consumer does not provide adequate information to be able to process the switch despite the gaining supplier having requested it.²⁹

2.17 We would, however, welcome respondents' views on whether additional exemptions are required for scenarios whereby suppliers cannot complete switching in 21 calendar days. For example, we understand that the timing of bank holidays does affect suppliers' ability to complete switching within 21 calendar days from the date the consumer enters into the contract. Also, in some instances, suppliers may experience delay in receiving a customer's switch request from a price comparison website. We would therefore welcome feedback on these issues to ensure they do not undermine the new proposed Guaranteed Standards.

2.18 Thirdly, we believe that the gaining supplier should be easily able to identify when a switch is delayed, as they are currently required to do so for market monitoring reports, and therefore will be able to automatically compensate the consumer in those instances.

2.19 Losing suppliers already know when a switch away from them is completed as they need to monitor this in order to send a final bill to a customer. However, we recognise that the losing supplier will not be aware of the date the consumer enters into a contract with a gaining supplier. Nor will the losing supplier know if, for example, the consumer requests a specific date to complete the switch (i.e. an 'advanced registration') or if there are other valid reasons to delay the switch. Although we could amend existing switching data flows to provide losing suppliers with this information, we believe this would be likely to incur disproportionate additional costs. Therefore, we propose that the losing supplier must take all reasonable steps to compensate consumers when they become aware a switch has been delayed. Additionally, we propose that when a gaining supplier is paying a consumer compensation, they should tell the consumer they are also entitled to compensation from the losing supplier. In such instances, the losing supplier will then be required to pay compensation when it is claimed by the consumer.

2.20 We will retain the existing licence condition.³⁰ Our new individual standard of performance is introduced in order to provide consumers with an individual right to compensation if that standard is breached, whereas the licence condition has a wider purpose of imposing requirements on all suppliers that are enforceable by Ofgem. Where the new standards directly or closely mirror supply licence requirements, we would not rule out compliance or enforcement action where there is a high level of licence breaches or the impact of those breaches is significant.

2.21 To ensure continued consistency between supply licence requirements and our new proposed standard of performance, we propose to ensure that this Guaranteed Standard can be reduced from 21 calendar days to five working days to align with the new switching speed requirements introduced as a result of our faster switching

²⁹ As per supply licence condition 14A.1 and 14A.3

³⁰ As per supply licence condition 14A.1

reforms at the appropriate time. When the ETWG discussed the requirement to return customers within 21 calendar days of an ET being agreed, they noted that this was to align with the supply licence requirement on switching speeds. Therefore, we believe it is also appropriate to reduce this to five working days when faster switching speeds are introduced into the supply licence.

Question 2: Do you agree with our proposed new performance standard for delayed switches?

Question 3: Beyond the licence definition of “valid switches”, do you believe any additional exemptions are necessary to cover scenarios whereby a switch cannot be completed within 21 calendar days?

Question 4: Do you agree with our approach for losing suppliers compensating consumers?

Question 5: Do you agree with our proposal to revise this performance standard to align to new faster switching requirements in the future?

Erroneous switches

2.22 An erroneous switch occurs when a customer is switched without their consent, or without a valid contract, to another supplier. This can occur for many reasons. These include when a consumer requests a switch and the wrong meter point is identified; as a result a different consumer, who had not requested a switch, is switched to a new supplier. Alternatively, other reasons for erroneous switches include forgery, mis-selling and failing to action a customer’s cancelled contract.

2.23 When erroneous switches occur, they cause considerable consumer inconvenience and can cause significant consumer distress. Current rates of erroneous switches across the retail market are too high and we are concerned at the variable performance of different suppliers.

2.24 Additionally, much of the detriment caused to consumers is because of the long time it takes to resolve erroneous switches, which often comes down to the failure of both gaining and losing suppliers to agree that an erroneous switch has happened or failure to switch a customer back promptly after an erroneous switch has been agreed.

2.25 The supply licence currently requires suppliers to prevent erroneous switches occurring by taking all reasonable steps to ensure they have a valid contract with a customer before a switch takes place.³¹ The requirements for managing and resolving erroneous switches are set out in industry codes (the Master Registration

³¹ As per supply licence condition 14A.10

Agreement (MRA) in electricity and the Supply Point Administration Agreement (SPAA) in gas).

2.26 There has not been a substantial reduction in absolute erroneous switch numbers since the introduction of the supply licence condition to require suppliers to prevent erroneous switches occurring.³² As a result of the significant consumer inconvenience caused, we believe that we need to introduce new measures to incentivise all suppliers to reduce the number of erroneous switches and improve the consumer experience when they do happen. We are accordingly proposing three new performance standards.

New Performance Standard (B): Compensation for failure to agree whether switch is erroneous or not

2.27 We propose that a new Guaranteed Standard be introduced that requires suppliers to agree whether a switch is valid or erroneous within 20 working days of identification of the possible erroneous switch. We consider that this requirement is implicit in the requirement contained in the Erroneous Transfer Charter to write to a customer within 20 days to confirm that they will be returned to their correct supplier.

2.28 We propose that compensation be paid by both the gaining and losing supplier when a consumer or a supplier have identified a possible erroneous switch and the gaining and losing suppliers have failed to agree whether the switch is a valid or erroneous switch within 20 working days.

Question 6: Do you agree with our proposed new performance standard for failure to agree whether a switch is erroneous or not?

New Performance Standard (C): Compensation when an erroneous switch is agreed

2.29 We propose to introduce a new performance standard to require suppliers to ensure consumers are not erroneously switched. We believe that a breach of this Guaranteed Standard should mean that compensation would be paid by both the gaining and losing supplier once an erroneous switch is agreed between suppliers.

2.30 This is consistent with existing supply licence obligation on gaining suppliers to have a valid contract with a consumer before a switch is completed.³³ Similarly, this

³² See statutory consultation on preventing ETs, Ofgem, April 2014; https://www.ofgem.gov.uk/sites/default/files/docs/2014/04/statutory_consultation_enforce_three_week_switching_and_prevent_erroneous_transfers.pdf

³³ Supply licence requirement 14A.10 requires suppliers to take all reasonable steps to ensure they have a valid contract with the consumer before a switch is completed.

proposed performance standard on losing suppliers is generally consistent with existing requirements imposed on them as they must treat their customers fairly and maintain accurate data for their own customers.³⁴ Considering these responsibilities and the roles both suppliers play in preventing erroneous switches, we believe it is reasonable to require both suppliers to pay compensation when an erroneous switch is agreed.

