

**To: All holders of an electricity supply licence who are relevant licence holders for the purpose of section 11A(10) of the Electricity Act 1989**

**NOTICE OF STATUTORY CONSULTATION ON A PROPOSED MODIFICATION PURSUANT TO SECTION 11A OF THE ELECTRICITY ACT 1989 OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCES GRANTED OR TREATED AS GRANTED UNDER SECTION 6(1)(d) OF THE ELECTRICITY ACT 1989**

1. Each of the companies to whom this notice is addressed holds an electricity supply licence granted, or treated as granted, pursuant to section 6(1)(d) of the Electricity Act 1989 (the "Act").
2. In accordance with section 11A (2), (3) and (4) of the Act, the Gas and Electricity Markets Authority (the "Authority") gives notice ("Notice") that it proposes to modify the standard conditions of the electricity supply licence by introducing standard condition 28AA.
3. The reasons why the Authority proposes to make this licence modification relate to the need to protect disengaged vulnerable consumers and are set out in the covering document titled: "[Statutory consultation for a vulnerable customer safeguard tariff](#)".
4. The effects of this proposed modification are described in the document referred to in paragraph 3 of this Notice and the annotated version of proposed standard condition 28AA in schedule 2. In summary, the main effects of the proposals are to extend the price cap provided for in standard condition 28A to domestic customers which have previously received, or currently receive, the Warm Home Discount and are subject to any form of deemed, evergreen or default tariff/ contractual arrangement.
5. The envisaged text for the proposed modification to introduce standard condition 28AA is set out in schedule 1 to this Notice.
6. A copy of the proposed modification and other documents referred to in this Notice have been published on our website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)). Alternatively they are available from our Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003).
7. Any representations with respect to the proposed licence modification must be made on or before **09:00 on Monday 13 November 2017** to: Jemma Baker, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to [vulnerability@ofgem.gov.uk](mailto:vulnerability@ofgem.gov.uk)
8. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
9. Subject to responses to the statutory consultation, in the event that the Authority decides to proceed with the proposed modification, it is intended that the modification will take effect on a date which is at least 56 days after the date on which the Authority's decision is published.

**Rachel Fletcher, Senior Partner**

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

**11 October 2017**

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

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

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

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

28AA.1 Subject to 28AA.15 and 28AA.16, in respect of each Relevant 28AA Customer and in accordance with the requirements of this condition, the Obligated Licensee must ensure that at all times during the Charge Restriction Period the aggregate Charges for Supply Activities which apply to that customer do not exceed the Relevant Maximum Charge.

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

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

#### **Compliance in respect of Single-Register Tariffs**

28AA.3 For all Single-Register Tariffs (including Multi-tier Tariffs), the Obligated Licensee must comply with paragraph 28AA.1 on the basis that the Relevant Maximum Charge is determined using the Benchmark Metering Arrangement values for Single-Rate Metering Arrangements.

28AA.4 Where a Single-Register Tariff is a Multi-tier Tariff the Obligated Licensee must also ensure that it complies with paragraph 28AA.1 for all possible divisions of consumption between the different months within the Charge Restriction Period.

#### **Compliance in respect of Multi-Register Tariffs**

28AA.5 For all Multi-Register Tariffs, the Obligated Licensee must comply with paragraph 28AA.1 on the basis that:

- (a) the Relevant Maximum Charge is determined using the Benchmark Metering Arrangement values for Economy 7 Metering Arrangements; and
- (b) in calculating the aggregate amount of all Charges for Supply Activities, consumption in different periods must be weighted using the Assumed Consumption Split which is applied across Great Britain and which reflects annual consumption patterns.

#### **Requirements for reasonable estimate of the average consumption split for Multi-Register Tariffs**

28AA.6 In respect of the first Charge Restriction Period that applies under this condition, the Authority may either:

- (a) by publishing a statement in Writing, require the Obligated Licensee to adopt the same Assumed Consumption Split as it has adopted for the purposes of the corresponding Charge Restriction Period that applies for the purposes of Condition 28A; or

- (b) direct the Obligated Licensee to adopt as the Assumed Consumption Split such other reasonable estimate of the average consumption split as the Authority considers appropriate in the circumstances, after consulting with the Obligated Licensee.

