

Consultation

Statutory Consultation – Microbusiness Strategic Review

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This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential and put the confidential material in separate appendices to your response.

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Contents

Executive summary	5
Introduction	7
Background	7
Revised package of policy measures	12
Impact Assessment	12
Other related work	13
Microbusinesses and the Covid-19 pandemic.....	16
Related publications.....	17
Consultation stages	17
How to respond.....	17
Your response, data and confidentiality	17
General feedback	18
How to track the progress of the consultation	19
Awareness: Knowing about opportunities and risks.....	20
Section summary	20
The outcomes we want to see and the consumer harms impacting these outcomes	20
Original policy proposals.....	20
Stakeholder views and evidence.....	20
Revised policy proposals.....	22
Browsing: Searching for deals.....	23
Section summary	23
The outcomes we want to see and the consumer harms impacting these outcomes	23
Original policy proposals.....	23
Stakeholder views and evidence.....	24
Revised policy proposals.....	27
Contracting: Signing up to a new contract	30
Section summary	30
The outcomes we want to see and the consumer harms impacting these outcomes	30
Original policy proposals.....	30
Stakeholder views and evidence.....	31
Revised policy proposals.....	34
Dialogue: Two-way communication with service providers.....	39
Section summary	39
The outcomes we want to see and the consumer harms impacting these outcomes	39

Original policy proposals.....	39
Stakeholder views and evidence.....	39
Revised policy proposals.....	41
Exiting: Switching away from an old contract	44
Section summary	44
The outcomes we want to see and the consumer harms impacting these outcomes	44
Original policy proposals.....	44
Stakeholder views and evidence.....	45
Revised policy proposals.....	47
Appendices.....	50
Appendix 1 –Draft supply licence conditions.....	51
Appendix 2 – Consultation questions.....	66
Appendix 3 – Privacy notice	67

Executive summary

Ofgem’s priority is to protect the interests of current and future consumers. We want to see a retail energy market that works in the interests of all consumers, including microbusinesses. We have identified some areas where the retail energy market is not working well for microbusinesses and where individual consumers are suffering detriment. **We are now consulting on a finalised package of measures designed to remedy these issues.**

Over the course of our Microbusiness Strategic Review, the views and evidence we have gathered have identified a mixed picture of consumer experience in the microbusiness segment. On the one hand, engagement levels are relatively high with around three in four microbusinesses on a negotiated, fixed-term deal. Microbusinesses are able to negotiate bespoke contracts that suit their needs and agree competitive prices where they switch to a new supplier or agree a new deal with their existing provider. Microbusinesses can access a good quality of service from the best performing suppliers and obtain valuable market insight and contracting services from brokers and other third party intermediaries who play an important role in the market.

On the other hand, microbusinesses who do not engage with the market face particularly high prices. For those that do engage in the market, too many encounter opacity, poor practice and procedural barriers that hamper their customer journey and can leave them overpaying for their energy. As many microbusinesses use brokerage services to engage with the market, the activities of a minority of brokers is causing particular harm in individual cases and we believe this poor practice is having a broader impact on trust across the market too.

To address these issues, we developed an initial package of proposed policy measures that we consulted on in 2020. Having reviewed consultation responses, held a number of virtual stakeholder workshops, gathered additional industry data and accounted for developments in government policy, we have refined our plans and are now consulting on a finalised package of proposals as follows:

- **Provision of principal contractual terms:** Strengthening existing rules around the provision of principal contractual terms to ensure consumers receive this key information both pre and post-contract agreement in all cases
- **Brokerage cost transparency:** Clarifying and strengthening existing supply licence obligations to provide information about brokerage costs on contractual documentation
- **Broker dispute resolution:** Introducing a requirement for suppliers to only work with brokers signed up to a qualifying alternative dispute resolution scheme

- **Cooling-off period:** Introducing a 14 day cooling-off period for microbusiness contracts
- **Banning notification requirements:** Banning suppliers from requiring microbusinesses to provide notice of their intent to switch
- **Information and Awareness:** Working collaboratively with Citizens Advice to create new and updated information so that microbusinesses can access up-to-date guidance and advice alongside communications to help further boost awareness of how the market operates and their rights as consumers.

We envisage our proposals, both individually and as a complementary package, bringing significant benefits to consumers and the market. Consumers will be provided with the key information they need to make better informed choices, have new contract cooling-off rights, and be able to resolve disputes with their broker via an independent body. Their switching experience will also be smoother. At the same time our proposals should help increase supplier accountability, and drive improved practice within the broker community.

Pending feedback to this consultation, we intend implementing these reforms later this year with the full package taking effect in early 2022. Alongside implementing these near-term reforms, we will continue to support government as it prepares to consult on the case for direct regulation of third party intermediaries, including brokers operating in the microbusiness retail energy market.

We recognise that a well-functioning market will be more important than ever in the coming months as microbusinesses emerge from the challenges posed by the Covid-19 pandemic. We believe introducing each of the measures will play an important role in contributing to the longer-term recovery by greatly improving microbusinesses experience at each stage of their customer journey. We believe each measure represents a proportionate intervention that can realistically be implemented by suppliers and other industry participants who are also working hard to recover and rebound from the pandemic.

We welcome views from stakeholders on our proposals **by close on 9 July 2021**.

Introduction

Background

Microbusinesses in the UK economy and retail energy market

Microbusinesses play a central role in the UK economy, providing a wide range of products and services. Latest government data suggests that there were over 5.7 million microbusinesses in the UK by 2020, accounting for 96% of all businesses, 33% of employment and 21% of turnover.¹ Data from the Office of National Statistics (ONS) shows that despite the impact of the Covid-19 pandemic, 70% of microbusinesses in the UK were still trading² as of January 2021³

Microbusinesses are equally important in the retail energy market. As of December 2020, the largest suppliers (who supply approximately 90% of the microbusiness market) provided supply to circa 1.4m electricity and 0.5m microbusiness gas meter points. Microbusinesses make up a significant proportion of energy expenditure too, with expenditure from all these meter points accounting for £3.4bn in 2020.^{4 5}

Why we launched a strategic review of the microbusiness market

The regulatory framework protecting microbusinesses in the energy market has evolved in recent years. In 2013 we introduced 'Standards of Conduct' setting overarching rules for suppliers to follow when engaging with microbusinesses. We also introduced rules in 2018 to limit back billing. However, our evidence base, including published research, indicated that despite this evolution, the market is not working well for some microbusinesses. For example, the Competition and Markets Authority's (CMA) price transparency remedy which took effect in 2017, aimed to reduce search costs for smaller microbusinesses, encourage them to engage in the market and ultimately pay less for their energy. Our evaluation of the remedy

¹ House of Commons Library (2020),

<https://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf>

² Business insights and impact on the UK economy, 28 January 2021, Office for National Statistics:

<https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/bulletins/businessinsightsandimpactontheukconomy/28january2021>

³ Data representing 15 June 2020 to 24 January 2021

⁴ These values were compiled using an ongoing request for information to suppliers that represent approximately 90% of the small business market segment. These suppliers are British Gas, Corona, EDF, Eon, Gazprom, Npower, Opus, Scottish Power, SSE, and Total Gas & Power for electricity, and British Gas, CNG, Corona, EDF, Eon, Gazprom, Npower, Opus, Scottish Power, SSE, TEGS, and Total Gas & Power for gas.

⁵ For the purposes of this data, microbusinesses are defined as those non-domestic consumers who use no more than 100 MWh of electricity per year, and/or no more than 293 MWh of gas per year.

indicated that attempts to introduce price transparency had not yet had a significant impact on the way the market operates.⁶ It revealed a market with far from fully transparent pricing and where energy suppliers held significantly more key information than the customers they serve.

Meanwhile our micro and small business survey identified that a significant minority of microbusinesses are not engaging with the market and accessing the best deals. The 2018 survey found that of those businesses undertaking no switching activity, 43% believe that all suppliers charge the same and 51% believe the differences between deals are marginal.⁷

Government, consumer groups and industry parties have also consistently raised concerns with the way the microbusiness segment of the energy market is operating. They have placed a particular emphasis on poor practices by a minority of brokers who operate in the microbusiness market that are having a detrimental impact on customers, citing a lack of transparency around commission costs as a particular issue.

We acknowledged these issues in our Forward Work Programme 2019-2021, where we noted that microbusinesses face many of the same issues as domestic consumers. We said that we would take steps to better understand the issues faced by microbusinesses and take action where necessary to ensure these businesses are able to access a competitive retail market and secure adequate levels of protection. We launched our Strategic Review of the microbusiness market to meet these aims.

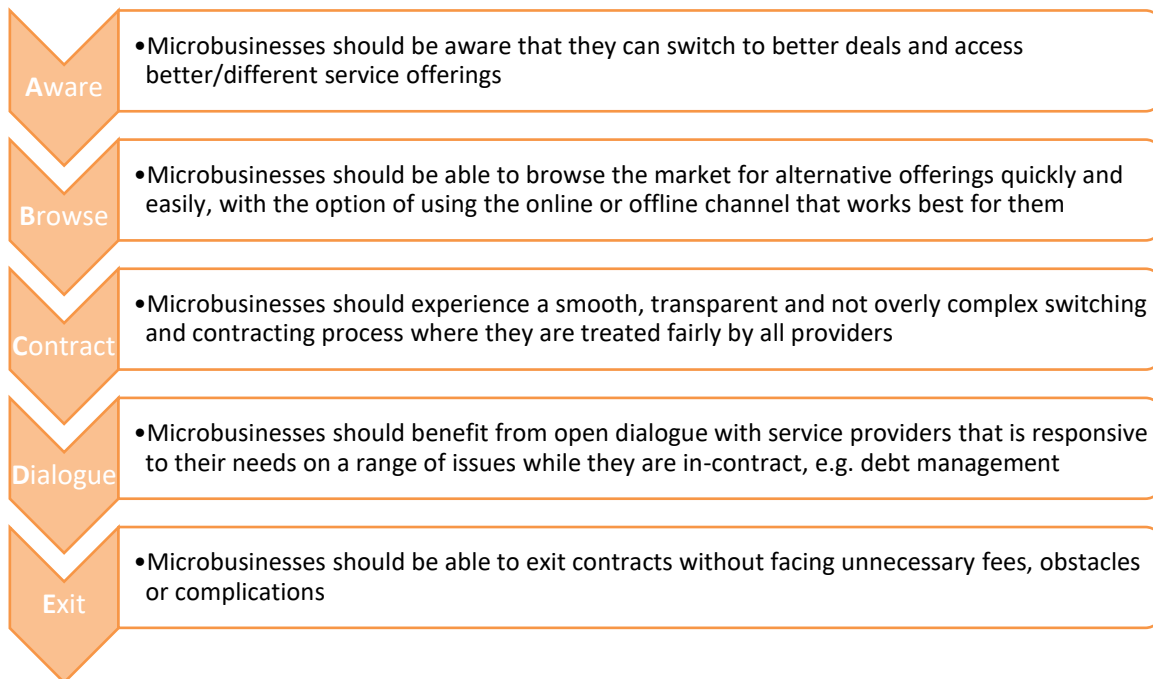
Our vision for a positive microbusiness customer journey

We envisage a retail market where providers meet microbusiness' needs and preferences; where microbusinesses receive appropriate protection, great customer service and are able to easily navigate and access competitive offerings to make informed decisions.

Based on this vision, we developed a customer journey model with a set of practical principles which we considered should be applied at each stage of the journey.

⁶ Ofgem, Evaluation of CMA Price Transparency Remedy (2019), <https://www.ofgem.gov.uk/publications-and-updates/evaluation-cma-price-transparency-remedy-final-report>

⁷ Ofgem, Micro and small business engagement survey (2018), https://www.ofgem.gov.uk/system/files/docs/2018/10/micro_and_small_business_engagement_survey_2018_report.pdf



Theories of consumer harm

We developed eight theories of consumer harm based on areas where either we had already seen some evidence of detriment, or where we saw a likelihood of consumer harm. Below we set out our theories of consumer harm, representing both overarching and specific concerns relating to the customer journey.