2.31 As we similarly stated above in relation to the licence condition on switching speeds, we will also retain the existing licence condition 14A.10 and would not rule out compliance or enforcement action where there is a high level of licence breaches or the impact of those breaches is significant.

Question 7: Do you agree with our proposed new performance standard to ensure a consumer is not erroneously switched?

New Performance Standard (D): Compensation when a supplier fails to send 20 working day letter

2.32 We propose to introduce a new performance standard to require suppliers to send the "20 working day letter" to consumers. This would replicate the existing requirement under the ET Customer Charter within the MRA and SPAA, which requires the contacted supplier to send a letter to a consumer within 20 working days of their initial contact to confirm that they will be returned to their original supplier.

2.33 The six largest suppliers already pay compensation, on a voluntary basis, for failing to meet this requirement. However, our proposal is that all contacted suppliers should pay compensation if they fail to send this letter to consumers via the Guaranteed Standards framework. Our proposed standard would replace the existing voluntary compensation paid by large suppliers. However, until the point at which this new Guaranteed Standards compensation payment comes into force, we expect those large suppliers who currently pay this compensation on a voluntary basis to continue to do so.

2.34 We note that this option for consumer consultation has also been recently discussed within the ETWG, in which suppliers agreed that it was appropriate to mandate this compensation scheme for all suppliers. The ETWG subsequently decided that this consumer compensation would sit more appropriately as part of Guaranteed Standards and decided not to take the compensation forward via codes. Therefore, we have proposed including it in the Guaranteed Standards.

³⁴ Suppliers must 'treat customers fairly' as per the supply licence Standards of Conduct, and specific requirements to maintain accurate data for each meter point are contained in MRA and SPAA industry codes.

Question 8: Do you agree with our proposed new performance standard for sending the “20 working day letter”, as currently required by the ET Customer Charter?

Final bills

2.35 Delays to a consumer’s final bill after switching away from a supplier can seriously impact a consumer’s cash flow as they can end up paying two energy bills at the same time. In many instances, a final bill comes long after switching coincides, or even comes later than, the first bill from the new supplier. Although both bills are legitimate, and relate to different periods of time, the consumer is expected to pay both bills at the same time and may experience cash flow problems as a result.

2.36 This issue exists with a final bill that is sent within the current six-week time limit specified by the licence.³⁵ We understand that not all suppliers are meeting even the relatively generous six-week requirement. We believe that it is important that consumers should have some certainty over when financial obligations will be due and that delays and uncertainties in issuing final bills causes unnecessary distress and difficulty for consumers.

New Performance Standard (E): Compensation when a supplier fails to send final bill within six weeks

2.37 We are therefore proposing to introduce a new performance standard to require losing suppliers to issue final bills within six weeks of a switch. We propose that losing supplies should compensate consumers for the inconvenience caused when they fail to do this.

2.38 This new standard does not impose new requirements upon suppliers as it is consistent with, and based upon, the existing six-week requirement to send a final bill specified in the supply licence.³⁶

2.39 We also acknowledge there will be circumstances in which suppliers are unable to issue final bills as a result of reasons out of their control, for example, if they have been unable to get the customer’s final meter reading despite proactive attempts to do so. We would therefore welcome respondents’ views on whether explicit exemptions for such scenarios are necessary and desirable within the Guaranteed Standards Regulations.

³⁵ As per supply licence condition 27.17, which requires a losing supplier to take all reasonable steps to send a final bill to a customer within six weeks of the switch taking place.

³⁶ As per supply licence condition 27.17

2.40 We will also retain the existing licence condition 27.17 and we would not rule out compliance or enforcement action where there is a high level of licence breaches or the impact of those breaches is significant.

2.41 We do, however, continue to encourage all suppliers to issue final bills as soon as possible after a switch has occurred. We believe that the existing requirement to send bills within six weeks is not ideal. With smart meters, the processing of final meter reads will be largely automated and therefore we believe there is no reason for issuing a final bill to take longer than a few weeks at most. Additionally, consumer expectations for sending final bills are likely to change in coming years following the introduction of faster switching and rollout of smart meters. We may consider in due course whether the current requirement is appropriate or whether it should be shortened or replaced by a principle requiring timely issue of final bills.

Question 9: Do you agree with our proposed new performance standard for sending final bills?

Question 10: Do you believe any explicit exemptions are necessary for scenarios whereby suppliers are unable to issue a final bill within six weeks?

Credit refunds after a switch

2.42 Wherever a customer's credit is held by a supplier after a switch it is important that it should be returned to the customer as soon as possible. Consumers should not be left waiting for credit refunds for any extended period of time.

2.43 Slow refund of credit balances after a switch can cause consumers cash flow problems. This is a particular issue for some vulnerable customers and pre-payment meter customers. As smart pre-payment meters should be put into credit mode when they are switched, those customers will not carry-over credit on their meter to a new supplier. Delay in refunding this credit to a consumer can cause some consumers significant hardship.

2.44 Credit refunds from a losing supplier after a switch is not currently explicitly dealt with by the supply licence, which contains a more general obligation to refund credit balances in a timely manner when requested to do so by the consumer. It is however a commitment of suppliers who have signed up to the Energy Switch Guarantee.³⁷

³⁷ See Energy Switch Guarantee commitment 10 here; <https://www.energyswitchguarantee.com/the-full-energy-switch-guarantee/>
The list of the 24 participating suppliers is available here; <https://www.energyswitchguarantee.com/signatories/>

New Performance Standard (F): Compensation when the losing supplier fails to refund any outstanding credit balances within two weeks of sending the final bill

2.45 We are proposing to introduce a new performance standard to require losing suppliers to refund credit balances within two weeks of sending the final bill to the consumer. This is consistent with the current commitment within the Energy Switch Guarantee. We consider that it is reasonable to argue that when a consumer requests to switch to another supplier they are requesting the termination of their contract with their existing supplier, which will include provision for the return of any outstanding credit balances, and therefore a loss notification could reasonably be interpreted as a request from a customer for the refund of any credit balance. Similarly, the fact that over 90% of the market have voluntarily adopted 14 days after the final bill as an appropriate timescale for refund of credit balances suggests that this might reasonably be supposed to be timely in relation to a switch. We would be grateful for views on this matter, including any arguments as to why this would not be the case.

2.46 We are proposing that losing suppliers who fail to refund credit balances within two weeks of the final bill should compensate the consumer.

2.47 As suppliers who have signed up to the Energy Switch Guarantee represent over 90% of the domestic retail market (by market share), we do not believe this will impose a disproportionate burden on the whole market to meet this requirement.

2.48 As with the requirements on the timing of final bills, we may consider in due course shortening these time frames for refunding credit balances in line with consumer expectations after faster switching is introduced.