28AA.7 In respect of any subsequent Charge Restriction Period that applies under this condition, the Obligated Licensee must comply with:

- (a) paragraph 28A.26 of condition 28A on the basis that any reference to:
  - (i) "Assumed Consumption Split" is to be read as "Assumed Consumption Split as applied under condition 28AA";
  - (ii) "Multi-Register Prepayment Tariff" is to be read as "Multi-Register Tariff"; and
  - (iii) "Prepayment Tariff" is to be read as "Tariff subject to the Relevant Maximum Charge in condition 28AA"; and;
- (b) paragraph 28A.27 of condition 28A on the basis that any reference to:
  - (i) "Assumed Consumption Split" is to be read as "Assumed Consumption Split as applied under condition 28AA";
  - (ii) "Multi-Register Prepayment Tariff" is to be read as "Multi-Register Tariff"; and
  - (iii) "Prepayment Tariff" is to be read as "Tariff subject to the Relevant Maximum Charge in condition 28AA".

28AA.8 In respect of any Charge Restriction Period that applies under this condition, the Obligated Licensee must comply with paragraph 28A.28 of condition 28A on the basis that:

- (a) any reference to "Relevant Customers" is to be read as "Relevant 28AA Customer"; and
- (b) any reference to "Relevant Maximum Charge" is to be read as "Relevant Maximum Charge as applied under condition 28AA".

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

28AA.9 For each Benchmark Metering Arrangement (denoted  $l$ ), for that part of a Charge Restriction Period (denoted  $j$ ) where this condition has effect with resulting length  $t$  months, and for each of the 14 Charge Restriction Regions (denoted  $i$ ), the Relevant Maximum Charge for a given level of consumption  $x$  shall be determined by reference to the Benchmark Maximum Charges applicable during the part of a Charge Restriction Period where this condition has effect at two Benchmark Annual Consumption Levels denoted below as  $nil$  and  $m$ , as follows:

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

## **Reporting obligation**

28AA.10 Subject to paragraph 28AA.11, the Obligated Licensee must provide the Authority, in a format specified by the Authority, with a report containing the following information for each of its Tariffs with a Relevant 28AA Customer to whom this condition applies:

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

28AA.11. For the purposes of paragraph 28AA.10 the first report must be provided five Working Days after the Modification date, and any subsequent report must be provided five Working Days after a date specified by the Authority in a statement published in writing.

28AA.12 The Obligated Licensee must inform the Authority, in Writing (or in any other format specified by the Authority), of any changes to the information included in the report as soon as reasonably practicable after the implementation of any such changes.

28AA.13 The Obligated Licensee must give the Authority any information that it reasonably requests about the Obligated Licensee's compliance with this condition as soon as reasonably practicable after receiving a request.

## **Direction for alternative compliance assessment**

28AA.14 Paragraphs 28A.21 and 28A.22 of condition 28A apply to this condition on the basis that:

- (a) any reference to "Prepayment Tariff" is to be read as "Tariff subject to the Relevant Maximum Charge in condition 28AA";
- (b) any reference to "Prepayment Charge Restriction" is to be read as "paragraph 28AA.1 of condition 28AA";
- (c) any reference to "Relevant Customers" is to be read as "Relevant 28AA Customer";

- (d) any reference to "Relevant Maximum Charge" is to be read as "Relevant Maximum Charge as applied under condition 28AA";
- (e) any reference to "Multi-Register Prepayment Tariff" is to be read as "Multi-Register Tariff"; and
- (f) any reference to "Assumed Consumption Split" is to be read as "Assumed Consumption Split as applied under condition 28AA"

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

28AA.15 Where the Obligated Licensee has identified a Relevant 28AA Customer on a date which is:

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

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

28AA.16 Where the Obligated Licensee has identified a Relevant 28AA Customer on a date which is earlier than 30 days before the Modification Date, the Obligated Licensee must comply with paragraph 28AA.1 of this condition on and from the Modification Date.