Overarching theories of consumer harm

- 1) The smallest microbusinesses cannot effectively engage with the current market given its complexity, including the very wide range of offerings and providers. At present their size and lack of expertise places them at a significant disadvantage when engaging with providers, leading to them ending up on expensive and/or unsuitable deals.
- 2) The cost of disengagement is higher for microbusinesses than disengaged domestic consumers leading to disengaged microbusinesses overpaying for their energy.
- 3) Barriers to accessing, using and sharing consumption data are preventing some microbusinesses fully benefiting from smart data and other technological innovations. This is hampering their ability to make informed switching decisions, use energy more efficiently and budget effectively.

Awareness

- 4) A significant number of microbusinesses are generally unaware of the opportunities presented by the market, their rights, and company obligations. This is leading to a lack of engagement and/or a substandard experience during the customer journey.

Browsing

- 5) Despite the CMA's attempts to improve price transparency, pricing is still not fully transparent and it is difficult to compare prices. This is leading to a significant proportion of microbusinesses not identifying the best deals.

Contracting

- 6) The supplier/third party intermediary contracting process is, or is perceived to be, overly complex, costly and opaque, leading to some consumers ending up on costly contracts with disadvantageous terms.
- 7) Microbusinesses often rely on brokers to switch and weak broker regulation is allowing room for sharp practices by some brokers. Gaps in current consumer redress mechanisms add further to this harm.

Dialogue

- 8) The absence of rules concerning debt management in this segment of the market is resulting in some microbusinesses struggling with debt being treated unfairly and not benefiting from customer-focused debt management policies and processes.

Scope of the Review

In our Opening Statement where we launched our review, we set out the scope of our review as follows.⁸

Business classifications: We noted our view that larger businesses are generally better equipped to look after their own interests and that we are therefore focusing on microbusinesses as defined in the gas and electricity supply licences for the purpose of this review.

Home-based single site businesses: We recognised that a typical home-based single site business (by this we mean where an individual uses one room in their home as an office) is unlikely to engage with the business energy market. Instead they will likely consume energy under the terms of one (or two if they are a dual-fuel customer with different suppliers for each fuel) domestic supply contract(s). We noted that our review would not consider consumers on domestic supply contracts.

⁸ Ofgem, Opening Statement – Strategic Review of the microbusiness retail market (2019), <https://www.ofgem.gov.uk/publications-and-updates/opening-statement-strategic-review-microbusiness-retail-market>

Industry and other parties: We stated that our review would focus on the experiences microbusinesses have at each stage of their customer journey. Suppliers, third party intermediaries (TPIs)⁹, Citizens Advice, Citizens Advice Scotland, Ombudsman Services and others interact with consumers at various points in the journey. We said that we would therefore consider the role and impact of all parties at each stage of the customer journey.

Time frame and actions: We noted that the review was scheduled to run for the course of our 2019-2021 Forward Work Programme. We have since set out our updated timeline in our Forward Work Programme 2021/22¹⁰. We focused on identifying near-term actions that can be taken within the confines of the existing regulatory framework.

Our approach to assessing and prioritising issues

Evidence sources

In our Policy Consultation we outlined the range of evidence sources used to help assess the nature and impact of the challenges faced by microbusinesses¹¹.

Categorising and prioritising issues

Our stakeholder engagement helped us build a broad picture of the challenges faced by microbusinesses engaging in the retail energy market at each stage of their customer journey. We then analysed the views and evidence obtained to assess the impact of the harms we identified in terms of their likely scale and severity.

- **Scale:** We assessed the likely scale of a harm by considering the number of microbusinesses potentially affected by it.

⁹ The Third party intermediary (TPIs) market is rapidly expanding and developing to include a very wide range of players who currently include organisations or individuals that give energy related advice, aimed at helping customers to buy energy and/or manage their energy needs (e.g. switching sites, energy brokers and any company that offers support with energy procurement).

¹⁰ Forward Work Programme 2021/22, March 2021: <https://www.ofgem.gov.uk/publications-and-updates/forward-work-programme-202122>

¹¹ Ofgem, Microbusiness Strategic Review: Policy Consultation (2020), <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-policy-consultation>

- **Severity:** To assess the severity of a harm, we considered the likely harm for individual microbusinesses accounting for financial impacts, and also impacts on trust, future engagement in the market and inconvenience.

Applying this model enabled us to draw up a list of harms for prioritisation. In our Policy Consultation we mapped these harms against each stage of the customer journey model and highlighted those that were prioritised.

Revised package of policy measures

In the following chapters we set out a summary of stakeholder views and evidence regarding our original package of proposed policy measures received via our Policy Consultation, including drawing on a selection of illustrative examples from responses. We have also drawn on stakeholder views presented at three online workshops we ran in autumn 2020¹² and new data we have collected from suppliers¹³. We explain how we have used these data to refine or in some cases set aside each of the policy measures we originally consulted on.

Impact Assessment

Alongside this document we have published a revised Impact Assessment setting out our updated thinking on the likely impact of our proposals.

¹² PowerPoint slide packs presented at these events are available to download from the following page on our website: <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-policy-consultation>

¹³ A Request for Information (RFI) was issued to the suppliers from whom we regularly collect contractual and pricing data. These are British Gas, CNG Ltd, Corona Energy, E.ON, EDF, Gazprom Energy, npower, Drax (Opus Energy and Haven power), SSE, Scottish Power and Total Gas & Power. The RFI asked for data on how far in advance of the supply start date contracts have historically been agreed, and the estimated implementation costs of a cooling-off period that would expire 28 days before the supply start date.

Other related work

A number of other workstreams are focused on complementary reforms that will help improve microbusinesses' experience. We have summarised these below.

Smart metering rollout

Suppliers are required under their current licence obligations to take all reasonable steps to roll out smart meters to domestic and designated non-domestic premises they serve by the end of June 2021, and this includes their microbusiness customers. A new regulatory framework will replace the current obligations on 1 July 2021, which will give suppliers binding annual installation targets to continue to drive market-wide rollout of smart meters to mid-2025. Smart meters give consumers near real-time information on energy use – expressed in pounds and pence – so that consumers will be able to better manage their energy use, save money and reduce metering issues. The Department for Business, Energy and Industrial Strategy (BEIS) cost-benefit analysis sets out that microbusiness customers should expect to see significant benefits from the rollout, particularly the £1.5bn released through energy consumption reduction¹⁴. We continue to provide regulatory oversight of rollout delivery, ensuring energy suppliers' compliance with their smart meter licence obligations and working to secure the best possible outcomes for consumers.

Switching programme

The Switching Programme is currently in its Design, Build and Test phase and continues to actively work with industry stakeholders to create the central systems and processes to enable a faster and more reliable switching experience. The changes will enable non-domestic customers to switch within two working days while improvements to address data will ensure that there are fewer issues with switches going wrong. By improving the speed and reliability of switching, the Programme aims to increase the number of consumers who engage actively in the market and, with a view to driving competition in the market leading to lower bills, better tariffs, products, and services for consumers. The expected go-live date for the Programme is in summer 2022.

¹⁴ Smart Meter Roll-Out, Cost-Benefit Analysis (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831716/smart-meter-roll-out-cost-benefit-analysis-2019.pdf

In our Policy Consultation, we acknowledged the importance of improving access to energy data for microbusiness customers to facilitate contact comparison for customers wanting to switch, and also noted positive progress with Gemserv and Xoserve in making this happen. Further to industry approving a code modification to formalise TPI access to non-domestic electricity data in June 2020, we can confirm that access to non-domestic electricity data is due to be governed under the Retail Energy Code (REC)¹⁵ from 1 September 2021¹⁶ and access to non-domestic gas data will move to the REC at the same time as the Switching Programme go-live¹⁷.

Market-wide Half-hourly Settlement (MHHS)

In April 2021, we published our decision to proceed with implementation of Market-wide Half-hourly settlement (MHHS).¹⁸ This is one of the key activities in our new Forward Work Programme 2021/22. Building on other reforms such as the smart meter rollout, MHHS will be a vital enabler of the flexibility that will support the transition to net zero. MHHS will send accurate signals to suppliers about the cost of serving their customers throughout each day. Suppliers will have powerful incentives to offer new tariffs and products that encourage more flexible use of energy and help consumers to lower their bills.

We expect microbusinesses to be among all energy consumers who will share in the system-wide benefits of MHHS, whether or not they are able to offer flexibility. In our Decision, we estimate that our chosen option for MHHS will deliver net benefits to GB energy consumers in the range of £1,559m-£4,509m over the period 2021-2045.

¹⁵ The Retail Energy Code (REC) was introduced as part of the Switching Programme and is a dual fuel code that will, in time, govern all energy retail processes and rules, including access to energy data.

¹⁶ <https://www.ofgem.gov.uk/publications-and-updates/retail-energy-code-v20-and-retail-code-consolidation>

¹⁷ Switching Programme Significant Code Review, March 2021: <https://www.ofgem.gov.uk/publications-and-updates/switching-programme-significant-code-review-retail-energy-code-v30>

¹⁸ Electricity Retail Market-wide Half-hourly Settlement: Decision and Full Business Case, April 2020:

<https://www.ofgem.gov.uk/publications-and-updates/electricity-retail-market-wide-half-hourly-settlement-decision-and-full-business-case> Ofgem

Cold calling by brokers in the energy market

In our Policy Consultation we noted the role that the Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS) can play in helping microbusinesses screen out unwanted sales calls. We noted that this is particularly relevant given information provided during our Policy Consultation suggesting that the volume and nature of unsolicited calls received by microbusinesses from brokers during business hours has been increasing in recent years, causing significant disruption, nuisance and disengagement among microbusinesses.

Further investigations into cold calling by TPIs in the energy market by the Information Commissioner's Office (ICO) have confirmed a rise in the number of complaints in this sector. As a result of this, the ICO will be running a new workstream to engage with and educate TPI's with the aim of improving their compliance to the TPS/CTPS regulations, or otherwise taking enforcement activity where appropriate.

Microbusinesses and the Covid-19 pandemic

We recognise that microbusinesses have been and continue to be impacted by the pandemic. Our package of reforms will help improve outcomes for microbusinesses at this critical time, complementing the actions we have and are continuing to take outside of this Review to respond to the pandemic.

Regulatory guidance

In light of the financial pressures that some small businesses have been under, our open letters to suppliers in April and June 2020¹⁹ set out our expectations for non-domestic suppliers to be reasonable in considering what support they can offer their customers and to treat small business customers fairly by supporting them in managing their energy needs. This included providing support to customers struggling to pay their bills as a direct or indirect result of the pandemic. The letters also recognised that suppliers will need to think pragmatically about how their approach to debt management should evolve going forward, as they continue to deal with customers financially impacted by the pandemic. We remind suppliers of their existing obligations under SLC 0A²⁰ to treat microbusiness consumers fairly in the way in which they behave and carry out any actions, provide information and deliver customer services.

Contract access

In our Policy Consultation we noted our concerns around access to energy contracts for some microbusinesses being restricted as a response to the pandemic. We have since looked into this issue. The evidence we have gathered to date suggests that some microbusinesses operating in high-risk sectors (such as hospitality) have at some points during the pandemic found it more difficult to access new supply contracts. However, some suppliers remain active in offering supply contracts to businesses operating in these sectors. We are continuing to monitor this area to ensure the best outcomes for affected customers.

¹⁹ Impact of Covid-19 on retail energy supply companies – an enabling framework for regulatory flexibility, Open letter, April 2020: <https://www.ofgem.gov.uk/publications-and-updates/impact-covid-19-retail-energy-supply-companies-enabling-framework-regulatory-flexibility>;
Impact of Covid-19 on retail energy supply companies – regulatory expectations from 1 July 2020, Open letter, June 2020: <https://www.ofgem.gov.uk/publications-and-updates/impact-covid-19-retail-energy-supply-companies-regulatory-expectations-1-july-2020>

²⁰ Supply licence condition 0A. Treating Microbusiness Consumers Fairly

Related publications

Stakeholders may wish to view the following publications alongside this consultation:

[Opening Statement - Strategic Review of the microbusiness retail market](#)

[Evaluation of CMA Price Transparency Remedy](#)

[Microbusiness Research Synthesis](#)

[Microbusiness Strategic Review: Policy Consultation and Draft Impact Assessment](#)

[Microbusiness Strategic Review Event 1: Broker Dispute Resolution](#)

[Microbusiness Strategic Review Event 2: Switching related proposals](#)

[Microbusiness Strategic Review Event 3: Broker Conduct Principle, Informed Contract Choices and Commission Transparency](#)

Consultation stages

Following the closure of this statutory consultation, we expect to issue a final decision in summer 2021. We then anticipate policy measures taking effect from autumn 2021 onwards.