Question 11: Do you agree with our proposed new performance standard for refund of credit balances? Views would be welcome on whether it is reasonable to consider that a customer deciding to switch supplier should be considered to have requested any outstanding credit balance from their losing supplier, and that refunding that credit balance within two weeks of a final bill would be timely.

Question 12: Do you believe we should add any other new performance standards?

Payments

Approach to dual fuel switches

2.49 We propose to treat a dual fuel switch to one supplier as a single switch. Where any of the proposed standards are not met by one supplier in relation to either or both fuels in a dual fuel switch this would be considered to be a single breach of the relevant standard.

2.50 We believe that this approach is straightforward for consumers who will receive compensation. Requiring two payments of compensation to be made by one supplier for breaches of Guaranteed Standards in a dual fuel switch would complicate arrangements.

2.51 However, if a consumer opts to switch gas and electricity separately to different suppliers or at different points in time to the same supplier, then we propose this be considered as two separate switches and therefore the consumer receive separate payments of compensation for each breach within the separate gas and/or electricity switches.

Question 13: Do you agree with our approach to dual fuel switches?

Who will the Guaranteed Standards apply to and who should pay compensation?

2.52 An energy switch is a transaction that involves more than one party. It is often difficult to be sure which supplier is responsible for a problem when it arises. The disagreements between suppliers over who is responsible for the problem, and who is responsible for fixing it, lead to consumers being pushed from one supplier to the other without anyone taking responsibility for resolving the issue. We want to tackle this problem as it does wider damage to consumer confidence in the switching process.

2.53 In the case of any individual standard breach it will be difficult to identify which supplier (gaining and/or losing) is responsible for a delayed or an erroneous switch without a forensic investigation. The cost of working out who is at fault for each case is likely to be time-consuming and disproportionately expensive. It might also require further assistance from the consumer, thus increasing the inconvenience and stress suffered by the consumer.

2.54 In the absence of a simple, quick and objective means of determining fault for each individual breach, we are proposing a split of the responsibility for paying compensation between the gaining and losing supplier in relation to any Guaranteed Standard where both might have contributed to the breach occurring. Therefore, we are proposing that compensation relating to a process where both suppliers are involved be paid by both the gaining and losing supplier. Both parties are responsible for ensuring a switch is processed in a timely manner (i.e. is not delayed) and preventing erroneous switches. Both parties also have a role to play in ensuring that a switch goes smoothly. Therefore, requiring the gaining and losing supplier to pay compensation recognises that each party has a role to play in ensuring that a switch goes smoothly, and that both parties could be responsible for delaying a switch or giving rise to an erroneous switch. It places incentives on all suppliers to ensure that they keep data for which they are responsible accurate and that they process all aspects of a switch with appropriate speed and care.

2.55 We do not have enough evidence for apportioning responsibility between the gaining and losing suppliers. In this consultation document we have made an estimate, based on our current understanding. We understand that the majority of the responsibility for getting a switch right sits with the gaining supplier. We are not able to identify with any certainty what proportion of problems are caused by the gaining or losing suppliers on average. We believe that our proposals (A), (B) and (C) above should apply to both the gaining and losing suppliers, and that compensation should be paid by both suppliers when those standards are breached. In order to reflect the larger role played by the gaining supplier in the switching process, and therefore the higher likelihood of gaining supplier errors or omissions leading to a delayed or erroneous switch, we are proposing that the gaining supplier pay two-thirds of compensation amount, while the losing supplier pays the remaining third.

2.56 While this would mean that, for any individual breach of these standards, one supplier would be paying compensation when they might not be at fault, we believe that on average suppliers will tend to pay compensation in proportion to the problems they are responsible for.

2.57 We are keen to hear the views of respondents on what the appropriate apportionment of responsibility should be between gaining and losing supplier for each of the relevant proposed standards. Stakeholders have, in the past, argued that it would not be possible to introduce a compensation mechanism for breaches where absolute responsibility for the breach cannot be identified with confidence. We do not accept that, and consider that our approach of splitting responsibility on a proportionate basis is a satisfactory and appropriate way of dealing with the difficulty of attributing fault. We would like to arrive at an industry consensus on what the appropriate split of responsibility should be. If stakeholders are strongly opposed to the principle of shared responsibility, then it would be helpful if they could articulate a practical alternative approach that they would support. We do not think it is credible for the industry to argue that the difficulty of attributing responsibility for problems with switches should mean that it is not possible to take action to improve outcomes for consumers, or to compensate them when poor outcomes do occur.

2.58 This approach will ensure that customers are compensated for an unacceptable outcome but is, inevitably, an imprecise mechanism for targeting specific poor practices among suppliers. We recognise this, but believe that the approach set out here offers an appropriate and proportionate means to address an increasing consumer detriment problem. We hope that these new Guaranteed Standards will incentivise all suppliers to work both individually and collectively to tackle the root causes of delayed and erroneous switches and thus reduce the number of times the standards are breached.

2.59 We recognise that there will be cases where neither supplier is at fault for a breach, for example when an erroneous switch is caused by a customer inadvertently selecting an incorrect address (though suppliers can take steps to reduce this risk by e.g. requiring consumers to confirm their address). We believe our proposals to place responsibility on both suppliers, even where a breach may be out of their control, is consistent with existing Guaranteed Standards schemes. Similar approaches can be

seen in the existing electricity network Guaranteed Standards scheme where the removal of the 'force majeure' exemption following the October 2002 storms deemed networks responsible for supply interruptions in severe weather conditions.

2.60 However, we appreciate that safeguards are needed to ensure that consumers are not able to 'game' our new standards of performance. Existing exemptions and limitations to supplier payment obligations set out within regulation 9 will apply to these new Guaranteed Standards. They, for example, state that a supplier does not have to pay compensation to consumers if they reasonably consider the matter frivolous or vexatious.³⁸ We will further consider whether additional safeguards are necessary to ensure that suppliers are not liable for compensation if a breach of a standard of performance is the result of a consumer acting in bad faith or not cooperating with the supplier's investigation into the unreliable switch.

Question 14: Do you agree that where both gaining and losing suppliers are involved in the process covered by a guaranteed standard then both should pay compensation where the standard is breached? Please provide views, with any evidence you may have, on the appropriate split of responsibility between the gaining and losing supplier for each of proposed Guaranteed Standards A, B and C.

Question 15: Do you believe additional safeguards are needed to ensure suppliers are not liable for payments if consumers have acted in bad faith?