### **Termination of condition**

28AA.17 This condition will cease to have effect at 23:59 on 31 December 2019 unless the Authority specifies an earlier date by publishing a statement in Writing.

### **Definitions for condition**

28AA.18 In this condition:

**"Assumed Consumption Split"** means the assumed percentage consumption split between each rate relevant to a Multi-Register Metering Arrangement, determined on the following basis:

- (a) in respect of each Economy 7 Tariff, the split will be 42% for off-peak consumption levels and 58% for peak consumption levels; and
- (b) in respect of each Multi-Register Tariff (other than an Economy 7 Tariff), split shall be based on historic consumption data or, in the absence of historic data, on a reasonable estimate of the average consumption split;

**"Benchmark Annual Consumption Levels"** has the meaning given to that term in standard condition 28A.32;

**"Benchmark Maximum Charge"** means the applicable value published by the Authority for the Charge Restriction Period *j* pursuant to paragraph 28A.16 of condition 28A and calculated in accordance with paragraphs 28A.7 to 28A.15;

**“Benchmark Metering Arrangement”** means:

(a) for the purposes of paragraph 28AA.3, a Single-Rate Metering Arrangement and the values that relate to “Single-rate meters” as specified in the relevant column in Annexes 1 to 5 of condition 28A; and

(b) for the purposes of paragraph 28AA.5, an Economy 7 Metering Arrangement and the values that relate to “Economy 7 Meters” as specified in the relevant column in Annexes 1 to 5 of condition 28A;

**“Charge Restriction Region”** has the meaning given to that term in standard condition 28A.32;

**“Charge Restriction Period”** has the meaning given to that term in standard condition 28A.32;

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

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

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

(a) contains any terms and conditions which apply for a fixed term period; and

(b) comes into effect automatically or at the discretion of the licensee after the expiry or termination of any type or part of a previous Domestic Supply Contract or, where applicable, other contractual arrangement (“previous contract”) either:

(i) by virtue of the terms and conditions provided for in that previous contract (and, for the purposes of this definition, it is irrelevant whether or not the Domestic Customer originally agreed to any terms and conditions which purported to permit that automatic effect or discretion of the licensee); or

(ii) otherwise by the operation of the law or any provision of an enactment;

**“Economy 7 Metering Arrangement”** means using an Electricity Meter for the purpose of an Economy 7 Tariff;

**“Economy 7 Tariff”** means a Tariff whereby a Domestic Customer is charged on the basis of two separate Unit Rates, where in each period of 24 hours the peak electricity consumption level is recorded during 17 “day/normal” hours and the off-peak electricity consumption level is recorded during seven “night/low” hours;

**“Metering Arrangement”** means, for the purpose of this licence condition, using one or more Electricity Meters for the purpose of a Tariff whereby a Domestic Customer is charged either on the basis of a Multi-Register Metering Arrangement or on the basis of a Single-Register Metering Arrangement;

**“Modification Date”** means the date specified by the Authority in the modification direction inserting this condition for the purposes of section 11A(8) of the Electricity Act 1989;

**“Multi-tier Metering Arrangement”** means using an Electricity Meter for the purpose of a Tariff whereby a Domestic Customer is charged on the basis of a Unit Rate which varies according to the Domestic Customer’s electricity consumption over a defined period of time;

**“Multi-tier Tariff”** means a Tariff whereby a Domestic Customer incurs Charges for Supply Activities on the basis of a Multi-tier Metering Arrangement;

**“Multi-Register Metering Arrangement”** means using one or more Electricity Meters for the purpose of a Tariff whereby a Domestic Customer’s electricity consumption at certain times, or for certain purposes (for example, heating), or both, is separately recorded - on one or more registers - and includes any contractual arrangement whereby the Domestic Customer is charged on the basis of Time of Use Rates (regardless of the metering equipment employed);