How to respond

We want to hear from anyone interested in this consultation. Please send your response to the email address provided on the front page of this document **by close on 9 July 2021**.

We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, data and confidentiality

You can ask us to keep your response, or parts of your response confidential. We will respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions,

court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations at Appendix 3 of this document.

General feedback

We believe that consultation is at the heart of good policy development. We welcome any comments about how we have run this consultation. We would also like your answers to the following 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. Do you have any further comments?

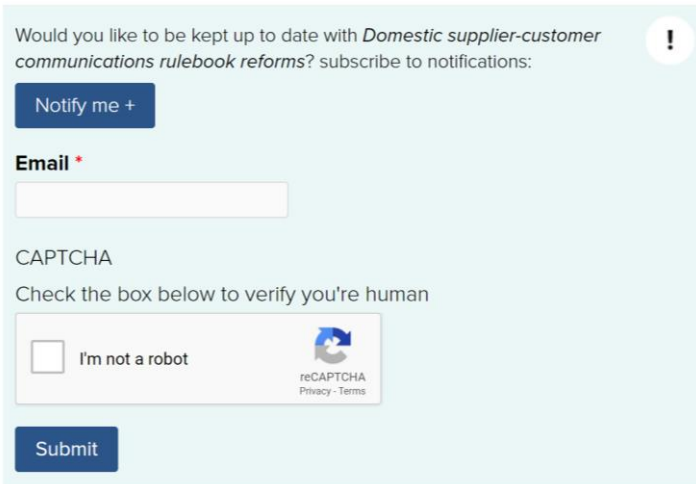
Please send any general feedback comments to stakeholders@ofgem.gov.uk


How to track the progress of the consultation

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Awareness: Knowing about opportunities and risks

Section summary

In this chapter we signpost readers to the outcomes we want to see at this stage of the customer journey, along with the consumer harms we identified and prioritised earlier in the review. We go on to recap our original policy proposals; set out stakeholder views and evidence in response to these plans; and our revised proposals.

The outcomes we want to see and the consumer harms impacting these outcomes

In our Policy Consultation we set out the outcomes we want to see at this stage of the customer journey. We went on to describe the key consumer harms we had identified and how these harms were adversely affecting consumers' experience at this stage of their journey.²¹

Original policy proposals

In our Policy Consultation we proposed working collaboratively with leading consumer groups on a two-pronged approach to improving awareness and information provision for microbusinesses. First, building upon and developing existing and new awareness materials for microbusinesses and second, utilising the most effective channels to disseminate information, harnessing the latest technological developments. We stated that we would like to tap into leading consumer groups' expertise and local networks to build upon and disseminate/provide access to key information.

Stakeholder views and evidence

The clear majority of stakeholders are supportive of our proposal, with many keen to play a part in its delivery.

Content of information

²¹ Microbusiness Strategic Review: Policy Consultation, Ofgem, <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-policy-consultation> , page 20

A variety of suggestions were made regarding the content of information that could be provided to microbusinesses. For example, Drax envisage a guide including how microbusinesses can engage with the market and what their rights are. They suggest the guide could also be used to highlight the actions microbusinesses can take to get the best outcomes, such as getting a smart meter and ensuring value for money from third party intermediaries (TPIs).

There were several other suggestions to help raise awareness of different elements of the market. A number of stakeholders focused on the accessibility of clear pricing for consumers, reflecting on the aims of the Price Transparency Remedy²². Some stakeholders also proposed the creation of a centralised site with links to all suppliers pricing data. For example EDF suggest Citizens Advice or Ofgem websites could provide a location for such a site.

Disseminating information

We have received several suggestions of methods for ensuring microbusinesses can access key information about the retail energy market. In particular, a number of stakeholders, including for example Centrica, propose the creation of a centralised information hub. They suggest the hub could help provide information relevant to all customers. On a similar note, Cost Advice Services suggest that awareness raising information provided by an independent body will help to ensure impartial information provision.

Several stakeholders have focused on methods for improving the availability of information specifically concerning brokers and their services. For example E.on have suggested this could be achieved by a consumer body such as Citizens Advice providing star ratings for brokers, as they do for suppliers²³, enabling microbusinesses to see which brokers offer the highest rated services.

²² The CMA introduced the Price Transparency Remedy in June 2017. It requires suppliers to provide clear prices to microbusiness customers through a quotation tool on their own websites or through Price Comparison Websites (PCWs). It aims to reduce microbusinesses' search costs, encourage them to engage in the market, and ultimately pay less for their energy.

²³ First published in 2016, Citizens Advice star rating services provides consumers with accessible information about energy supplier performance with scores calculated using a variety of data and metrics. Citizens Advice, Compare domestic energy supplier's customer service, <https://www.citizensadvice.org.uk/about-us/our-work/citizens-advice-consumer-work/supplier-performance/energy-supplier-performance/compare-domestic-energy-suppliers-customer-service/>

Revised policy proposals

After considering stakeholder views and evidence, **we remain of the view that our proposal to improve awareness levels and information provision for microbusinesses will deliver benefits for consumers and effectively complement the other reforms we propose taking forward.**

We welcome Citizens Advice commitment in their draft Consumer Work Plan 2021/2022²⁴ to improve information for microbusinesses, and have agreed that we will work with Citizens Advice to shape the creation of new and updated information over the coming months. This will enable microbusinesses and others to access up-to-date guidance and advice, focused in particular on the areas where new or updated guidance will add most value. We will also work jointly with Citizens Advice to establish the best tools for signposting the availability of this information to microbusinesses and on communications to help further boost awareness.

²⁴ Consultation: The Citizens Advice Draft Consumer Work Plan 2021/22, Citizens Advice, January 2021: <https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/consultation-the-citizens-advice-draft-consumer-work-plan-202122/>

Browsing: Searching for deals

Section summary

In this chapter we signpost readers to the outcomes we want to see at this stage of the customer journey, along with the consumer harms we identified and prioritised earlier in the review. We go on to recap our original policy proposals; set out stakeholder views and evidence in response to these plans; and our revised proposals.

The outcomes we want to see and the consumer harms impacting these outcomes

In our Policy Consultation we set out the outcomes we want to see at this stage of the customer journey. We went on to describe the key consumer harms we had identified and how these harms were adversely affecting consumers' experience at this stage of their journey.²⁵

Original policy proposals

Requirement to provide Principal Terms

Currently suppliers must take 'all reasonable steps' to bring the Principal Terms of a contract, in plain and intelligible language, to the attention of a microbusiness customer before entering into a contract.²⁶ In our Policy Consultation we proposed that this existing obligation be strengthened. We proposed strengthening it by requiring a written version of the Principal Terms be brought to the attention of the consumer in all circumstances so that consumers always receive this key information.

²⁵ Microbusiness Strategic Review: Policy Consultation, Ofgem, <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-policy-consultation>, page 25

²⁶ The Principal Terms contain the key terms of a contract. A full definition of what is included in the Principal Terms is available within the Electricity Supply Licences, <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>

Transparency around brokerage costs²⁷

In our Policy Consultation we stated how the evidence provided to us has suggested that at least some microbusinesses are unaware of brokerage costs, which can be very high relative to the costs of energy supply. We proposed that increasing the transparency of brokerage costs up front (via the Principal Terms) would allow consumers to make more informed contract choices and better assess the value of brokerage services.

As well as providing information on brokerage costs when first entering into a contract via the Principal Terms, we set out our view that it would also be beneficial for this information to be disclosed throughout the duration of the contract as this would ensure consumers are able to use this when comparing offers. We believed this to be especially pertinent in the microbusiness market as fixed-term contracts can last multiple years and many consumers choose to negotiate new contracts well in advance of their existing contract end date. We therefore proposed introducing an additional requirement for suppliers to disclose brokerage costs included as part of the supply contract on bills, statements of account and at the request of the microbusiness customer.

Stakeholder views and evidence

Requirement to provide Principal Terms

A clear majority of stakeholders support our proposal to strengthen the requirements around the provision of Principal Terms. Many have however requested further clarity about the design of our proposals and what it will mean in practice for suppliers and brokers. Some have raised concerns about their ability to ensure consumers receive Principal Terms in writing.

Clarity on requirements

Many stakeholders have requested further clarity on when the Principal Terms must be provided in writing. For example, Love Energy Savings highlight their view that the existing supply licence conditions are unclear on how the Principal Terms must be brought to the

²⁷ Here and elsewhere in this document we refer to the term 'brokerage costs', a term that we propose defining in the supply licence conditions as meaning any fees, commission or other consideration including a benefit of any kind, processed by the licensee and paid or made or due to be paid or made to the Broker in respect of a Micro Business Consumer Contract.

customer's attention before entering into a contract and whether these must be provided in writing at this stage.

Providing Principal Terms in writing

Some suppliers such as Dyce Energy and Engie have highlighted that it is their current practice to provide customers with a written version of the Principal Terms.

A minority of other suppliers raised concerns with ensuring brokers they work with provide a written copy of the Principal Terms in all circumstances. For example Utilita have highlighted difficulties in overseeing broker compliance during preliminary contract negotiations.

Transparency around brokerage costs

The majority of stakeholders are supportive of our proposal to improve transparency around brokerage costs. These stakeholders have noted that increased transparency will help ensure microbusiness customers can make a more informed choice when deciding to engage with a broker and could help reduce the consumer harms stemming from opacity around brokerage costs. EDF for example argue transparency of broker fees would ensure customers are able to make an informed choice about engaging a broker and decide whether what they are being offered represents a fair value for the service received. The Federation of Small Businesses note that the way in which broker charges are presented is also of critical importance, particularly given differences in the way in which suppliers calculate commission and varying TPI business models

Those opposed to our proposals, primarily some TPIs, have in particular raised their concern that the proposal to display brokerage costs on bills could encourage a 'race to the bottom'. Northern Gas & Power for example have suggested that brokers could compromise the quality of service offered to microbusiness consumers to allow them to compete with other brokers on price.

The majority of stakeholders have gone on to offer views on two specific elements of our proposal: the frequency with which brokerage cost information is provided, and its format.

Frequency

Stakeholders are broadly supportive of brokerage cost information being included in Principal Terms and on request by customers. There is broad recognition among stakeholders that the

key point in time for consumers to receive this information is upfront, at the point when they are considering entering a new deal so that they can use this information to inform their decision-making.

Conversely there is broad consensus among stakeholders that brokerage costs should not be required to be displayed on bills or statements of account for a range of reasons, including those set out below.

'Bill cluttering'/confusion

Several consumer groups, along with a number of suppliers believe placing brokerage costs on all bills creates the potential for 'cluttering' and creating confusion. For example, Citizens Advice have highlighted that their report 'Getting through to Businesses' found more information on bills could be confusing, and customers may not engage with the information²⁸.

Apportioning charges across billing periods

Some suppliers and TPIs have raised concerns around presenting brokerage costs across different billing periods. Dyce Energy for example suggest that disclosing commission on bills would highlight seasonal variance in commission costs despite there being no actual change in the service provided by a TPI across the seasons.

Cost of system changes

Some suppliers have raised concerns about the costs of system changes associated with displaying brokerage costs. Drax for example argue disclosing commission payments on every bill and statement of account would require complex and costly IT system changes which would increase burden on suppliers while providing few benefits to consumers.

²⁸ Citizens Advice, Getting through to business, <https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/getting-through-to-business>

Format

Stakeholders views vary widely on the format brokerage costs should be displayed in. Some advocate suppliers being required to display brokerage costs in a standardised format. Suggestions on the precise format vary. For example EDF propose broker commission being displayed as the total estimated cost (£), for the whole contract duration. They see this as being the simplest and clearest method for enabling customers to make an informed decision. Engie suggest displaying broker fees in p/kWh so that they are relative to other key charges such as energy or policy costs.

Several stakeholders propose a principles-based approach, allowing suppliers to decide how to display brokerage costs. Centrica for example suggest prescriptive requirements would not account for different commission structures present in the market and potentially stifle innovation.

Revised policy proposals

Requirement to provide Principal Terms

After considering stakeholder views and evidence we are **retaining our proposal to strengthen the requirements around Principal Terms** while modifying the draft supply licence drafting to provide greater clarity.