Compensation levels

2.61 As set out above, we are proposing to make both gaining and losing suppliers liable for compensation payments when the proposed new Guaranteed Standards (A), (B) and (C) above are breached. We have set out above our view that the gaining supplier should be responsible for two-thirds of the compensation and the losing supplier for one-third in the case of Guaranteed Standards (A) and (C), and that they should each be liable for the same sum under Guaranteed Standard (B).

2.62 We have considered two options for the amounts of compensation to be payable for a breach of the proposed new Guaranteed Standards (A), (B) and (C):

- i. The gaining supplier could pay compensation at £30, in line with the other Guaranteed Standards. The losing supplier would then pay £15 in the case of Guaranteed Standards (A) and (C), and £30 under Guaranteed Standard (B). This would mean that the consumer receives £45 (or £60 in the case of a breach of Guaranteed Standard (B)), by contrast to any other Guaranteed Standards breach for which they would receive £30.

³⁸ Regulation 9, The Electricity and Gas (Standards of Performance) (Suppliers) Regulations 2015

- ii. The customer could receive £30 compensation, in line with the other Guaranteed Standards. This would mean the gaining supplier paying £20 and the losing supplier paying £10 in the case of Guaranteed Standards (A) and (C), and each supplier paying £15 under Guaranteed Standard (B).

2.63 Our preference is for option i. We believe that this would be simpler for suppliers to operate as it would mean that they only have to deal with two levels of compensation payments, and would place the same incentives on gaining suppliers in respect of delayed and erroneous switches as they face for the other Guaranteed Standards.

2.64 We consider that the arguments on the level of compensation to be paid by the gaining and losing supplier in respect of proposed new Guaranteed Standards (A), (B) and (C) is finely balanced, and we would welcome views from respondents on which they think is more appropriate and why.

2.65 In line with the existing supplier Guaranteed Standards, we are proposing that a single £30 payment would be made by the specified supplier for a breach of new Guaranteed Standards (D), (E) and (F).

2.66 We recognise that if a consumer is erroneously transferred and all three of our proposed performance standards pertaining to Erroneous Switches are breached, and there is a delay in returning the customer to their correct supplier, then £180 compensation would be payable to the consumer (£90 from a gaining supplier, £60 from the losing supplier plus £30 payable regarding the "20 working day letter" from whichever supplier the consumer contacts). We believe this is proportionate as these payments will be made for separate breaches of performance standards that the suppliers are responsible for. We want to ensure that suppliers improve their performance in all of these standards. We therefore believe it is necessary to introduce them all for suppliers to compensate consumers if any or all of them are breached.

Question 16: Do you agree with the proposed two-thirds to one-third ratio of compensation payments between gaining and losing supplier in the cases of Guaranteed Standards A and C, and an equal share in the case of Guaranteed Standard B? Please provide any evidence you have to support your views.

Question 17: Do you agree that compensation payments where both suppliers are involved should be £30 or £15 in the cases of Guaranteed Standards A and C, and £30 for both suppliers in the case of Guaranteed Standard B?

Question 18: Do you agree with our proposals that all other proposed Guaranteed Standards (D), (E) and (F) should be subject to compensation payments of £30, in line with existing guaranteed standards?

Payment within 10 working days

2.67 If a supplier breaches any of the existing supplier Guaranteed Standards, they are required to make an automatic payment of £30 compensation within 10 working days of being aware of their initial breach.³⁹ We propose to adopt the same requirement to make payment to consumers within 10 working days of being aware of the breach for all of our proposed new Guaranteed Standards.

2.68 Where payment is due by the supplier with a valid contract with a consumer, they will already have a billing relationship with the consumer and will therefore be required to make an automatic payment directly to the consumer.

2.69 Our proposed Guaranteed Standards (B) and (C) also require payment from a supplier without a valid contract or a billing relationship with a consumer when a supplier has erroneously taken over a consumer's supply. For such instances where the supplier has no billing relationship with the consumer, we propose that the supplier makes all reasonable endeavours to identify and pay compensation to the affected consumer. We believe that gaining suppliers will often acquire contact details for the consumer they have erroneously transferred during the erroneous switch resolution process, and therefore paying compensation to the consumer will be fairly straightforward.

Question 19: Do you agree suppliers should be required to make all payments in 10 working days?

Additional compensation payable if fail to make payment promptly

2.70 For the existing supplier Guaranteed Standards, if the supplier was aware of the breach and fails to pay compensation within 10 working days, they are required to pay an additional £30 or £15, as applicable to each new performance standard.⁴⁰ We propose to adopt a similar approach for all our proposed new Guaranteed Standards.

2.71 For example, for our proposed new performance standard (A), we propose that the gaining supplier be required to pay an additional £30 to the consumer for every 10 working days that they fail to compensate the consumer for breach of the Guaranteed Standards, and the losing supplier will be required to pay an additional £15 to the consumer. In order to incentivise prompt payment of compensation to consumers, we do not propose to introduce a limit or cap to these additional payments.

Question 20: Do you agree with our proposals to require additional payments to be made for failure to compensate consumers promptly?

³⁹ Subject to some exemptions and limitations as prescribed by regulation 9.

⁴⁰ As per regulation 8.

Additional compensation payable if suppliers fail to resolve problems

2.72 As slow resolution of problems often causes the most consumer inconvenience, we believe that it is important for suppliers to resolve the problems quickly. We therefore propose that suppliers be liable for further payment for every additional period that they fail to satisfy the performance standard in order to ensure that consumer problems do not drag on for an indefinite time. This means that for every additional 10 working days that a supplier fails to satisfy the original requirement, an additional payment of £30 or £15, as applicable to individual standard, will be payable to the consumer. For example, if suppliers breach proposed performance standard (A) and then go onto fail to complete the switch for another 10 working days, then the gaining supplier will have to pay an additional £30 to the consumer and the losing supplier will have to pay an additional £15. This is also consistent with existing electricity network Guaranteed Standards where, for example, consumers are due additional payments of compensation for every additional 12 hours for which electricity supply is not restored in normal weather conditions.

2.73 We propose that these additional compensation payments be applicable for proposed Guaranteed Standards (A), (B), (D), (E) and (F). We do not think such additional payments are necessary for proposed Guaranteed Standards (C) as the occurrence of an erroneous switch is itself a one-off event. In respect of Guaranteed Standard (A) no further payments would be required if a consumer were to cancel the switch before it had been completed, or the contract between the supplier and the consumer were otherwise to come to an end.

Question 21: Do you agree with our proposals to require additional payments to be made by suppliers if they fail to resolve problem?

Consumer coverage

2.74 We propose that these new Guaranteed Standards apply to domestic consumers only. This is consistent with the consumer coverage of most of the existing supplier Guaranteed Standards.