**“Multi-Register Tariff”** means a Tariff whereby a Domestic Customer incurs Charges for Supply Activities on the basis of a Multi-Register Metering Arrangement;

**“Obligated Licensee”** means a Supplier which is a compulsory scheme electricity supplier for the purposes of regulation 5(1) of the Regulations;

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

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

(a) is subject to a Deemed Contract, an Evergreen Supply Contact or a 28AA Default Fixed Term Contract; and

(b) falls into at least one of the following categories:

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

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

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

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

**“Relevant Maximum Charge”** means for each Relevant 28AA Customer the maximum charge amount (in pounds sterling, excluding value added tax) for any consumption level, calculated in accordance with paragraph 28AA.9;

**“Scheme Year”** has the meaning given to that term in paragraph 2 of the Regulations;



**“Single-Rate Metering Arrangement”** means using one or more Electricity Meters for the purpose of a Tariff whereby a Domestic Customer is required to pay for the Charges for Supply Activities on the basis of a single Unit Rate;

**“Single-Register Metering Arrangement”** means any Metering Arrangement which is not a Multi-Register Metering Arrangement, and includes a Single-Rate Metering Arrangement (regardless of the metering equipment employed) and a Multi-Tier Metering Arrangement in which the Unit Rate does not vary according to the time of use);

**“Single-Register Tariff”** means a Tariff whereby a Domestic Customer is required to pay for the Charges for Supply Activities on the basis of a Single-Register Metering Arrangement.

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

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

#### Overall policy intention

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

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

##### Policy intention

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

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

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

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

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

28AA.1 Subject to 28AA.15 and 28AA.16, in respect of each Relevant 28AA Customer and in accordance with the requirements of this condition, the Obligated Licensee must ensure that at all times during the Charge Restriction Period the aggregate Charges for Supply Activities which apply to that customer do not exceed the Relevant Maximum Charge.

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

##### Policy intention

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

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

#### Proposed legal drafting

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

### **Compliance in respect of Single-Register Tariffs**

#### Policy intention

*It is intended that this condition would apply the same substantive approach to Single-Register Tariffs and Multi-tier Tariffs to that taken in SLC 28A.*

#### Proposed legal drafting

28AA.3 For all Single-Register Tariffs (including Multi-tier Tariffs), the Obligated Licensee must comply with paragraph 28AA.1 on the basis that the Relevant Maximum Charge is determined using the Benchmark Metering Arrangement values for Single-Rate Metering Arrangements.

28AA.4 Where a Single-Register Tariff is a Multi-tier Tariff the Obligated Licensee must also ensure that it complies with paragraph 28AA.1 for all possible divisions of consumption between the different months within the Charge Restriction Period.

### **Compliance in respect of Multi-Register Tariffs**

#### Policy intention

*It is intended that this condition would apply, as far as possible, the same substantive approach to Multi-Register Tariffs to that taken in SLC 28A.*

*The approach taken with the proposed legal drafting below is based on SLC 28A but sets out some elements of the concept of "Assumed Consumption Split" as a definition rather than in the main body of the condition.*

#### Proposed legal drafting

28AA.5 For all Multi-Register Tariffs, the Obligated Licensee must comply with paragraph 28AA.1 on the basis that:

- (a) the Relevant Maximum Charge is determined using the Benchmark Metering Arrangement values for Economy 7 Metering Arrangements; and
- (b) in calculating the aggregate amount of all Charges for Supply Activities, consumption in different periods must be weighted using the Assumed Consumption Split which is applied across Great Britain and which reflects annual consumption patterns.