We are consulting on strengthening the requirements around Principal Terms to ensure that they are provided in all cases. This will ensure that consumers always receive key information about a new contract, including any brokerage costs, which we believe is an essential part of a robust contracting process.

In addition, we are proposing to further clarify when the *written* Principal Terms must be provided. We propose amending the existing supply licence obligation to require that a written copy of the Principal Terms must be sent to the customer no later than one working day after a contract has been entered into.

Designing the supply licence obligations in this way would mean that a consumer should always be provided with Principal Terms *in some form, before* they enter into a contract, and always receive these terms *in written form* either before or shortly after entering into a contract. This will provide consumers with both the key information they need to make a purchasing decision before entering into a contract and the opportunity to read and reflect on

this information while they are in the cooling-off period (our proposal for a cooling-off period is set out in the next chapter of this document).

Transparency around brokerage costs

After considering stakeholder views and evidence we **are retaining our proposal to increase transparency around brokerage costs**. We are proposing modifying both the frequency of when brokerage cost information must be provided and the format that it must be provided in to account for stakeholder views and evidence and maximise the effectiveness of the proposal. We are proposing that information on brokerage costs must be provided to microbusinesses through the Principal Terms, for all contracts, but not on bills or account statements. We are proposing that this information is displayed as a total cost in pounds/pence, covering the duration of the contract.

Frequency

We recognise the range of issues raised by stakeholders concerning the display of brokerage cost information on bills and statements of account. In particular, we acknowledge that the majority of the benefit to be gained from obtaining information about brokerage costs is likely to occur at the point when a microbusiness is considering entering into a new contract, where this information can be used to help fully evaluate a purchasing decision. By the time a consumer receives bills and statements of account they will typically have made their purchasing decision and any cooling-off period will have expired so receiving this information on these communications will be of limited value. Mandating its provision to every consumer does not therefore appear warranted. An individual consumer who wishes to obtain brokerage cost information partway through their contract can do so by requesting it from their supplier.

Format

The key driver for our proposal is ensuring brokerage costs are presented in the clearest possible terms for consumers. We believe this will maximise the chances of consumers being fully aware of the brokerage cost element of a supply contract and therefore be best placed to account for brokerage costs when selecting a new deal.

We believe this outcome can be best achieved by requiring the presentation of brokerage costs as a total amount in pounds/pence, covering the duration of the contract. We believe this format will be easy to understand and can be incorporated in contractual documentation

(using estimation where it is not possible to provide an exact figure) irrespective of the brokerage cost structure for a particular deal.

Our proposed approach mirrors that taken in some other settings that microbusinesses may be familiar with. For example, the Financial Conduct Authority rules for general insurance brokers require that “disclosure must be in cash terms (estimated, if necessary) and in writing or another durable medium.”²⁹

²⁹ FCA, FCA Handbook: ICOBS 4.4 Commission disclosure for commercial customers, <https://www.handbook.fca.org.uk/handbook/ICOBS/4/4.html?date=2021-03-31>

Contracting: Signing up to a new contract

Section summary

In this chapter we signpost readers to the outcomes we want to see at this stage of the customer journey, along with the consumer harms we identified and prioritised earlier in the review. We go on to recap our original policy proposals; set out stakeholder views and evidence in response to these plans; and our revised proposals.

The outcomes we want to see and the consumer harms impacting these outcomes

In our Policy Consultation we set out the outcomes we want to see at this stage of the customer journey. We went on to describe the key consumer harms we had identified and how these harms were adversely affecting consumers' experience at this stage of their journey.³⁰

Original policy proposals

Broker conduct principle and Informed contract choices

In our Policy Consultation we proposed introducing a supply licence condition requiring suppliers to ensure that brokers they work with conduct themselves appropriately when interacting with microbusinesses. We proposed extending relevant parts of the existing 'Standards of Conduct' (SLC 0A) to achieve this³¹.

In addition, we proposed targeting poor sales and marketing practices directly by introducing specific requirements on suppliers and the brokers they work with. We proposed that suppliers and brokers they work with must:

- ensure that the structure, terms and conditions of contracts are clear and easily comprehensible

³⁰ Microbusiness Strategic Review: Policy Consultation, Ofgem, <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-policy-consultation>, page 32

³¹ Standard Conditions of Electricity Supply Licence, Ofgem, <https://www.ofgem.gov.uk/publications-and-updates/standard-conditions-electricity-supply-licence>

- not mislead or otherwise use inappropriate tactics when selling or marketing
- only recommend contracts which are appropriate to a customer’s characteristics and/or preferences
- maintain a record of information provided to microbusiness customers concerning a contract during Face-to-Face Marketing Activities or Telesales Activities for a period of 2 years

Cooling-off period

In our Policy Consultation we proposed introducing a cooling-off period for microbusiness contracts. This would provide microbusinesses with the right to cancel a new contract by giving notice to the new supplier up to 14 days after the date the contract was entered into and the customer had been provided with the Principal Terms in writing.³² We proposed that the length of the cooling-off period should be 14 days on the basis that this would allow microbusinesses’ sufficient time to evaluate the terms of the contract.

Stakeholder views and evidence

Broker conduct principle & Informed contract choices

Stakeholder views regarding our proposals for a Broker conduct principle and informed contract choices are mixed. Most stakeholders are supportive of the overall intent behind the measures but at the same time highlight several significant concerns with the design of these proposals and advocate the direct regulation of brokers as their preferred alternative. Of the minority of stakeholders who support these proposals, several only do so on the proviso that these measures represent an interim step towards direct regulation and that they will have limited value.

Varying interpretations leading to a ‘race to the bottom’

A broad range of stakeholders have raised the potential for widely varying supplier and broker interpretations of the compliance requirements for the proposals leading to different standards being applied and ultimately a ‘race to the bottom’ where low standards become

³² The Principal Terms contain the key terms of a contract. A full definition of what is included in the Principal Terms is available within the Electricity Supply Licences, <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>

widespread. For example, Citizens Advice have raised concerns that some suppliers may apply looser interpretations of the principles than others. They suggest this could create an environment where brokers who are prone to poor behaviour partner with suppliers with the loosest interpretations, resulting in poor outcomes for microbusiness customers.

Difficulty meeting absolute obligations

Several stakeholders have raised concern with the proposed supply licence requirement that:

“The licensee must, and must ensure that Brokers, achieve the Standards of Conduct in a manner consistent with the Customer Objective.”.

E.on for example suggest this requirement would be unenforceable by either the supplier or Ofgem. They argue suppliers should not be penalised for brokers’ actions which fall outside a supplier’s direct control. Some stakeholders have suggested options for amending the obligations that would account for this. For example, Verastar have suggested changing the drafting to require suppliers to take ‘all reasonable steps’, making clear suppliers are not primarily responsible for broker conduct.

Significant implementation costs

For both proposals several suppliers anticipate high implementation and/or ongoing costs for suppliers and brokers. For example, Corona note suppliers would need to regularly audit all of their brokers to a high standard, noting that this would be a practice which some medium and small scale suppliers are unlikely to have any significant experience or expertise in. They argue this would create high costs and be a significant burden for suppliers. They also suggest brokers could face high administrative burdens and costs to meet the record keeping requirements of each individual supplier.

Partial coverage

Many stakeholders have raised the issue that these proposals would only offer a partial solution to the harms faced by microbusiness when engaging with the minority of brokers who adopt poor practices because the proposed approach only covers activities connected to supply contracts and not direct broker-consumer contracts.

Cooling-off period

Stakeholders hold mixed views regarding our proposal for a 14-day cooling-off period. Consumer groups are strongly supportive of the proposal, highlighting the benefits to consumers who enter into unfavourable contracts. Some have also suggested that a period of longer than 14 days would be appropriate. A minority of suppliers, including for example Bulb, are also supportive of the proposal, with Bulb stating that they already offer a cooling-off period to all their microbusiness customers. Conversely, the majority of suppliers oppose the proposal, believing that a range of different costs and unintended consequences would ultimately outweigh the benefits. Brokers and TPIs' views are mixed. Some, including for example Commercial Energy Solutions support the proposal while others, including for example Full Power Utilities either oppose the proposal or recommend that it should only apply where a contract is entered into verbally.

Overlap with the Switching Programme

Most suppliers have raised significant concerns with implementing a microbusiness cooling-off period concurrently with the systems and process changes they are making to implement faster switching. Many have highlighted that a microbusiness cooling-off period has not been included into the current central systems design and that further changes to this have not been factored into the revised Switching Programme delivery timetable. They have cited concerns about their practical ability to deliver changes concurrently, significant cost implications, and impacts on the delivery timeline for the Switching Programme. For example, the Industrial and Commercial Shippers and Suppliers (ICoSS) trade body have noted that in their view it would not be possible to deliver both the system changes for the Switching Programme and the systems changes needed for a microbusiness cooling-off period.

Additional risk premiums

Many stakeholders have noted that suppliers would need to account for a cooling-off period in their hedging and pricing strategies. They have pointed to suppliers including a premium in contract prices to offset the risk of a consumer cooling-off and the supplier having to resell purchased energy back to the market at a lower price in a scenario where wholesale prices had fallen in the period between the customer agreeing contract terms and cooling-off from the contract. For example, SSE raise concerns that falling market prices may drive consumers to cool-off so that they can take advantage of lower contract rates.

Unsolicited sales activity during the cooling-off period

Many stakeholders have raised concerns that consumers in the cooling-off period could be targeted with unsolicited sales activity which would in some cases be unwelcome or inappropriate. In particular, stakeholders including for example the Utilities Intermediaries Association have suggested that a cooling-off period would present an opportunity for unscrupulous brokers to lure consumers away from competitive contracts entered into in good faith. Other stakeholders, including for example Black Sheep Utilities have raised their concern that a cooling-off period could end up driving down switching rates if it were used by a customer's current supplier as an opportunity to 'win-back' business where the customer had agreed a switch to a new supplier and entered into a contract with them in good faith.

Revised policy proposals

Broker conduct principle & Informed contract choices

After considering stakeholder views and evidence, and wider developments concerning the regulation of TPIs, **we are not now pursuing our proposals for a Broker conduct principle and Informed contract choices supply licence obligations at this time.**

We acknowledge that there would be challenges associated with effectively implementing these measures. We also recognise that since publishing our Policy Consultation, there has been an important development in the regulatory landscape concerning TPI regulation so we are accounting for this in our revised proposals.

In their December 2020 Energy White Paper, BEIS outlined their plans to ensure the retail market regulatory framework adequately covers the wider market. BEIS committed to consult on regulating third parties such as energy brokers, and we understand BEIS will shortly publish a Call for Evidence on consumer harms emanating from the activities of TPIs currently operating in the market. We welcome BEIS' commitment to take forward work in this area and view it as a positive step. We are sharing our evidence base with BEIS to help inform the development of plans for TPI regulation. We look forward to BEIS' upcoming publication and will continue to monitor this market segment. In the meantime, we believe that the remainder of our reform package will significantly improve outcomes for microbusinesses in the short-term.

Cooling-off period

After considering stakeholder views and evidence, **we are retaining our proposal for a cooling-off period**, while making some adjustments to minimise cost and unintended consequences while maximising consumer benefits.

We continue to believe that a cooling-off period will provide a valuable protection for microbusiness customers, especially those who have unwittingly signed up to a deal over the phone, or feel as though they have been misinformed or have been provided with incomplete information. A cooling-off period will provide these consumers with the time and space to reflect on the terms of their new deal before being bound by it.

At the same time, we acknowledge that implementing the proposal as originally designed would overlap with the systems and process changes needed to facilitate our Switching Programme reforms resulting in undesirable consequences. We have therefore adjusted our proposal to minimise the overlap with the Switching Programme while maximising consumer benefits.

Provision of written Principal Terms

As detailed in the previous chapter, we now propose amending the existing supply licence obligations so that the written Principal Terms must be sent to the consumer no later than one working day after the contract has been entered into. We are also proposing amending the drafting of the definition of 'Principal Terms' in the supply licence so that they include information about cancellation rights. This will ensure that consumers are informed of their rights concerning cooling-off in all cases pre and post-contract entry.