2.75 We do not currently propose to extend these new Guaranteed Standards to non-domestic consumers, however, we will consider in due course whether there are arguments for extending these standards to microbusinesses.

Question 22: Do you agree that the new Guaranteed Standards should be introduced for domestic suppliers only?

Provision of information to consumers

2.76 The Regulations currently require suppliers to notify the customer promptly of applicable Guaranteed Standards whenever circumstances arise to which any individual standard of performance applies.⁴¹ The Regulations also require suppliers to maintain a statement describing supplier, gas transporter and electricity distribution Guaranteed Standards on their website and provide a copy of this statement to consumers on request.

2.77 We expect suppliers to add our proposed new Guaranteed Standards to these existing notifications and statements. We also consider that these existing requirements are sufficient to ensure suppliers inform customers when a Guaranteed Standards has been breached, making the customer is aware that they are due compensation.

2.78 We do not propose to change the requirements within the Regulations, nor provide prescriptive rules when a supplier should notify a consumer of relevant Guaranteed Standards. However, we note that there are several relevant requirements concerning customer communication within the supply licence⁴² as suppliers need to consider when and how information is provided to consumers to enable them to make informed choices about their supply of gas or electricity.⁴³ This could include the provision of information to consumers who are considering switching about possible compensation if their switch goes wrong.

Question 23: Do you agree that no changes are needed to requirements regarding the provision of information to consumers?

Record Keeping

2.79 Suppliers should keep accurate records which enable them to identify all cases relating to potential breaches of these proposed new Guaranteed Standards. They should keep records to demonstrate both that the relevant events are being tracked and that payments are being made when appropriate. However, there are currently no express requirements imposed upon suppliers to do this.

2.80 We therefore consider that express requirements should be imposed on suppliers requiring them to keep accurate records of the number of potential breaches of all Guaranteed Standards (including the number of claims for Guaranteed Standards compensation which are turned down), the number of compensation payments made, the timeliness of payments and the total value of

⁴¹ See regulation 10

⁴² For fuller details on requirements regarding customer communication, see Policy consultation: domestic supplier-customer communications rulebook reforms, published 10 May 2018; <https://www.ofgem.gov.uk/publications-and-updates/domestic-supplier-customer-communications-rulebook-reforms>

⁴³ As per supply licence condition 0.3(b)(v)

compensation paid. We are also considering whether suppliers should be required to record a breakdown of breaches by customer types in order to ensure that certain groups of consumers are not disproportionately affected.

2.81 We do, however, need to further consider the best way of introducing this requirement upon suppliers.

Question 24: Do you agree that we should expressly require suppliers to keep accurate records of their Guaranteed Standards performance?

Audits

2.82 There are also no express provisions within Guaranteed Standards regulations that provide us with the power to request audits of individual suppliers' Guaranteed Standards performance. At a principle level, we believe it is desirable for Ofgem to have the power to request suppliers conduct an independent audit of their own compliance with the regulations, if we suspect non-compliance.

2.83 As with the proposal on record keeping, we need to further consider the best way of introducing this requirement upon suppliers.

Question 25: Do you agree that Ofgem should have the power to request an audit of individual suppliers' Guaranteed Standards performance?

Reporting

2.84 Suppliers reporting on Guaranteed Standards performance is currently inconsistent and some suppliers do not provide quarterly submissions of the Guaranteed Standards performance. This undermines the existing Guaranteed Standards scheme.

2.85 We therefore propose to mandate all individual suppliers to report the number of potential breaches of all Guaranteed Standards, the number of compensation payments made, the timeliness of payments, the total value of compensation paid to Ofgem on a quarterly basis and, potentially, number of breaches by customer types in an agreed format. This is consistent with the network Guaranteed Standards scheme which mandates networks to report on their performance to Ofgem.⁴⁴

⁴⁴ For example, as per SLC11 of the electricity distribution licence.

2.86 As with the proposals above, we need to further consider the best way of introducing this requirement upon suppliers.

Question 26: Do you agree that we should mandate quarterly GS performance reporting from all suppliers?

Publishing performance data

2.87 We propose to continue to pass individual suppliers' Guaranteed Standards data onto Citizens Advice. Citizens Advice will continue to have the statutory power to publish this information to inform consumers as it sees fit.

2.88 Linked to our wider proposals to publish suppliers' switching performance data,⁴⁵ we believe that publication of all individual suppliers' Guaranteed Standards performance data will impose a strong reputational incentive upon suppliers, help to drive improved performance and empower consumers to make informed choices of energy supplier.

2.89 We therefore intend to publish performance data of all individual suppliers. Alongside the development of our approach to mandatory Guaranteed Standards performance reporting, we will consider the data metrics that we should publish and the best way of doing this. This could, for example, include publication of the number of times each supplier breaches each Guaranteed Standards, the value of compensation paid out, the timeliness of payment and a breakdown of customer types affected. The publication of individual performance data is consistent with the existing approach within the network Guaranteed Standards scheme as, for example, Ofgem currently reports the overall value of compensation paid by each network company in the RIIO electricity distribution annual reports,⁴⁶ while Citizens Advice also reports on individual network company performance.⁴⁷

Question 27: Do you agree with our plans to publish individual supplier Guaranteed Standard performance?

⁴⁵ As referenced in open letter published on 6 December 2017;
<https://www.ofgem.gov.uk/publications-and-updates/open-letter-creating-incentives-suppliers-improve-switching-performance>

⁴⁶ See, for example, RIIO-ED1 Annual Report 2016-17;
https://www.ofgem.gov.uk/system/files/docs/2017/12/riio-ed1_annual_report_2016-17.pdf

⁴⁷ See, for example, Citizens Advice report, October 2017;
<https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/living-up-to-the-standards-energy-networks-performance-against-the-guaranteed-standards-of-performance-in-2015-16/>

Dispute Resolution

2.90 Exhausted or deadlocked complaints against energy suppliers can currently be referred to dispute resolution bodies, such as the Ombudsman.⁴⁸ Although GEMA is the current prescribed dispute resolution body within the Guaranteed Standards Regulations,⁴⁹ the Ombudsman does not currently consider consumer complaints against suppliers for non-payment of compensation for breaches of Guaranteed Standards.

2.91 We therefore do not propose to change or add to the existing dispute resolution provisions within the Regulations as other dispute resolution bodies, such as the Ombudsman, will still be able to consider consumer complaints in relation to the new proposed Guaranteed Standards.

Question 28: Do you agree with our proposal to retain the existing dispute resolution procedure within the Regulations?