### **Requirements for reasonable estimate of the average consumption split for Multi-Register Tariffs**

#### Policy intention

*As far as possible, it is intended that the same substantive approach would be taken as for the treatment of a reasonable estimate of the average consumption split for the purposes of paragraphs 28A.26 to 28A.28 of condition 28A.*

*However, it is intended that a different approach would be taken for the first Charge Restriction Period to avoid any delays in implementation. We would intend to give suppliers sufficient notice of the Assumed Consumption Splits that they will be expected to use for the first Charge Restriction Period for tariffs to be set accordingly – but our policy intention is not to include a particular period of notice ahead of the first Charge Restriction Period in this licence drafting.*

Proposed legal drafting

28AA.6 In respect of the first Charge Restriction Period that applies under this condition, the Authority may either:

- (c) by publishing a statement in Writing, require the Obligated Licensee to adopt the same Assumed Consumption Split as it has adopted for the purposes of the corresponding Charge Restriction Period that applies for the purposes of Condition 28A; or
- (d) direct the Obligated Licensee to adopt as the Assumed Consumption Split such other reasonable estimate of the average consumption split as the Authority considers appropriate in the circumstances, after consulting with the Obligated Licensee.

28AA.7 In respect of any subsequent Charge Restriction Period that applies under this condition, the Obligated Licensee must comply with:

- (a) paragraph 28A.26 of condition 28A on the basis that any reference to:
  - (i) "Assumed Consumption Split" is to be read as "Assumed Consumption Split as applied under condition 28AA";
  - (ii) "Multi-Register Prepayment Tariff" is to be read as "Multi-Register Tariff"; and
  - (iii) "Prepayment Tariff" is to be read as "Tariff subject to the Relevant Maximum Charge in condition 28AA"; and;
- (b) paragraph 28A.27 of condition 28A on the basis that any reference to:
  - (i) "Assumed Consumption Split" is to be read as "Assumed Consumption Split as applied under condition 28AA";
  - (ii) "Multi-Register Prepayment Tariff" is to be read as "Multi-Register Tariff"; and
  - (iii) "Prepayment Tariff" is to be read as "Tariff subject to the Relevant Maximum Charge in condition 28AA".

28AA.8 In respect of any Charge Restriction Period that applies under this condition, the Obligated Licensee must comply with paragraph 28A.28 of condition 28A on the basis that:

- (a) any reference to "Relevant Customers" is to be read as "Relevant 28AA Customer"; and
- (b) any reference to "Relevant Maximum Charge" is to be read as "Relevant Maximum Charge as applied under condition 28AA".

## Determination of Relevant Maximum Charge

### Policy intention

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

### Proposed legal drafting

28AA.9 For each Benchmark Metering Arrangement (denoted  $l$ ), for that part of a Charge Restriction Period (denoted  $j$ ) where this condition has effect with resulting length  $t$  months, and for each of the 14 Charge Restriction Regions (denoted  $i$ ), the Relevant Maximum Charge for a given level of consumption  $x$  shall be determined by reference to the Benchmark Maximum Charges applicable during the part of a Charge Restriction Period where this condition has effect at two Benchmark Annual Consumption Levels denoted below as  $nil$  and  $m$ , as follows:

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

## Reporting obligation

### Policy intention

*The policy intent is to have similar reporting requirements as in condition 28A (paragraphs 28A.29-28A.31 in the electricity version).*

*Aside from amending references to "Prepayment", a main difference is that we are not including an equivalent to 28A.29(e) (electricity version) on customer criteria, as this does not appear relevant for a condition which only limits charges for certain consumers on a given tariff.*

*The intention is that reporting will only apply to Tariffs used by Relevant 28AA Customers, rather than all supplier's tariffs. On this basis, the equivalent to 28A.29(g) (electricity version) is intended to include only those customers that are covered by the cap – ie Relevant 28AA Customers where this condition applies.*

*Another difference is with the timeframe for reporting, including in respect of providing a snapshot of information about Relevant 28AA Customers at a particular point in time.*

*The policy intent is to set an initial timeframe on the face of the licence condition (based on the date the licence modification comes into effect) in order to cover the first portion of the Relevant Charge Restriction Period, along with a power to give Ofgem the flexibility to set further dates for reporting in respect of each subsequent Charge Restriction Period that may be applicable.*

### Proposed legal drafting

28AA.10 Subject to paragraph 28AA.11, the Obligated Licensee must provide the Authority, in a format specified by the Authority, with a report containing the following

information for each of its Tariffs with a Relevant 28AA Customer to whom this condition applies:

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

28AA.11 For the purposes of of paragraph 28AA.10 the first report must be provided five Working Days after the Modification date, and any subsequent report must be provided five Working Days after a date specified by the Authority in a statement published in writing.