Overlap with the Switching Programme

We have considered concerns raised by some suppliers that the implementation of a cooling-off period for microbusiness consumers may impact upon their ability to deliver the changes required to facilitate the Switching Programme and would generate significant cost that would ultimately be passed on to consumers. The implementation of faster and more reliable switching continues to be a priority for Ofgem and is expected to bring considerable benefits

to consumers.³³ We have therefore considered how to minimise the impact of our proposal on the work being undertaken to deliver the Switching Programme, while at the same time maximising the benefits consumers can gain from our proposal.

In response to stakeholder feedback, we propose limiting the applicability of the cooling-off period so that a customer can only exercise their right to cool-off up to the point when the switching process is initiated on central systems. This will significantly reduce the impact on non-domestic suppliers' systems and processes being put in place to facilitate the Switching Programme.

We consider that the limit for a customer to cool-off should be 28 days before the date on which supply is due to start under the terms of that contract as this is the earliest date a supplier will be able to submit a switch request for both electricity and gas under the new switching arrangements.³⁴

The majority of microbusiness consumers enter into contracts well in advance of the expected supply start date and so would be entitled to cool-off under our revised proposal. Data we received from suppliers showed that in 2019 59% and 55% of negotiated gas and electricity microbusiness contracts respectively were entered into more than 28 days ahead of the date on which supply was due to start and so would have been eligible for a cooling-off period under our revised proposal.³⁵

Other sources suggest that contracting via TPIs is taking place well in advance too. For example, Love Energy Savings stated that on average their customers enter into a contract 4.5 months ahead of the intended start date. This further supports the principle that for many microbusinesses, a 14 day cooling-off period running up until 28 days before the supply start date will be accessible to them should they need to use it.

We acknowledge that the design of our revised proposal will result in a minority of consumers benefiting from a lesser degree of protection depending on the point at which they agree a

³³ The overall monetised benefit to consumers is estimated to be between £185m and £1,077m. We continue to believe that the non-monetised benefits outweigh the monetised benefits.

³⁴ The current maximum switch request period is 28 days for electricity and 30 days for gas, this will be harmonised to 28 days for both under the Central Switching Service as part of the Switching Programme.

³⁵ We requested this information from suppliers that serve approximately 90% of the small business market segment. These suppliers are British Gas, Corona, CNG, EDF, Eon, Gazprom, Npower, Opus, Haven, Scottish Power, SSE, and Total Gas & Power.

new deal. Monitoring the usage and impact of a cooling-off period and contracting trends will enable us to establish whether a future expansion of coverage may be warranted.

Additional risk premium

While we acknowledge that a cooling-off period may impact suppliers' hedging and pricing strategies, our analysis suggests that the impact would not be significant and that suppliers should be able to efficiently manage their exposure. Wholesale prices on forward markets are not particularly volatile over a 14-day period - our analysis of season +1 and season +2 contracts suggests on average a movement of roughly 3% for electricity contracts and 4% for gas contracts.³⁶

Given the small saving that variations of these magnitudes would represent to a consumer, we do not consider it likely that a significant number of consumers would cool-off purely to take advantage of a change in wholesale prices. Instead, we consider that only a small minority of consumers, mainly those that have inadvertently entered into inappropriate contracts, are likely to utilise their cooling-off rights. Further detail on our analysis can be found in our Impact Assessment published alongside this consultation.

Unsolicited sales activity during the cooling-off period

Under our revised proposal, the cooling-off period would only be applicable up until the first point when a switch can be registered on central systems. We believe this will mean that a consumer's decision to switch will be known only to themselves and their chosen supplier, along with their broker should they choose to use one. This should help minimise the volume of unsolicited third party sales activity that takes place during the cooling-off period.

Extended implementation time

We consider that this proposal may take longer to implement than some of the other measures that form part of our proposed package due to the system and process change requirements this specific proposal will generate for suppliers. We therefore propose that this measure should take effect from 1 January 2022.

³⁶ Season +1 and season +2 contracts are wholesale market contracts for delivery in subsequent winter or summer seasons. Our analysis covers contract prices during 2017-2020 sourced from ICIS Heren.

Question 1

Do you agree that 1 January 2022 represents an achievable start date for implementing a 14 day cooling-off period for microbusiness consumers?

Dialogue: Two-way communication with service providers

Section summary

In this chapter we signpost readers to the outcomes we want to see at this stage of the customer journey, along with the consumer harms we identified and prioritised earlier in the review. We go on to recap our original policy proposals; set out stakeholder views and evidence in response to these plans; and our revised proposals.

The outcomes we want to see and the consumer harms impacting these outcomes

In our Policy Consultation we set out the outcomes we want to see at this stage of the customer journey. We went on to describe the key consumer harms we had identified and how these harms were adversely affecting consumers' experience at this stage of their journey.³⁷

Original policy proposals

In our Policy Consultation we proposed introducing a supply licence condition requiring suppliers to only work with brokers signed up to a qualifying Alternative Dispute Resolution (ADR) scheme. This would allow microbusinesses to raise a complaint to the ADR provider if they cannot resolve a dispute with their broker directly. We proposed outlining high-level requirements for the scheme in the supply licence, with the scheme provider(s) setting out detailed scheme arrangements and requirements in their terms of reference.

Stakeholder views and evidence

Most stakeholders are strongly supportive of our policy proposal, agreeing that the proposal would address a clear protection gap. Several stakeholders have noted that the effectiveness of the proposal would depend on the detail of how such a scheme would operate. BIRA, for example, acknowledge the effectiveness of similar ADR schemes in other sectors including the private rental sector, and consider that when implemented well can protect all parties.

³⁷ Microbusiness Strategic Review: Policy Consultation, Ofgem, <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-policy-consultation>, page 40

Multiple scheme providers

Several stakeholders have raised concerns that the potential for multiple scheme providers could risk a drop in the quality of redress service provided to consumers and increase complexity, particularly given the requirement for suppliers to determine whether a scheme is appropriate. For example, Money Advice Trust has raised a concern that this could encourage the least committed firms to adopt the cheapest and least rigorous scheme available.

Some stakeholders have suggested that there should only be one scheme provider and that Ofgem should approve this provider. A number of these stakeholders have suggested that Ombudsman Services would be the most appropriate provider given their experience operating the existing energy supplier ADR scheme. For example, Citizens Advice have stated that having one scheme provider would reduce confusion and that Ombudsman Services taking on this role would bring valuable expertise and the ability to manage cases where there are issues concerning both the broker and the supplier.

A minority of suppliers believe that competition in the provision of ADR services could be positive. For example, Centrica have highlighted their use of an independent ADR provider for their Services customers, which involves an additional provisional stage between a case being raised and final determination, where potential remedies are discussed/negotiated between parties. For example, Gazprom have stated that a provider with specialist knowledge of the non-domestic sector would be beneficial.

Supplier involvement in the scheme

Several stakeholders have suggested that it may be difficult to determine whether a complaint should be raised against a supplier or broker and therefore which scheme the complaint would be progressed through. They advocate further consideration being given on how to prevent the same case progressing through both schemes simultaneously.

Most suppliers have questioned the extent of involvement they would have in the scheme. For example, Corona have suggested that supplier dispute resolution should not be in scope other than providing evidence where appropriate. Several suppliers have stated that the broker ADR scheme should be clearly separated from the existing supplier ADR scheme and have raised concerns about whether the new scheme would have powers to cancel supply contracts between a customer and their supplier. For example, E.on have stated that the 'at fault' party should be responsible for all of the supplier costs associated with implementing a remedy.

Information sharing

Some suppliers have highlighted that information from a broker ADR scheme could benefit their monitoring of broker conduct. Other stakeholders have also noted the potential value of intelligence gathered by the scheme provider(s). For example, the Utilities Intermediaries Association has suggested that information gathered from the scheme could be used to inform future policy decisions and alert Ofgem to areas of harm.

Funding

A number of suppliers, including for example Drax, have stated that the scheme should be fully funded by participating brokers. Some brokers and TPIS have highlighted that the fees should be proportionate and not be a barrier to entry for brokers who do not engage in poor practice. For example, Love Energy Savings have stated that fees should be proportionate and manageable in relation to the fees earned from the disputed sale.

Revised policy proposals

After considering stakeholder views and evidence, **we are retaining our proposal to introduce a supply licence condition requiring that suppliers only work with brokers signed up to a qualifying ADR scheme.** We propose making some amendments to the supply licence conditions to address stakeholder feedback.

Requirement for further development by the scheme provider(s)

We are conscious that the implementation of a broker ADR scheme would require further development by the scheme provider(s). It would also require a large volume of entities to be fully on-boarded onto the scheme before supply licence obligations took effect. For a scheme to be effective, particular consideration will need to be given to requirements for entry and exit. These would include checking appropriate complaints procedures are in place, obtaining written commitments to the scheme rules from participants, and establishing a robust and fair process for expulsion if these rules are not adhered to.

We therefore consider that this proposal may take longer to implement than some of the other measures that form part of our proposed package and so propose that this measure takes effect from 1 January 2022.

We note that Ombudsman Services are continuing to develop a model for scheme design and operation. Following on from a workshop they held with some suppliers and TPIs in February, we understand they are continuing stakeholder engagement and planning further workshops to present and gain feedback on their updated plans in preparation for publishing a scheme design document. We are encouraged to see the continued development of a broker ADR scheme by Ombudsman Services and acknowledge many stakeholders' view that Ombudsman Services would be well placed to act as ADR provider.

Multiple scheme providers

We have considered stakeholders' concerns about the potential for multiple ADR scheme providers leading to less rigorous schemes and a drop in quality of service. To account for this, we propose introducing an obligation on suppliers to abide by any future guidance we may issue on what constitutes a Qualifying Dispute Settlement Scheme. This would allow us to provide direction to suppliers should it appear as though prospective providers may not be suitably placed to deliver a robust broker ADR scheme.

Supplier involvement in cases

We share stakeholders' views that dispute resolution processes should be simple for consumers to access. We acknowledge concerns that it may be difficult for consumers to determine whether a complaint should be raised against a supplier or broker. However before any complaint is raised to an ADR scheme, the complaint must first be brought to the supplier or broker directly. At this point we expect suppliers and brokers they work with to communicate with one another and the consumer to resolve the issue if at all possible, and identify which party any further complaint should be raised against.

We recognise there may be rare occasions where a consumer has a complaint about both a supplier and broker in relation to a single issue that they are unable to resolve. In this scenario, two separate cases could be brought before two different ADR schemes. However, we also believe that there is scope for the different ADR schemes to communicate and make this process more efficient. For example, it may be possible for a broker ADR scheme to produce recommendations in respect of a complaint against a supplier (or vice versa) which could allow for an expedited resolution. Suppliers should account for this as part of their evaluation of what constitutes an effective and efficient broker ADR scheme.

We acknowledge some suppliers concerns around a broker ADR scheme determining that a supply contract between a customer and the supplier should be terminated as the result of an

upheld dispute. Responsibility for determining suitable remedies is something that that will lie with the scheme provider(s). Scheme design and remedies in individual cases should be guided by the principle of ensuring that consumers receive redress which is proportional to the nature of the issue and the effect it has had on them.

Through our Autumn 2020 workshops³⁸ and bi-lateral engagement with Ombudsman Services we have identified that suppliers may hold information which could be relevant to a consumer’s complaint with a broker, such as details of the supply contract and brokerage costs. We believe that requiring suppliers to provide relevant information directly to the broker ADR scheme provider(s) would reduce the burden on microbusinesses to gather these data and speed up the dispute resolution process. We therefore propose placing an obligation on suppliers to provide information requested by a broker ADR scheme provider in relation to one of the supplier’s previous or existing customers where the ADR scheme provider is dealing with a dispute involving that customer.

Funding

The structure of funding for any scheme will be a matter for the scheme provider(s) to determine. Nevertheless, for a broker ADR scheme to be effective and operate in consumers’ best interests we consider it should be sufficiently funded so that complaints can be effectively and expeditiously investigated and resolved. Ombudsman Services have provided us with an illustrative funding model for such a scheme which is detailed in our accompanying Impact Assessment.

Question 2

Do you agree that 1 January 2022 represents an achievable start date for fully implementing both the proposed supply licence obligation and the associated scheme needed to introduce independent dispute resolution for microbusinesses in dispute with a broker?