Payments during the Switching Programme transitional period

2.92 As part of the implementation of new switching arrangements within the Faster and More Reliable Switching Programme, we have decided to have an initial transitional switch speed period. This will be used to test the impact of the Switching Programme's data improvement remedies. During this transitional period, our view is that suppliers should be allowed to switch faster than five working days, and up to the next working day.⁵⁰

2.93 The Switching Programme is still developing the detailed arrangements for the Switching Programme transitional phase and will publish, in due course, the proposed arrangements for managing this. This will include any additional requirements for suppliers that wish to switch customers faster than five working days during the transitional period.⁵¹

⁴⁸ For more information on the Ombudsman's role in the energy sector, see

<https://www.ombudsman-services.org/sectors/energy>

⁴⁹ Regulation 11

⁵⁰ For more detail on the Switching Programme's transitional period, see paragraph 1.24 on page 14 within the Switching Programme Outline Business Case and Blueprint Phase Decision, Ofgem, 12 February 2018;

https://www.ofgem.gov.uk/system/files/docs/2018/02/switching_programme_outline_business_case_and_blueprint_phase_decision.pdf

⁵¹ The Switching Programme will further engage with industry on the full package of measures used for the transitional phase in due course.



Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation

2.94 One option that we are considering, either by itself, or as part of a package of measures, is to require suppliers who opt to switch consumers faster than five working days during the transitional period, to pay a higher compensation amount if those faster switches go wrong. These additional compensation payments would help to ensure that suppliers gave due consideration to the impact of their actions on consumers and the wider reputation the competitive market during this sensitive initial stage of live operation.

Question 29: Do you support the option of higher compensation payments for switches that go wrong where the supplier has attempted to switch the customer faster than five working days during the Switching Programme transitional phase?

3. Next Steps and Implementation of Regulations

Chapter Summary

This chapter sets the consultation and Request for Information response date. It also provides detail on our proposed timeline for analysing responses, issuing a statutory consultation, making the Regulations and proposed implementation date.

Question box

Question 30: Do you agree with our proposal to allow suppliers and other bodies a two-month implementation period to make necessary adjustments to comply with the new Guaranteed Standards after we publish our decision?

3.1 Responses to this consultation are invited by 31 July 2018. We will discuss the proposed RfI with stakeholders, with the aim of issuing it formally in due course.

3.2 Following consideration of the responses to this consultation and request for information, we will aim to publish our policy decision and to issue a draft version of the proposed changes to the Guaranteed Standards regulations as part of a statutory consultation on those changes in late summer 2018.

3.3 The final version of our proposed changes to the Electricity and Gas (Standards of Performance) (Supplier) Regulations 2015 will be made by the Authority with the consent of the Secretary of State. Subject to consideration of feedback received on the draft Regulations and responses to our statutory consultation, our ambition is to issue our decision and make the Regulations by the end of autumn 2018.

Implementation Period and Date

3.4 We recognise that suppliers and other bodies will need time to adjust some of their internal processes to ensure they are compliant with the new Guaranteed Standards. We are testing the impact of our proposals, and the level of change required by suppliers to comply with them, via our impact assessment. Subject to responses to that impact assessment, we will give further consideration to the necessary implementation period.

3.5 However, as all of our proposed Guaranteed Standards are consistent with existing requirements imposed upon suppliers by the supply licence, industry codes and/or the Energy Switch Guarantee, our current view is that no significant system changes will be needed by suppliers in order to comply with them. We consider that the changes suppliers will need to make should be limited to establishment of internal

processes for monitoring, record keeping, paying compensation to consumers and reporting performance to Ofgem. This will build upon what suppliers should already be doing in order to comply with existing Guaranteed Standards. We therefore believe that our proposals represent a proportionate set of measures that will be a relatively straightforward to implement.

3.6 Accordingly, we propose to provide suppliers and other bodies a two-month implementation period from the modified Regulations being made and before they come into force. This period of time will also provide the necessary time for the Joint Committee on Statutory Instruments to scrutinise the amended Statutory Instrument.⁵² Accordingly, we aim for the revised supplier Guaranteed Standards to take effect from 31 December 2018.

3.7 We also note that it is possible for specific sections within the Regulations to commence at a later date. We will consider whether this is necessary and desirable for any of our proposals. For example, this may be necessary in order to revise our proposed Guaranteed Standard (A) to reduce the requirement on switching speed from 21 calendar days to 5 working days, in line with wider implementation of supply licence changes as part of the Faster and More Reliable Switching Programme reforms. Similarly, we will further consider whether this be necessary and desirable in order to vary the value of consumer compensation for those suppliers who opt to switch faster during the Switching Programme transitional phase.

Question 30: Do you agree with our proposal to allow suppliers and other bodies a two-month implementation period to make necessary adjustments to comply with the new Guaranteed Standards after we publish our decision?

Longer-term evaluation of our proposals and Guaranteed Standards

3.8 As one of the objectives of our reforms is to improve the reliability of switching, we plan to monitor the impact our changes have on consumers' switching experiences and wider supplier performance regarding delayed switches, erroneous switches, timing of final bills and credit refunds. We expect that the introduction of new Guaranteed Standards will ensure there are strong incentives on suppliers to improve performance, but we will continue to review wider switching performance in the retail market to ensure there are no unexpected or perverse outcomes.

3.9 Alongside this, as we state in the consultation, we may consider in due course whether further revisions to Guaranteed Standards on, for example, timing of final bills are necessary and desirable to take account of the changing consumer

⁵² For more information about the Joint Committee on Statutory Instruments, see <https://www.parliament.uk/business/committees/committees-a-z/joint-select/statutory-instruments/>



Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation

expectations and capabilities of suppliers as a result of the rollout of smart meters. Similarly, we may consider whether any reductions in time to agree an erroneous transfer are necessary or desirable to take account of changing consumer expectations, or align with any changes made to the existing requirements within MRA and SPAA industry codes or as part of the creation of the Retail Energy Code within our Faster and More Reliable Switching Programme. We may also consider whether additional Guaranteed Standards are necessary to compensate consumers following the rollout of smart meters.



Appendices

Appendix 1 – Background: Existing Guaranteed Standards of Performance

1.1 Guaranteed Standards of Performance (Guaranteed Standards) are statutory regulations that place service level requirements on parties when they have specific interactions with their customers. They provide a right to compensation to individual consumers in certain cases of breach. The information below provides some illustrative background to the scope and operation of the existing supplier and electricity networks Guaranteed Standards schemes.