28AA.12 The Obligated Licensee must inform the Authority, in Writing (or in any other format specified by the Authority), of any changes to the information included in the report as soon as reasonably practicable after the implementation of any such changes.

28AA.13 The Obligated Licensee must give the Authority any information that it reasonably requests about the Obligated Licensee's compliance with this condition as soon as reasonably practicable after receiving a request.

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

#### [Policy intention](#)

*It is intended that the same substantive approach would be taken as for paragraphs 28A.21 and 28A.22 of condition 28A. In particular, the policy intention is to provide for the possibility of alternative compliance arrangements for zero standing charge tariffs.*

#### Proposed legal drafting

28AA.14 Paragraphs 28A.21 and 28A.22 of condition 28A apply to this condition on the basis that:

- (a) any reference to "Prepayment Tariff" is to be read as "Tariff subject to the Relevant Maximum Charge in condition 28AA";
- (b) any reference to "Prepayment Charge Restriction" is to be read as "paragraph 28AA.1 of condition 28AA";

- (c) any reference to "Relevant Customers" is to be read as "Relevant 28AA Customer";
- (d) any reference to "Relevant Maximum Charge" is to be read as "Relevant Maximum Charge as applied under condition 28AA";
- (e) any reference to "Multi-Register Prepayment Tariff" is to be read as "Multi-Register Tariff"; and
- (f) any reference to "Assumed Consumption Split" is to be read as "Assumed Consumption Split as applied under condition 28AA".

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

#### Policy intention

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

#### Proposed legal drafting

28AA.15 Where the Obligated Licensee has identified a Relevant 28AA Customer on a date which is:

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

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

28AA.16 Where the Obligated licensee has identified a Relevant 28AA Customer on a date which is earlier than 30 days before the Modification Date, the Obligated Licensee must comply with paragraph 28AA.1 of this condition on and from the Modification Date.

### **Termination of condition**

#### Policy intention

*The inclusion of a sunset clause is intended to give suppliers certainty on the maximum period of time proposed condition 28AA will be in effect. However, it is also intended that Ofgem will have the power to disapply condition 28AA earlier and such a power would be used in the event that the licence condition is no longer necessary due to other measures being taken by Government or Ofgem.*

#### Proposed legal drafting

28AA.17 This condition will cease to have effect at 23:59 on 31 December 2019 unless the Authority specifies an earlier date by publishing a statement in Writing.

### **Definitions for condition**

### Policy intention with definitions

*Most of the definitions are intended to link to the existing requirements of Standard Condition 28A or to reproduce an requirement in an adapted form to work in the context of this condition, e.g. by removing references to "Prepayment". However, we have provided an explanation of the policy intent for any definitions that have a more substantive effect.*

### Proposed legal drafting

28AA.18 In this condition:

### Policy intention for Assumed Consumption Split

*We recently directed suppliers to use a revised Assumed Consumption Split for the prepayment safeguard tariff. This is 42% (off-peak) and 58% (peak), rather than the 38% to 62% split originally set out in SLC 28A. We intend to use the same revised split for this condition 28AA, in order to be consistent.*

### Proposed legal drafting for Assumed Consumption Split

**"Assumed Consumption Split"** means the assumed percentage consumption split between each rate relevant to a Multi-Register Metering Arrangement, determined on the following basis:

(a) in respect of each Economy 7 Tariff, the split will be 42% for off-peak consumption levels and 58% for peak consumption levels; and

(b) in respect of each Multi-Register Tariff (other than an Economy 7 Tariff), split shall be based on historic consumption data or, in the absence of historic data, on a reasonable estimate of the average consumption split;

**"Benchmark Annual Consumption Levels"** has the meaning given to that term in standard condition 28A.32;

### Policy intention Benchmark Maximum Charge

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

### Proposed legal drafting for Benchmark Maximum Charge

**"Benchmark Maximum Charge"** means the applicable value published by the Authority for the Charge Restriction Period *j* pursuant to paragraph 28A.16 of condition 28A and calculated in accordance with paragraphs 28A.7 to 28A.15;

**"Benchmark Metering Arrangement"** means:

(a) for the purposes of paragraph 28AA.3, a Single-Rate Metering Arrangement and the values that relate to "Single-rate meters" as specified in the relevant column in Annexes 1 to 5 of condition 28A; and

(b) for the purposes of paragraph 28AA.5, an Economy 7 Metering Arrangement and the values that relate to "Economy 7 Meters" as specified in the relevant column in Annexes 1 to 5 of condition 28A;



**“Charge Restriction Region”** has the meaning given to that term in standard condition 28A.32;

**“Charge Restriction Period”** has the meaning given to that term in standard condition 28A.32;

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

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

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

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

**“Economy 7 Metering Arrangement”** means using an Electricity Meter for the purpose of an Economy 7 Tariff;

**“Economy 7 Tariff”** means a Tariff whereby a Domestic Customer is charged on the basis of two separate Unit Rates, where in each period of 24 hours the peak electricity consumption level is recorded during 17 “day/normal” hours and the off-peak electricity consumption level is recorded during seven “night/low” hours;

**“Metering Arrangement”** means, for the purpose of this licence condition, using one or more Electricity Meters for the purpose of a Tariff whereby a Domestic Customer is charged either on the basis of a Multi-Register Metering Arrangement or on the basis of a Single-Register Metering Arrangement;

**“Modification Date”** means the date specified by the Authority in the modification direction inserting this condition for the purposes of section 11A(8) of the Electricity Act 1989;

**“Multi-tier Metering Arrangement”** means using an Electricity Meter for the purpose of a Tariff whereby a Domestic Customer is charged on the basis of a Unit Rate which varies according to the Domestic Customer’s electricity consumption over a defined period of time;

**“Multi-tier Tariff”** means a Tariff whereby a Domestic Customer incurs Charges for Supply Activities on the basis of a Multi-tier Metering Arrangement;

**“Multi-Register Metering Arrangement”** means using one or more Electricity Meters for the purpose of a Tariff whereby a Domestic Customer’s electricity consumption at

certain times, or for certain purposes (for example, heating), or both, is separately recorded - on one or more registers - and includes any contractual arrangement whereby the Domestic Customer is charged on the basis of Time of Use Rates (regardless of the metering equipment employed);

**“Multi-Register Tariff”** means a Tariff whereby a Domestic Customer incurs Charges for Supply Activities on the basis of a Multi-Register Metering Arrangement;

*Policy intention for Obligated Licensee*

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

Proposed legal drafting for Obligated Licensee

**“Obligated Licensee”** means a Supplier which is a compulsory scheme electricity supplier for the purposes of regulation 5(1) of the Regulations;

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

*Policy intention for Relevant 28AA Customer*

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

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

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

Proposed legal drafting for Relevant 28AA Customer

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

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

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

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

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

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

**"Relevant Maximum Charge"** means for each Relevant 28AA Customer the maximum charge amount (in pounds sterling, excluding value added tax) for any consumption level, calculated in accordance with paragraph 28AA.9;

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

**"Single-Rate Metering Arrangement"** means using one or more Electricity Meters for the purpose of a Tariff whereby a Domestic Customer is required to pay for the Charges for Supply Activities on the basis of a single Unit Rate;

**"Single-Register Metering Arrangement"** means any Metering Arrangement which is not a Multi-Register Metering Arrangement, and includes a Single-Rate Metering Arrangement (regardless of the metering equipment employed) and a Multi-Tier Metering Arrangement in which the Unit Rate does not vary according to the time of use);

**"Single-Register Tariff"** means a Tariff whereby a Domestic Customer is required to pay for the Charges for Supply Activities on the basis of a Single-Register Metering Arrangement.