³⁸ We held three online stakeholder events covering our policy proposals to help inform our policy thinking. PowerPoint slide packs presented at these events are available to download from the following page on our website: <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-policy-consultation>

Exiting: Switching away from an old contract

Section summary

In this chapter we signpost readers to the outcomes we want to see at this stage of the customer journey, along with the consumer harms we identified and prioritised earlier in the review. We go on to recap our original policy proposals; set out stakeholder views and evidence in response to these plans; and our revised proposals.

The outcomes we want to see and the consumer harms impacting these outcomes

In our Policy Consultation we set out the outcomes we want to see at this stage of the customer journey. We went on to describe the key consumer harms we had identified and how these harms were adversely affecting consumers' experience at this stage of their journey.³⁹

Original policy proposals

Termination notices

In our Policy Consultation, we proposed amending the supply licence to prohibit suppliers from requiring customers to submit a termination notice before terminating a contract. Notice of a proposed transfer from a gaining supplier would instead be sufficient for a switch to proceed. We stated our view that this change would speed up the switching process and help prevent microbusinesses who wish to negotiate a new contract from unnecessarily spending periods of time on costly Out-of-Contract rates. Suppliers would still be able to charge appropriate termination fees if a customer wishes to terminate a contract before any initial fixed-term period ends and customers would still need to provide notification if they want to prevent a contract from being extended into a Roll-Over Period.⁴⁰

³⁹ Microbusiness Strategic Review: Policy Consultation, Ofgem, <https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-policy-consultation>, page 45

⁴⁰ The Roll-Over period is the period of time after the Initial Period for which a Micro Business Consumer Contract will continue.

We proposed that negotiated Evergreen Contracts should be exempt from this prohibition and suppliers should still be allowed to require up to 30 days' notice to be given.⁴¹ This would continue to allow suppliers to provide non fixed-term contract options at a lower cost than Deemed or Out-of-Contract rates.

We proposed applying this requirement to both existing and future contracts to avoid complicating the requirements to terminate contracts. We noted how a misalignment in approach between existing and future contracts could persist for an extended period of time as many microbusiness contracts last for multiple years.

30-day contract extensions

To limit the financial impact of being moved onto costly Out-of-Contract rates when a switch is blocked, we also proposed introducing a requirement for suppliers to continue to charge consumers on the basis of the rates in place prior to a blocked switch until the customer has either agreed a new contract with their existing supplier; agreed a new contract with another supplier (and supply has started); or 30 days have passed. We proposed this to prevent engaged customers from being disadvantaged by facing increased charges while an issue with their switch is resolved.

Stakeholder views and evidence

Termination notices

The majority of stakeholders are supportive of our proposal to ban termination notices, agreeing that they represent a barrier to switching and an unnecessary administrative burden for microbusinesses.

Several suppliers, including for example Gazprom, have stated they have either already removed termination notice requirements or are in the process of doing so. Verastar have highlighted that written notice is not required for switching for other utilities such as water and telecoms.

⁴¹ An Evergreen Contract is a Micro Business Consumer Contract which is for a period of an indefinite length and which does not contain a fixed-term period and is not an Out-of-contract Contract.

Supply licence drafting allowing customers to exit fixed-term contracts early

Some stakeholders have raised concerns that the draft supply licence conditions may inadvertently require suppliers to allow customers to exit fixed-term contracts before their conclusion. These stakeholders have noted that suppliers would have to account for this risk through increased prices or exit fees.

Application to existing as well as future contracts

The majority of stakeholders who have provided a view on whether the prohibition of termination notices should apply to existing as well as future contracts agree that the proposal should apply to both. A few stakeholders including for example SSE note that applying the proposal to existing contracts would require changes to contract terms and related customer communications to be delivered, which would require an appropriate lead time to implement.

Requiring notice triggering engagement with existing supplier

Of the small minority of suppliers who disagree with the proposal, most have stated that they believe the requirement to give termination notice creates a valuable point of engagement with the customer. These suppliers highlight the opportunity this brings to win-back customers with competitive offers, remind them of any termination fees that may apply and prevent erroneous transfers.

30-day contract extensions

Stakeholders hold mixed views on our proposal for a requirement that suppliers continue to charge consumers on the basis of rates in place prior to a blocked switch until the customer has agreed a new contract or 30 days has passed.

The majority of consumer groups and TPIs are supportive of the proposal, with some suggesting that the period of time should be longer than 30 days. Money Advice Trust for example have suggested that there should be no limit and that the extension should last until the switch is finalised. Some stakeholders, including the Utilities Intermediaries Association, have highlighted that the proposal would incentivise suppliers to make their objections process more efficient and faster.

The majority of suppliers do not support the proposal. Many have raised concerns that the proposal does not address the root cause of the issue and that the implementation costs would outweigh the benefits.

Increased risk premiums

Many stakeholders have noted that suppliers would need to account for contract extensions in their hedging and pricing strategies. Many suppliers have commented that this impact could be significant as wholesale prices and non-commodity costs may have changed substantially since the point when the contract price was initially agreed. For example, Corona noted that they have seen 100% commodity price movements in recent years that would need to be accounted for. These suppliers have highlighted the significant difficulty in forecasting these variations over the length of a contract term which can be multiple years in length.

Several stakeholders, including for example Engie have also raised concerns that the potential for substantial variations between the existing contract prices and those available years later could incentivise consumers to attempt to cause supplier objections so that the original contract is extended.

Application where the supplier is not at fault

While several suppliers support the principle of ensuring a customer is not financially impacted where a supplier is at fault for a delayed switch, many have raised concerns that the proposal would apply when the supplier has objected to a switch for a valid reason such as where the customer is in debt. Some suppliers have highlighted that the majority of objections are for valid reasons rather than a supplier error and so the proposal may not effectively target the root cause of delays.

Revised policy proposals

Termination notices

After considering stakeholder views and evidence, **we are retaining our proposal to prohibit termination notices for the majority of contracts while amending the draft supply licence conditions to clarify that suppliers can still object to switches for other valid contractual reasons.** We are also proposing to make some consequential changes to licence condition 7A as well as removing redundant transitional provisions in this part of the supply licence.

Supply licence drafting allowing customers to exit fixed-term contracts early

It is not our intention to require that suppliers allow microbusinesses to exit fixed-term contracts before their conclusion (where the contract does not allow for early exit). We have therefore amended our draft supply licence conditions to reflect this.

Application to existing as well as future contracts

We have considered the concerns of some stakeholders around applying our proposal to existing, as well as future contracts. Our view remains that an application to both existing and future contracts would best avoid further complicating the requirements to terminate contracts. If the proposal is only applied to future contracts then there is a risk that some consumers may falsely believe they are not subject to a notice period and thus have switches blocked unnecessarily where they do not provide a termination notice.

Requiring notice triggering engagement with existing supplier

While we acknowledge some suppliers' views that the engagement created by requiring a termination notice may have a value, we do not consider this sufficient to merit maintaining the status quo. Our proposal does not prevent suppliers from continuing to carry out proactive retention and other communications activity at any time, including where their customer is approaching the end of their contract.

30-day contract extensions

After considering stakeholder views and evidence, **we are not now pursuing our proposal for 30-day contract extensions.**

We recognise that the benefits of this proposal would always be limited given that the time consumers spend on increased rates while issues with a blocked switch are resolved is also limited, with our proposed 30-day cut-off point reflecting this.

We have balanced this against the significant uncertainty in forecasting the cost to supply at the end of a contract and thus the potentially significantly higher risk premium that suppliers would likely pass on to consumers. We also recognise that requiring suppliers to apply the extension in certain cases such as where consumers are in debt or may have provided incorrect information appears inappropriate.

Our proposal to prohibit termination notices should reduce the number of switches blocked unnecessarily. The planned reforms to the switching process as part of our Switching Programme should reduce the number of switches delayed due to process issues and will speed up the switching process.⁴²

We are also conscious of work being undertaken by the Erroneous Transfer Performance Assurance Board to address poor supplier performance regarding erroneous transfers and Change of Supplier events with an aim of reducing the number of erroneous transfers and minimising the time taken by suppliers to resolve any that do occur.⁴³ We are encouraged by the progress being made to transition this work to the REC Performance Assurance Framework, which has a key objective to ensure that consumers have a positive experience when engaging in the retail energy market.

We also recognise that, alongside the existing supplier ADR scheme, our proposal for a broker ADR scheme would provide consumers with access to appropriate redress where a switch is blocked unfairly.

⁴² The Switching Programme reforms include improvements to industry address data quality would reduce the instances of something going wrong for consumers who have chosen to switch.

⁴³ The Erroneous Transfer Performance Assurance Board was established in 2019 under the joint auspices of the SPAA and the MRA to assist suppliers in the discharge of their obligations under licence.

Appendices

Index

Appendix	Name of appendix	Page no.
1	Working draft supply licence conditions	51
2	Consultation Questions	66
3	Privacy notice	67

Appendix 1 –Draft supply licence conditions

We have included the sections of the electricity supply licence SLCs we have propose removing or amending below. We propose making corresponding changes to the gas supply licence.

Alongside our proposals to address harms to microbusiness consumers we are also proposing making a minor 'housekeeping' amendment to Licence Condition 8 by updating a cross reference to Licence Condition 22.

Deletions are shown in strike through and new text is double underlined. We have only shown those licence conditions where modifications are proposed.

Condition 1. Definitions for standard conditions

1.3 In this licence, unless the context otherwise requires:

'Broker'

means a third party organisation or individual that, either on its own or through arrangements with other organisations or individuals, provides information and/or advice to a Micro Business Consumer about the licensee's Charges and/or other terms and conditions and whose payment or other consideration for doing so is made or processed by the licensee;

'Brokerage Costs'

means any fees, commission or other consideration including a benefit of any kind, processed by the licensee and paid or made or due to be paid or made to the Broker in respect of a Micro Business Consumer Contract.

'Principal Terms'

means, in respect of any form of Contract or Deemed Contract, the terms that relate to:

- (a) Charges;
- (aa) where the licensee is relying on sub-paragraph 22C.11(a) of standard condition 22C or sub-paragraph 23.8(a) of standard condition 23, the method by which Charges for the Supply of Electricity fluctuate automatically;
- (ab) where the licensee is relying on sub-paragraph 22C.11(b) of standard condition 22C or sub-paragraph 23.8(b) of standard condition 23, the precise variations to the Charges for the Supply of Electricity;
- (ac) Where the licensee is relying on paragraph 22C.11B of standard condition 22C and paragraph 23.8A of standard condition 23:

- (i) moving a Domestic Customer from one payment method to another and the precise circumstances when that will occur; and
 - (ii) the precise variations to the Charges for the Supply of Electricity and other terms and conditions which would occur as a result of the Domestic Customer being moved from one payment method to another;
- (ad) Where the licensee is relying on paragraph 22C.11B of standard condition 22C but not paragraph 23.8A of standard condition 23, moving a Domestic Customer from one payment method to another and the precise circumstances when that will occur;
- (b) any requirement to pay Charges through a Prepayment Meter;
 - (ba) in relation to a Domestic Supply Contract, any Credit Management which applies, including the Credit Limit;
 - (bb) in relation to a Domestic Supply Contract, any Load Limiting which applies, including the Load Limit;
 - (c) any requirement for a Security Deposit;
 - (d) the duration of the Contract or Deemed Contract (including, but not limited to, the duration of any fixed term periods and any arrangements for renewing or extending the duration of the Contract or any fixed term periods);
 - (e) the rights to cancel the Contract or end the Contract (including any obligation to pay a Termination Fee) or the circumstances in which a Deemed Contract will end,

and any other term that may reasonably be considered to significantly affect the evaluation by the Customer of the Contract under which electricity may be supplied to his premises including for the avoidance of doubt, in relation to Micro Business Consumers any Brokerage Costs, required to be paid or due to be paid in respect of the full duration of a Microbusiness Consumer Contract and to be presented as monies (whether actual or where that is not possible, estimated amounts).

Condition 7A. Supply to Micro Business Consumers

Identification and treatment of Micro Business Consumers

7A.1 If the licensee intends to:

- (a) enter into a Non-Domestic Supply Contract with a Customer; or

- (b) extend the duration of a Non-Domestic Supply Contract (including the duration of any fixed term period which may form part of a Contract of an indefinite length)

the licensee must either take all reasonable steps to identify whether that Non-Domestic Customer is a Micro Business Consumer, or deem that Non-Domestic Customer to be a Micro Business Consumer.

7A.2 Where any Contract or Contract extension as described in paragraph 7A.1 is entered into with a Non-Domestic Customer that has been identified as, or deemed to be, a Micro Business Consumer, that Contract shall be a "Micro Business Consumer Contract" for the purposes of this Condition.

7A.3 The licensee must not include a term in a Micro Business Consumer Contract which enables it to terminate the Contract or apply different terms and conditions to that Contract during a fixed term period on the grounds that the Customer no longer satisfies the definition of Micro Business Consumer.

Notification of Micro Business Consumer Contract terms and other information

7A.4 Before the licensee enters into a Micro Business Consumer Contract, it must ~~take all reasonable steps to bring,~~ or ensure that the relevant Broker brings, the following information to the attention of the Micro Business Consumer and ensure that the information is communicated in plain and intelligible language:

- (a) a statement to the effect that the licensee is seeking to enter into a legally binding Contract with the Micro Business Consumer; and
- (b) the Principal Terms of the proposed Contract.

7A.5 The licensee must ensure that all the express terms and conditions of a Micro Business Consumer Contract are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

7A.6 Where the licensee enters into, or extends the duration of, a Micro Business Consumer Contract for a fixed term period, it must prepare a statement (hereafter referred to as a "Statement of Renewal Terms") which:

- (a) is set out in Writing;
- (b) is drafted in plain and intelligible language;
- (c) displays the following information in a prominent manner:
 - (i) the date the fixed term period is due to end, or if that date is not ascertainable the duration of the fixed term

period;

- ~~(ii) — the Relevant Date, or if not known at the time of providing the Statement of Renewal Terms, a description of how the Relevant Date will be calculated by reference to the end of the fixed term period;~~
- (iii) (ii) (if applicable) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee at anytime before the Relevant Date in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies and, where paragraph 7A.13 applies, in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period; end of the fixed term that currently applies in order to prevent the Licensee from extending the Micro Business Consumer Contract with effect from the end of any fixed term period;
- (iv) (iii) a postal and Electronic Communication address to which the Customer may send a notification in Writing for that purpose; and
- (v) (iv) a statement explaining the consequences of the Micro Business Consumer not renewing the Micro Business Consumer Contract or agreeing a new Contract before the Relevant Date end of the fixed term period that currently applies.

7A.7 Where the licensee enters into or extends the duration (including the duration of any fixed term period) of a Micro Business Consumer Contract, it must take all reasonable steps to provide the Micro Business Consumer with the following information within 10 days, or do so as soon as reasonably practicable thereafter:

- (a) a copy of all the express terms and conditions of the Micro Business Consumer Contract; and
- (b) if the Micro Business Consumer Contract contains a fixed term period, the Statement of Renewal Terms.

7A.8 On or about ~~30 days before the Relevant Date~~ 60 days before the end of the Initial Period, unless the licensee has already agreed a new Micro Business Consumer Contract with the Micro Business Consumer, the licensee must provide the Micro Business Consumer with:

- (a) the Statement of Renewal Terms;
- (b) if paragraph ~~7A.13~~ 7A.12A applies and subject to paragraph 7A.8(d):
 - (i) a copy of the relevant Principal Terms which might apply to the Micro Business Consumer after the current fixed-term period of

the Micro Business Consumer Contract ends, including in the event that the Customer does nothing and the licensee extends the duration of the Contract in accordance with paragraph ~~7A.13A~~ 7A.12B; and

- (ii) a copy of the Principal Terms which would apply after the current fixed-term period of the Micro Business Consumer Contract ends, in the event that the Customer sends (or has already sent) a ~~notice~~ notification in Writing before the ~~Relevant Date~~ end of the fixed term period that currently applies to prevent renewal of the Micro Business Consumer Contract but does not appoint another supplier;
- (c) if paragraph ~~7A.13~~ 7A.12A does not apply, a copy of the Principal Terms, which would apply if the Customer does not change supplier or does not expressly agree a new Micro Business Consumer Contract or a further fixed-term period of the existing Micro Business Consumer Contract by the date that the current fixed-term period is due to end.
- (d) if paragraph ~~7A.13~~ 7A.12A applies but the licensee has already prevented the Micro Business Consumer from extending the duration of the Micro Business Consumer Contract for a further fixed-term period, the requirements in paragraph 7A.8(b) shall be replaced with a requirement to provide the MicroBusiness Consumer with a copy of the Principal Terms which would apply after the current fixed-term period of the Micro Business Consumer Contract ends if the Customer continues to be supplied by the licensee.
- (e) a statement displaying the Charges for the Supply of Electricity which apply to the Customer as at the date on which such statement is provided; and
- (f) the Customer's Annual Consumption Details.

7A.9 Where pursuant to paragraphs 7A.4 or 7A.8 the licensee is required to provide a Micro Business Consumer with any relevant Principal Terms:

- (a) it must ensure that the Principal Terms are:
 - (i) set out in Writing; and
 - (ii) drafted in plain and intelligible language;
 - (iii) sent by it, or by the relevant Broker, to a Micro Business Consumer no later than one working day after the Micro Business Consumer Contract is entered into.
- (b) if the terms of the Micro Business Consumer Contract provide that the Charges for the Supply of Electricity may vary or fluctuate from time to time, it must provide:
 - (i) an explanation that the Charges for the Supply of Electricity are subject to change from time to time; and, as applicable,
 - (ii) the precise variations to the Charges for the Supply of

Electricity or the method by which the Charges for the Supply of Electricity will fluctuate automatically; or

- (iii) where there is no agreed schedule of variations or an agreed fluctuation method in respect of the Charges for the Supply of Electricity, information about how the Micro Business Consumer may obtain the current Charges for the Supply of Electricity from the licensee

7A.9A For the purpose of this Condition 7A.9:

'providing' a Micro Business Consumer with any relevant Principal Terms means the supplier or the relevant broker must send the Principal Terms by email or by first class post to the Micro Business Consumer on the next working day after agreeing the contract at the latest; and that where they are sent by email, the Principal Terms will be 'provided' on the next working day after they are sent and if sent by first class post, they will be provided on the second working day after posting

7A.10 Where pursuant to paragraph 7A.8(b) the licensee provides a Micro Business Consumer with any offers of terms that relate to Charges for the Supply of Electricity, it must ensure that at least one offer is made in Writing which may be accepted at any time before the ~~Relevant Date~~ end of the fixed term period that currently applies.

Information on Bills etc

7A.10A Where the licensee has entered into a Micro Business Consumer Contract for a fixed term period, the licensee must provide the information specified in paragraph 7A.10B on each Bill and statement of account and display that information in a prominent position and ensure that it is drafted in plain and intelligible language.

7A.10B The specified information is:

- (a) the date the fixed term period of a Micro Business Consumer Contract is due to end;
- (b) where the licensee has entered into a Micro Business Consumer Contract for a fixed term period and it may, in accordance with that Micro Business Consumer Contract, be extended for a further fixed term period:
 - ~~(i) the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Consumer Contract);~~
 - (ii) (i) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee before the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Consumer Contract) end of any fixed term period that currently applies in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end

- of any fixed term period which currently applies; and
- (c) where the licensee has entered into a Micro Business Consumer Contract for a fixed term period and it does not have the ability to extend that MicroBusiness Consumer Contract for a further fixed term period:
- ~~(i) — the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and~~
 - ~~(ii) — a statement to the effect that this is the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies.~~
- (i) a statement to the effect that the Micro Business Customer may send a notification in writing to the licensee at any time before the end of the fixed term period that currently applies in order to terminate the Micro Business Consumer Contract with effect from the end of the fixed term period which currently applies.

Information on Brokerage Costs

7A.10C.1 In addition to the requirement in condition 7A.9, where the licensee has entered into a Micro Business Consumer Contract, the licensee must provide to the Micro Business Consumer on request, information relating to any form of Brokerage Costs paid or made, or due to be paid or made, to a Broker in respect of the full duration of that Micro Business Consumer Contract;

7A.10C.2 The licensee must ensure that the information that the licensee is required to disclose by virtue of condition 7A.10C.1:

- (a) is disclosed as monies, whether actual amounts or (if that is not possible) estimated amounts;
- (b) enables a Micro Business Consumer to understand the amount of those sums that it is due to pay which are, or are attributable to Brokerage Costs due to the Broker, as well as any Charges (so far as they are different) or other sums; and
- (c) is drafted in plain and intelligible language.

Length of notice periods in Micro Business Consumer Contracts

~~7A.11 The notice period for termination of a Micro Business Consumer Contract by a Micro Business Consumer must be no longer than 30 days.~~

~~7A.12 Paragraph 7A.11 is without prejudice to the licensee's ability to enter into a~~

~~Micro Business Consumer Contract with a Customer for a fixed term period which is longer than 30 days.~~

~~Termination of Micro Business Consumer Contracts which do not include a fixed term period~~

~~7A.12 A Without prejudice to any notice period that complies with paragraph 7A.11, in relation to any Micro Business Consumer Contract that does not include a fixed term period, the licensee must ensure that the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at anytime.~~

Termination during Initial Period of Micro Business Consumer Contracts which include a fixed term period

~~7A.12B.1 Subject to paragraph 7A.12B. 2 in relation to any Micro Business Consumer Contract which includes a fixed term period, the licensee must ensure that during the Initial Period a Micro Business Consumer is entitled to give notice of termination at any time in order to terminate the Micro Business Consumer Contract.~~

~~7A.12B.2 Where a Micro Business Consumer gives notice to terminate the Micro Business Consumer Contract during the Initial Period, the licensee must:~~

~~(a) terminate the contract at the end of the Initial Period, if the Micro Business Consumer gives notice to terminate at least 30 days before the end of the Initial Period;~~

~~(b) terminate the contract no more than 30 days after the Micro Business Consumer gives notice to terminate, if such notice is given within the last 30 days of the Initial Period.~~

7A.11 In relation to a Micro Business Consumer Contract that contains a fixed term period, the licensee must ensure that, a Micro Business Customer is not required to give any form of notice to terminate the Micro Business Consumer Contract or to switch supplier from the end of the Initial Period (or earlier, if the Contract allows for this), subject always to paragraphs 14.2-14.3 of Standard Licence Condition 14.

Termination during Roll-Over Period of Micro Business Consumer Contracts

~~7A.12BA This paragraph applies to Micro Business Consumer Contracts during the Roll-Over Period.~~

~~7A.12BAA The licensee must ensure that a Micro Business Consumer is entitled to give notice of termination at any time in order to terminate the Micro Business Consumer Contract with effect from the end of the Relevant Notice Period.~~

~~7A.12BAB Where a Micro Business Consumer gives notice of termination under paragraph 7A.12BAA, the licensee must not:~~

- ~~(a) charge the Micro Business Consumer a Micro Business Termination Fee; or~~
- ~~(b) engage in any course of action which has the effect of increasing the Standing Charge, Unit Rate or any other charge which the Micro Business Consumer must pay pursuant to the Micro Business Consumer Contract.~~

7A.12 In relation to Micro Business Consumer Contracts during the Roll-Over Period, the licensee must ensure that:

- (a) a Micro Business Consumer is not required to give any form of notice to terminate the Micro Business Consumer Contract or to switch supplier; and
- (b) a Micro Business Consumer is entitled to take steps to facilitate changing to any other Electricity Supplier at any time without having to pay a Termination Fee

Acknowledgement of receipt of termination notice

~~7A.12C If the licensee receives notice of termination in accordance with 7A.12.A or 7A.12B it must take all reasonable steps to notify the Micro Business Consumer in Writing within 5 Working Days of receipt of such notice of termination, or as soon as reasonably practical thereafter, that such notice of termination has been received.~~

Extending the duration of Micro Business Consumer Contracts

~~7A.13~~ 7A.12A This paragraph applies where the relevant Micro Business Consumer Contract is for a fixed-term period and contains a Roll-Over Clause.

~~7A.13~~ 7A.12B Where paragraph ~~7A.13~~ 7A.12A applies, the licensee may only extend the duration of that Contract for a further fixed term period if:

- (a) it has complied with paragraphs 7A.7 and 7A.8;
- (b) the Micro Business Consumer has not sent the licensee a notification in writing before the end of the Initial Period in order to prevent it from extending the duration of the Micro Business Consumer Contract for a further fixed term period ~~and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies;~~ and
- (c) the duration of the further fixed term period is 12 months or less.

~~Termination of Out of contract Contracts and Evergreen Micro Business Consumer Contracts~~

~~7A.13B If the licensee supplies electricity to a Micro Business Consumer's premises under an Out of contract Contract or Evergreen Micro Business Consumer~~

~~Contract, the licensee must not charge the Micro Business Consumer a Micro Business Termination Fee.~~

Termination of Evergreen Micro Business Consumer Contracts

7A.13A If the licensee supplies electricity to a Micro Business Consumer’s premises under an Evergreen Micro Business Consumer Contract, the licensee must ensure that:

- (a) the notice period for termination of any Evergreen Supply Contract with a Micro Business Consumer is no longer than 30 days; and
- (b) a Micro Business Consumer is entitled to take steps to facilitate changing to any other Electricity Supplier at any time without having to pay a Termination Fee.

7A.13AB Where paragraph 7A.13A applies, notice of termination must include but is not limited to notice given by the proposed new Relevant Electricity Supplier in respect of a Proposed Supplier Transfer.

7A.13AC If the licensee receives notice of termination in accordance with 7A.13A it must take all reasonable steps to notify the Micro Business Consumer in Writing within 5 Working Days of receipt of such notice of termination, or as soon as reasonably practical thereafter, that such notice of termination has been received.

Termination of Out-of-contract Contracts

7A.13B If the licensee supplies electricity to a Micro Business Consumer’s premises under an Out-of-contract Contract, the licensee must ensure that:

- (a) a Micro Business Consumer is entitled to take steps to facilitate changing to any other Electricity Supplier at any time without having to pay a Termination Fee; and
- (b) a Micro Business Consumer is not required to give any form of notice to terminate the Micro Business Consumer Contract or to switch supplier.

Reporting obligation

7A.13C.1 The licensee must give the Authority any Information that it reasonably requests about the licensee’s compliance with paragraphs ~~7A.12B.1 to 7A.13B~~ 7A.11 to 7A.13B as soon as reasonably practicable after receiving a request from the Authority.

7A.13C.2 The licensee must give the Authority any Information that it reasonably requests to assess the impact and effectiveness of the obligations contained in paragraphs ~~7A.12B.1 to 7A.13B~~ 7A.11 to 7A.13B as soon as reasonably practicable after receiving a request from the Authority.

~~Transitional provisions for standard condition 7A covering notice periods, termination fees and rollovers~~

~~7A.13D.1 Until the Specified Date, this condition 7A.13D applies to any Transitional~~

~~MicroBusiness Consumer Contracts.~~

~~7A.13D.2 For the purposes of this condition 7A.13D, a “Transitional Micro Business Consumer Contract” is a Micro Business Consumer Contract which was entered into on or before 15 December 2016.~~

~~7A.13D.3 In respect of the Transitional Micro Business Consumer Contract, the licensee is not required to comply with:~~

~~(a) paragraphs 7A.12B.1 and 7A.12B.2 of standard condition 7A,~~

~~(b) paragraphs 7A.12BA, 7A.12BAA and 7A.12BAB of standard condition 7A,~~

~~(c) paragraphs 7A.13 and 7A.13A of standard condition 7A,~~

~~(d) paragraphs 7A.13B, 7A.13C.1 and 7A.13C.2 of standard condition 7A, and instead, paragraphs 7A.13D.4 to 7A.13D.6 apply.~~

~~7A.13D.4 Paragraph 7A.12B.1 of standard condition 7A is replaced with:~~

~~**Termination of Micro Business Consumer Contracts which include a fixed term period**~~

~~7A.12B In relation to any Micro Business Consumer Contract which includes a fixed term period, the licensee must ensure that:~~

~~(a) — a Micro Business Consumer is entitled to give notice of termination before the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Supply Contract) in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and~~

~~(b) — without prejudice to any notice period which complies with paragraph 7A.11, if, at the end of any fixed term period, a Micro Business Consumer is not subject to a further fixed term period, the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.~~

~~7A.13D.5 Paragraph 7A.13 of standard condition 7A is replaced with:~~

~~7A.13 This paragraph applies where the relevant Micro Business Consumer Contract is for a fixed term period and contains a term entitling the licensee to extend the duration of the Micro Business Consumer Contract for a further fixed term period.~~

~~7A.13D.6 Paragraph 7A.13A of standard condition 7A is replaced with:~~

~~7A.13A Where paragraph 7A.13 applies, the licensee may only extend the duration of that Contract for a further fixed term period if:~~

~~(a) — it has complied with paragraphs 7A.7 and 7A.8;~~

~~(b) — the Micro Business Consumer has not sent the licensee a notification in Writing before the Relevant Date in order to prevent it from~~

~~extending the duration of the Micro Business Consumer Contract for a further fixed term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed term period which currently applies; and~~

~~(c) — the duration of the further fixed term period is 12 months or less.~~

Micro Business Consumer Cooling-off Period

7A.13E.1 The licensee must include a term in a Micro Business Consumer Contract that enables a Micro Business Consumer to cancel the Contract at any time in the cancellation period, without giving any reason, by giving notice of cancellation to the licensee.

7A.13E.2 Notice of cancellation includes any communication by the Micro Business Consumer to the licensee, made in the cancellation period, setting out the Micro Business Consumer’s decision to cancel the Contract.

7A.13E.3 The cancellation period begins on the day on which a Micro Business Consumer enters into a Contract with the licensee

7A.13E.4 The cancellation period ends at the earlier of:

- (a) 14 calendar days after the day on which the Contract is entered into and the Micro Business Consumer has been provided with a written copy of the Principal Terms as required under paragraph 7A.9; or
- (b) 28 calendar days (or such other period as the Authority may specify from time to time) before the date on which the supply of electricity under the terms of that contract, is due to begin.

7A.13E.5 Where a Micro Business gives notice of cancellation the licensee must not:

- (a) charge the Micro Business Consumer a Termination Fee; or
- (b) apply terms and conditions or Charges for the Supply of Electricity which are not set out under the Micro Business Consumer Contract; or
- (c) require payment of any Charges for the Supply of Electricity determined under the Micro Business Consumer Contract

7A.13E.6 The provisions in Condition 7A.13E shall take effect on a date specified by the Authority.

Definitions for condition

7A.14 In this condition:

“Evergreen Micro Business Consumer Contract”

means a Micro Business Consumer Contract which is for a period of an indefinite length and which does not contain a fixed-term period that applies to any of the terms and conditions of that Micro Business Consumer

	<p>Contract and is not an Out-of-contract Contract.</p>
“Initial Period”	<p>means a period of fixed duration from the start of a contract concerning the supply of electricity.</p>
“Micro Business Termination Fee”	<p>means any sum of money or other compensation (whether financial or not) which might be demanded from a Micro Business Consumer solely because his Micro Business Consumer Contract has ended and/or any sum of money or other reward (whether financial or not) which would have been provided to a Micro Business Consumer if he continued to be supplied under a Micro Business Consumer Contract for a particular period of time and would not be provided to that Micro Business Consumer solely because that contract has ended before that period of time has elapsed.</p>
“Out-of-contract Contract”	<p>means a Non-Domestic Supply Contract which continues to apply to a Micro Business Consumer in circumstances where that Non-Domestic Supply Contract has been terminated or has expired through the passage of time and the same licensee continues to supply electricity to that Micro Business Consumer.</p>
“Relevant Notice Period”	means a notice period of up to 30 days.
“Roll-Over Clause”	<p>means a term providing for a contract to continue (automatically, or at the sole option of the licensee) beyond the expiry of the Initial Period in the event that, during the Initial Period, the Micro Business Consumer has not terminated the Micro Business Consumer Contract or otherwise expressly agreed that the Micro Business Consumer Contract will continue for a period of fixed duration or an indefinite length.</p>
“Roll-Over Period”	<p>means the period of time after the Initial Period for which a Micro Business Consumer Contract will continue pursuant to the Roll-Over Clause.</p>
“Specified Date”	means 25 June 2017.

“Micro Business Consumer”

means a Non-Domestic Customer:

(a) which is a “relevant consumer” (in respect of premises other than domestic premises) for the purposes in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268); or

(b) which has an annual consumption of not more than 100,000 kWh.

“Relevant Date”

~~means the date which is 30 days, before the date any fixed term period of a Micro Business Consumer Contract is due to end.~~

Condition 8. Obligations under Last Resort Supply Direction

8.5 The licensee:

- (a) is not required to comply with a Last Resort Supply Direction in respect of premises to which it would not be required to supply electricity because of any of the exceptions set out in sub-paragraphs 6Z(a) and (b) of standard condition 22 (Duty to offer and supply under Domestic Supply Contract); and
- (b) shall not comply where the Last Resort Supply Direction is in respect of a Green Deal Premises and the licensee is not a Green Deal Licensee

Condition 20. Enquiry service, Supply Number and dispute settlement –for Non-Domestic Customers

Dispute settlement

20.5 The licensee must provide to each of its Non-Domestic Customers information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute with the licensee or, in the case of a Microbusiness Consumer, any Broker by providing that information on any relevant Promotional Materials sent to the Non-Domestic Customer and on or with each Bill or statement of account sent to each Non-Domestic Customer in relation to Charges or annually if the licensee has not sent such a Bill or statement of account to them. Such information must include, but is not limited to, how the procedures under any Qualifying Dispute Settlement Scheme can be initiated.

20.5A The licensee must ensure that any Broker is a member of a Qualifying Dispute Settlement Scheme.

20.5B The Licensee must provide any information it holds or controls which, in the

view of the provider of the relevant Qualifying Dispute Settlement Scheme, is relevant to a dispute between a Micro Business Consumer and a Broker, to the provider of the relevant Qualifying Dispute Settlement Scheme, on request by that provider.

20.5C The provisions in this Condition 20.5 insofar as they relate to dispute settlement between a Microbusiness Consumer and a Broker shall take effect on a date specified by the Authority.

20.5D For the purposes of this Condition:

'Qualifying Dispute Settlement Scheme'

means any scheme of dispute settlement, resolution and/or redress operated by the Relevant Energy Ombudsman or such other organisation as offers, and may be demonstrated to provide, independent, fair, effective and transparent out-of court dispute settlement relating to Relevant Broker Activities and constitutes a Qualifying Dispute Settlement Scheme in accordance with any guidance issued by the Authority.

'Relevant Broker Activities'

means any activity undertaken by a Broker in respect of a Micro Business Supply Contract including (but without prejudice to the generality of the foregoing):

- (a) any written or oral communications relating to the supply of electricity to a Micro Business Consumer including:
 - (i) any pre-sales communications;
 - (ii) any communications regarding Billing or Contractual Information; and
 - (iii) any matters falling within the scope of standard conditions 7A, 14, 14A and 21B (insofar as they relate to a Micro Business Consumer); and
- (b) any processing of information relating to the supply of electricity to a Micro Business Consumer, together with any other Relevant Activities as the Authority may direct from time to time, following consultation.

Appendix 2 – Consultation questions

Question 1: Do you agree that 1 January 2022 represents an achievable start date for implementing a 14 day cooling-off period for microbusiness consumers?

Question 2: Do you agree that 1 January 2022 represents an achievable start date for fully implementing both the proposed supply licence obligation and the associated scheme needed to introduce independent dispute resolution for microbusinesses in dispute with a broker?

Question 3: Do you have any other comments on our proposals?

Question 4: Do you have any comments on the draft supply licence conditions at Appendix 1 in this document?

Appendix 3 – Privacy notice

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

3. With whom we will be sharing your personal data

We will not share personal data contained in confidential consultation responses with any organisation outside of Ofgem unless legally obligated to do so.

4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for approximately 24 months until after the programme of work is closed.

5. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete

- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

6. Your personal data will not be sent overseas unless you use the Survey Monkey option

The Data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in term of data protection will not be compromised by this.

7. Your personal data will not be used for any automated decision making.

8. Your personal data will be stored in a secure government IT system

If using Survey Monkey your data will be removed from the platform once the Consultation is closed and be transferred to a secure government IT system.

9. More information For more information on how Ofgem processes your data, click on the link to our "[Ofgem privacy promise](#)".