Suppliers

Origin

1.2 Existing supplier Guaranteed Standards are outlined under The Electricity and Gas (Standards of Performance) (Supplier) Regulations 2015.⁵³ The Electricity Act 1989 and the Gas Act 1986 provides Ofgem with the power to make and add to these Guaranteed Standards, with the consent of the Secretary of State.⁵⁴

1.3 The supplier Guaranteed Standards were last amended in July 2015 as a result of the Simplification Plan 2012-13. These amended Guaranteed Standards regulations came into force on 1 January 2016.

Coverage

1.4 The existing standards prescribe performance standards in relation to the following service areas:

- Making and keeping appointments;
- Fixing faulty credit meters;
- Fixing faulty prepayment meters; and

⁵³ [The Electricity and Gas \(Standards of Performance\) \(Suppliers\) Regulations 2015](#)

⁵⁴ Section 39 of the Electricity Act 1989 and section 33A of Gas Act 1986; “The Authority may make regulations prescribing such standards of performance in connection with the activities of gas suppliers, so far as affecting customers or potential customers of theirs, as in the Authority’s opinion ought to be achieved in individual cases.”

- Reconnection after disconnection for unpaid charges.

1.5 Three of these current supplier Guaranteed Standards apply to domestic consumers only. However, the Guaranteed Standards regarding making and keeping appointments applies to both domestic and microbusiness consumers as the consumer impact of a breach of this standard would be similar for domestic and microbusiness consumers.

Awareness

1.6 Suppliers are required to publish a notice covering all Guaranteed Standards on their website, and are required to send a copy of the notice to any customer on request. Suppliers also have to inform a customer promptly of applicable Guaranteed Standards whenever circumstances arise to which any individual standard of performance applies. In practice, this means that suppliers inform customers when a Guaranteed Standard has been breached, so the customer is aware that they are due compensation.

Information and Reporting

1.7 Suppliers currently report Guaranteed Standards performance to Ofgem on a quarterly basis, in an agreed format. The submission of this data is not currently mandated, and is instead received and analysed as part of our general retail market monitoring functions. We also pass the data onto Citizens Advice, who have statutory powers to publish information relating to prescribed standards of performance and consumer complaints as they see fit.

1.8 We have also previously stated that suppliers should publish their Guaranteed Standards performance data on their websites in order to increase transparency.⁵⁵ However some suppliers, in particular some smaller newer entrant suppliers, do not consistently provide us with this data, nor do they publish a summary of their performance on their websites. We have also publicly noted that a feature within some of our compliance cases against suppliers for non-compliance with Guaranteed Standards is that they have kept inadequate records of all instances when contractors breached the existing Guaranteed Standards.⁵⁶

Payments under existing Guaranteed Standards

⁵⁵ See page 4 of 2015 Guaranteed Standards decision;
https://www.ofgem.gov.uk/sites/default/files/docs/2015/11/gosp_reforms_-_consultation_response_10th_nov_final_0.pdf

⁵⁶ For example, see open letter published on 16 December 2016;
https://www.ofgem.gov.uk/system/files/docs/2016/12/guaranteed_standards_-_open_letter_16_december_2.pdf

1.9 If a supplier breaches any of the existing supplier Guaranteed Standards, the supplier is required to make an automatic payment of £30 compensation within 10 working days of being aware of their initial breach⁵⁷. If the supplier was aware of the breach and fails to pay compensation within 10 working days, they are required to pay an additional £30.⁵⁸

Dispute resolution process under existing Guaranteed Standards

1.10 Exhausted or deadlocked complaints against energy suppliers can currently be referred to dispute resolution bodies, such as the Ombudsman.⁵⁹ We understand that the Ombudsman does currently consider consumer complaints against suppliers for non-payment of compensation for breaches of Guaranteed Standards.

1.11 The Electricity Act 1989 and the Gas Act 1986 also makes provision for the handling of possible disputes that may arise in relation to Guaranteed Standards.⁶⁰ In summary, any dispute arising from the Guaranteed Standards regulations (whether that dispute is between a customer and a supplier, or between suppliers) can be referred to the Authority, either by the disputing party or by Citizens Advice. However, to date, no formal disputes in relation to supplier Guaranteed Standards have been referred to the Authority.

Networks

1.12 There are three existing Regulations that set minimum levels of service for electricity and gas network companies: The Electricity (Standards of Performance) Regulations 2015; The Electricity (Connection Standards of Performance) Regulations 2015; and the Gas Transporter Standard Special Conditions D10: Quality of Service Standards. Consumers are entitled to compensation if the network operator fails to deliver against the stated standard.

1.13 For illustrative purposes, some detail regarding the operation of existing the existing electricity networks Guaranteed Standards is set out below.

Origin

1.14 Existing electricity network Guaranteed Standards are outlined under The Electricity (Standards of Performance) Regulations 2015.⁶¹ These Guaranteed Standards were amended in July 2014 when a decision was made to amend to provide consumers additional protection in the event of severe weather. These

⁵⁷ Subject to some exemptions and limitations as prescribed by regulation 9.

⁵⁸ As per regulation 8.

⁵⁹ For more information on the Ombudsman's role in the energy sector, see <https://www.ombudsman-services.org/sectors/energy>

⁶⁰ As per s39B of the Electricity Act 1989 and s33AB of the Gas Act 1986

⁶¹ [The Electricity \(Standards of Performance\) Regulations 2015](#)

amended network Guaranteed Standards regulations came into force on 1 April 2015.

Coverage

1.15 The existing network Guaranteed Standards prescribe individual standards of performance for restoration of supply and communication with all domestic and non-domestic customers regarding:

- Supply restoration, in the event of:
 - normal and severe weather conditions;
 - a rota disconnection leading to a customer's electricity supply not being restored for 24 hours or longer;
 - multiple interruptions - a customer's electricity supply failing for three hours or more, on at least four different occasions in a 12 months' period (by the same customer at the same premises); and
 - a distributor's fuse stops the electricity supply to a customer's property.
- Communication with customers, including:
 - notice of planned interruption to supply;
 - investigation of voltage complaints;
 - making and keeping appointments; and
 - notification and making of payments owed under the Guaranteed Standards.

Information and Reporting

1.16 Networks are obliged to report Guaranteed Standards performance to Ofgem under SLC 11 of the electricity distribution licence. We receive this report on an annual basis as a part of the RIIO-ED1 Regulatory Instructions and Guidance (RIGS). The data is used to alert Distribution Network Companies where corrections are needed, inform the Interruption Incentive Scheme and the RIIO electricity distribution annual report. We also send finalised returns onto Citizens Advice.

Payments under existing Guaranteed Standards

1.17 In the instance of a breach in relation to communication with customers, a network company is required to make a payment of £30.

1.18 In relation to restoration of supply, payments vary from £30 to £150 depending upon the type of breach and type of customer:

- Severe weather conditions - £70 for domestic and non-domestic customers (a further £70 will be paid for each additional period of 12 hours in which supply is not restored);
- Normal weather conditions - £75 for domestic customers and £150 for non-domestic customers (a further £35 will be paid for each additional period of 12 hours in which supply is not restored);
- Rota disconnection - £75 for domestic customers and £150 for non-domestic customers;
- Multiple interruptions - £75 for domestic and non-domestic customers; and
- Distributor's fuse - £30 for domestic and non-domestic customers.

Appendix 2 – Consultation Response and Questions

2.1 Ofgem would like to hear the views of anyone interested in the issues in this document. We would especially welcome responses to the questions at the beginning of each chapter. These questions are also copied below.

2.2 Please send us your response by close of business on 31 July 2018, and send them to

Rachel Clark
Consumers & Markets
Ofgem
10 South Colonnade
Canary Wharf
London
E14 EPU
SwitchingCompensation@ofgem.gov.uk

2.3 Unless you mark your response confidential, we'll publish it on our website, www.ofgem.gov.uk, and put it in our library. You can ask us to keep your response confidential, and we'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you want us to keep your response confidential, you should clearly mark your response to that effect and include reasons.

2.4 If the information you give in your response contains personal data under the Data Protection Act 1998, the Gas and Electricity Markets Authority will be the data controller. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. If you are including any confidential material in your response, please put it in the appendices.

CHAPTER: Two

Question 1: Do you agree that the aims of the Guaranteed Standards are aligned with and complementary to the industry-led operation of the Energy Switch Guarantee? We would be interested to see any proposals that you think would better support a continued combination of voluntary industry action and regulatory incentives to deliver better switching outcomes to consumers.

CHAPTER: Three

Question 2: Do you agree with our proposed new performance standard for delayed switches?

Question 3: Beyond the licence definition of “valid switches”, do you believe any additional exemptions are necessary to cover scenarios whereby a switch cannot be completed within 21 calendar days?

Question 4: Do you agree with our approach for losing suppliers compensating consumers?

Question 5: Do you agree with our proposal to revise this performance standard to align to new faster switching requirements in the future?

Question 6: Do you agree with our proposed new performance standard for failure to agree whether a switch is erroneous or not?

Question 7: Do you agree with our proposed new performance standard to ensure a consumer is not erroneously switched?

Question 8: Do you agree with our proposed new performance standard for sending the “20 working day letter”, as currently required by the ET Customer Charter?

Question 9: Do you agree with our proposed new performance standard for sending final bills?

Question 10: Do you believe any explicit exemptions are necessary for scenarios whereby suppliers are unable to issue a final bill within six weeks?

Question 11: Do you agree with our proposed new performance standard for refund of credit balances? Views would be welcome on whether it is reasonable to consider that a customer deciding to switch supplier should be considered to have requested any outstanding credit balance from their losing supplier, and that refunding that credit balance within two weeks of a final bill would be timely.

Question 12: Do you believe we should add any other new performance standards?

Question 13: Do you agree with our approach to dual fuel switches?

Question 14: Do you agree that where both gaining and losing suppliers are involved in the process covered by a guaranteed standard then both should pay compensation where the standard is breached?

Question 15: Do you believe additional safeguards are needed to ensure suppliers are not liable for payments if consumers have acted in bad faith?

Question 16: Do you agree with the proposed two-thirds to one-third ratio of compensation payments between gaining and losing supplier in the cases of Guaranteed Standards A and C, and an equal share in the case of Guaranteed Standard B? Please provide any evidence you have to support your views.

Question 17: Do you agree that compensation payments where both suppliers are involved should be £30 or £15 in the cases of Guaranteed Standards A and C, and £30 for both suppliers in the case of Guaranteed Standard B?

Question 18: Do you agree with our proposals that all other proposed Guaranteed Standards (D), (E) and (F) should be subject to compensation payments of £30, in line with existing guaranteed standards?

Question 19: Do you agree suppliers should be required to make all payments in 10 working days?

Question 20: Do you agree with our proposals to require additional payments to be made for failure to compensate consumers promptly?

Question 21: Do you agree with our proposals to require additional payments to be made by suppliers if they fail to resolve problem?

Question 22: Do you agree that the new Guaranteed Standards should be introduced for domestic suppliers only?

Question 23: Do you agree that no changes are needed to requirements regarding the provision of information to consumers?

Question 24: Do you agree that we should expressly require suppliers to keep accurate records of their Guaranteed Standards performance?

Question 25: Do you agree that Ofgem should have the power to request an audit of individual suppliers' Guaranteed Standards performance?

Question 26: Do you agree that we should mandate quarterly Guaranteed Standards performance reporting from all suppliers?

Question 27: Do you agree with our plans to publish individual supplier Guaranteed Standard performance?

Question 28: Do you agree with our proposal to retain the existing dispute resolution procedure within the Regulations?

Question 29: Do you support the option of higher compensation payments for switches that go wrong where the supplier has attempted to switch the customer faster than five working days during the Switching Programme transitional phase?

CHAPTER: Four

Question 30: Do you agree with our proposal to allow suppliers and other bodies a two-month implementation period to make necessary adjustments to comply with the new Guaranteed Standards after we publish our decision?

Appendix 3 - Feedback on this consultation

- 3.1 We would like to hear from anyone interested in this document. Send your response to the person or team named at the top of the front page.
- 3.2 We have asked for your feedback in each of the questions throughout it. Please respond to each one as fully as you can.
- 3.3 Unless you mark your response confidential, we will publish it on our website, www.ofgem.gov.uk, and record it in our library. You can ask us to keep your response confidential, and we'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you want us to keep your response confidential, you should clearly mark your response to that effect and include reasons.
- 3.4 If the information you give in your response contains personal data under the Data Protection Act 1998, the Gas and Electricity Markets Authority will be the data controller. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. If you are including any confidential material in your response, please put it in the appendices.

General feedback

- 3.5 We believe that consultation is at the heart of good policy development. We are keen to hear your comments about how we've conducted this consultation. We'd also like to get your answers to these questions:
 1. Do you have any comments about the overall process of this consultation?
 2. Do you have any comments about its tone and content?
 3. Was it easy to read and understand? Or could it have been better written?
 4. Were its conclusions balanced?
 5. Did it make reasoned recommendations for improvement?
 6. Any further comments?
- 3.6 Please send your comments to stakeholders@ofgem.gov.uk



Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation