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for energy consumers

Domestic and non-domestic gas
and electricity suppliers, energy
consumers and their
representatives and other
interested parties

Direct Dial: 020 7901 7000
Email: CDconsultations@ofgem.gov.uk

Date: 7 December 2017

Dear stakeholders,

Decision to extend the PPM safeguard tariff to those consumers in receipt of Warm Home Discount

Ofgem has decided to modify the standard conditions of the electricity and gas supply licences by inserting new standard condition 28AA to regulate charges for domestic customers who receive the Warm Home Discount (WHD). The main effect of this change is to extend the scope of the existing prepayment meter (PPM) safeguard tariff to protect an additional 1 million consumers who receive WHD. This decision takes into account stakeholders' responses to the statutory consultation issued on 11 October 2017.¹

Background and reasons for the decision

The energy market is not working for all consumers and those consumers who do not switch tariff are paying considerably more than those that do.² We are working to implement measures to improve competition and bring benefits to consumers. However, it will take time for these benefits to reach all consumers, particularly vulnerable consumers who face different and, in some cases, greater barriers to engagement.

We have decided that it is necessary, on a temporary basis, to widen the scope of the PPM safeguard tariff to include customers in receipt of WHD. Our evidence gathering over the summer (and taking into account the CMA energy investigation findings) suggests that regulating the charges that a supplier can charge these consumers will better protect the interests of these consumers in the short term. This approach is also consistent with Ofgem's general objectives under the EU gas and electricity directive in terms of "contributing to the protection of vulnerable customers".³

Whilst it is acknowledged that there is no perfect or easy way to identify vulnerable customers, it is our view that customers in receipt of WHD are more likely to be vulnerable. Our research shows that consumers with vulnerable characteristics – low income, social housing renters, aged 65 or over, living with a disability – find it difficult to engage in the

¹ Ofgem, "Statutory consultation for a vulnerable customer safeguard tariff", 11 October 2017
https://www.ofgem.gov.uk/system/files/docs/2017/10/statutory_consultation_for_a_vulnerable_customer_safeguard_tariff.pdf

² Competition and Market Authority, "Energy Market Investigation – Final report", 24 June 2016
<https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

³ Ofgem General Duties
<https://www.ofgem.gov.uk/publications-and-updates/powers-and-duties-gema>

market and are more likely to lack confidence, or to be wary of the potential risks of switching tariff or supplier.⁴ Those consumers in receipt of WHD are more likely to be in receipt of an income related benefit, and a proportion will be aged 65 or over.

We recognise that not all vulnerable customers are in receipt of WHD. We chose this proxy because these customers can be easily identified by suppliers, enabling the safeguard tariff to be introduced this winter. Later this month, we will consult on whether we should introduce protection for around 2 million more vulnerable consumers later next year, and if so, what the best approach should be.

To ensure the measure is proportionate and in line with EU legislation, the WHD safeguard tariff will end in December 2019 if it has not already been replaced by other price protection. For instance, either by a wider vulnerable safeguard tariff or the government's temporary price cap for customers on Standard Variable and default tariffs.

Responses

We have considered the responses to our October 2017 statutory consultation⁵ and decided to proceed with the modifications to the licence set out in the statutory notices.

We have made several minor changes to better express the policy intent and small typographical corrections. These are highlighted within the relevant table within the final notice published alongside this letter.

Appendix 1 of this letter provides an overview of stakeholder responses along with our views on the issues raised. A number of stakeholders raised issues that relate to broader price caps. We have considered some of these issues at this stage, and will provide a comprehensive response to these points in our future work. But for the most part, this document focuses on the issues which are relevant to the WHD safeguard tariff.

Implementation

We have published Modification notices alongside this letter, specifying that the modifications to the standard conditions will take effect on and from 2 February 2018.

Any customer in receipt of WHD (this year or last year)⁶ prior to 14 December 2017 will receive the protection from 2 February 2018. For customers identified after this date, suppliers have 50 days from the date they are identified to ensure they receive the safeguard tariff. However, we expect suppliers to implement these price protections as quickly as possible and only use the full 50 days where contract variations are required.

More generally, in line with the new vulnerability principle in the domestic Standards of Conduct, we continue to expect suppliers to do all they can to identify customers in vulnerable situations and support them through the provision of services, advice and assistance. The introduction of price protection for customers in receipt of WHD does not absolve suppliers of this wider responsibility.

Yours faithfully,

Rachel Fletcher
Partner, Consumers and Competition
Duly authorised on behalf of the Gas and Electricity Markets Authority

⁴ GfK (2017) Consumer Engagement in the Energy Market 2017: Report on a survey of energy consumers https://www.ofgem.gov.uk/system/files/docs/2017/09/consumer_engagement_survey_2017_report.pdf

⁵ Statutory Consultation

<https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-vulnerable-customer-safeguard-tariff>

⁶ As well as any customer who has been identified (in line with the definition in the licence condition) but who has not yet received their WHD rebate.

Appendix 1 - Consideration of responses to statutory consultation

Overview of stakeholder responses and way forward

This licence modification decision follows a statutory consultation, published on 11 October 2017, that described our proposals and rationale for financial protections for vulnerable customers. We have also gathered evidence at multiple workshops and bilaterals with stakeholders.

This consultation sought responses on our proposals to put in place a short-term safeguard tariff from February next year, so that some vulnerable consumers can benefit from lower prices this winter. In reaching this decision, we have considered and taken into account the views put forward by stakeholders. Our decision has also been driven by the requirement to act quickly and the need for speedy action dictates many elements of our approach.

We received a number of responses to our October 2017 statutory consultation, which we will publish on our website in due course. Respondents generally accepted our proposals, on the basis that they are a short term measure to allow protections to be applied to a set of vulnerable customers as quickly as possible. We have received a number of specific clarifications around the finer points of implementation and responses on the prepayment meter cap methodology, which we have considered below.

In addition, we have received multiple responses containing views around our wider policies on vulnerability and issues that relate to broader price caps. We have considered some of these issues at this stage (where they are relevant to the WHD safeguard tariff this winter), and will provide a comprehensive response to these points in our future work.

Appendix structure

This appendix considers the issues of policy intent, scope, methodology, implementation and our impact assessment, in respect of the WHD safeguard tariff. For each area, we have initially outlined the views included within our statutory consultation proposal, summarised stakeholder feedback on these particular issues and then provided our consideration, way forward and rationale.

The Modification notices published alongside this letter highlight the minor drafting changes we have made to the legal drafting in light of consultation responses. These changes will ensure the legal drafting better reflects our policy intent. The changes are set out in the published Modification notices for the electricity and gas supply licences.⁷

1. Overarching policy intent

a) *Statutory consultation proposal*

Within our statutory consultation we considered the evidence on consumer engagement, which suggested that vulnerable consumers are less likely to engage with the market and more likely to suffer detriment as a result. We took the view that taking action to protect vulnerable consumers would be consistent with our statutory objectives.

b) *Stakeholder views (statutory objectives)*

On the issue of adherence to our principal objective and statutory duties, we received a range of differing responses. Consumer groups, smaller suppliers and independent responses were generally supportive of the scope, rationale and target group protected by our proposals. But some suppliers, particularly those obligated under the WHD scheme, raised challenges.

⁷ www.ofgem.gov.uk/publications-and-updates/decision-extend-ppm-safeguard-tariff-those-consumers-receipt-warm-home-discount

One obligated supplier raised the challenge that excessive protections were being applied to a specific subset of vulnerable customers, given the cumulative effect of the safeguard tariff, WHD and other schemes. Another obligated supplier noted fuel poverty is a policy for which government is responsible, and queried if Ofgem were acting under direction. Both disputed that targeting the WHD cohort was consistent with the application of Ofgem's statutory duties.

In addition, one submission from a consultancy proposed that for various reasons, the PPM cap methodology offers disproportionate protection to the biggest consumers and more limited protection to those with less consumption. We consider this point in the methodology section below.

c) Our view (statutory objectives)

We considered the points highlighted during the consultation and maintain that our modifications are consistent with our statutory objectives. We agree that government has the primary role in addressing fuel poverty, particularly for policy aimed at redistributing substantial costs between energy consumers. However, we have a duty to consider the interests of vulnerable consumers and to consider protecting their interests.

We believe significant detriment is being suffered by some of the most vulnerable in our society. Our actions are based on a careful consideration of the state of the retail market and driven by our underlying duties. Our objective is to reduce the substantial levels of consumer harm which we have observed in the market, rather than to redistribute costs. It is our view that such action would be consistent with our statutory objective of protecting the interests of existing and future energy consumers, and our general duties to have regard to the interests of certain groups who are vulnerable and to consider protecting the interests of consumers via means other than the promotion of competition. As outlined above, this approach is also consistent with Ofgem's general objectives under the EU gas and electricity directive in terms of "contributing to the protection of vulnerable customers".

d) Stakeholder views (Impacts on engagement)

We received a number of responses on the issue of engagement and competition. Some of these responses referenced the possible negative impacts of the WHD safeguard tariff on consumer engagement. These responses were generally critical of our proposals, noting that they would lead to a number of unintended negative impacts on the market.

We received multiple responses from suppliers and intermediary organisations, proposing that the introduction of the WHD safeguard tariff would directly lead to a reduction in the incentive and likelihood of impacted customers to switch, stemming from:

- Price convergence and a reduction in differentials;
- Promoting a false message that the customer is protected;
- Customers not looking to switch to new suppliers not participating in WHD;
- Suppliers being limited in their service offerings due to the cap structure; and
- Suppliers fundamentally reducing the cost and subsequent quality of services.

In addition, one supplier argued that the headroom contained within the prepayment cap design would be insufficient to allow effective levels of competition below the cap. Several suppliers noted that they had observed reductions in switching in their prepayment market segments since the implementation of the prepayment safeguard tariff.

e) Our view (Impacts on engagement)

On the issue of consumer engagement, we accept that it is possible that our proposals could influence the incentives to switch for protected consumers. We also note and thank

suppliers for the early, but limited evidence from the prepayment safeguard tariff which they have provided in relation to this issue.

However, as noted within our impact assessment, the customers impacted from our proposals include some of the most disengaged in the market. Significant gains from switching have previously not been sufficient to encourage these customers to shop around and ensure they are not on expensive default tariffs. We therefore believe that immediate protection for these customers is warranted. We also note that due to the inclusion of headroom and the prepayment uplift, we expect gains from switching to still exist under the level of the cap, particularly for direct debit consumers.

We are continuing to tackle the issue of disengagement through a variety of other measures, including changes to default rules, consumer engagement trials and the new consumer database - a secure database of information about consumers which will be used to encourage engagement.

We also note that under the Standards of Conduct, suppliers are required to identify vulnerable consumers and treat them fairly. We would not condone any reductions in the quality of service to vulnerable customers, and will continue to monitor compliance with the Standards of Conduct closely.

2. Scope

Vulnerable consumer scope

a) Statutory consultation proposal

We proposed to extend the prepayment safeguard tariff already in place for prepayment customers to those consumers who receive WHD rebates. For reasons of practicality and speed, we proposed our measures apply to those who are in receipt of WHD (in either the Core Group or the Broader Group) rather than all consumers that are eligible. The WHD safeguard tariff would apply to recipients of the WHD in either the current or previous scheme year. Our proposal would provide price protection for around 1 million vulnerable consumers who are not eligible for the prepayment meter safeguard tariff. We also proposed that the safeguard applies to any evergreen or fixed-term default tariff offered by the supplier to eligible customers. All meters would be covered by the tariff.

b) Stakeholder views

We received considerable feedback on consumer scope from respondents. All supplier types, as well as various consumer groups and independent respondents offered views. Most respondents agreed that extending the prepayment safeguard tariff to those customers who receive WHD rebates was an appropriate measure to allow protections to be applied this winter. Respondents were generally supportive of this proxy as a quick way of targeting a set of vulnerable customers.

Responses were also generally supportive of including all default tariffs (rather than just SVTs) in order to provide protection for all customers that did not actively choose their tariff. Although several suppliers highlighted that our proposals did not consider some non-traditional business models, such as bundled services where evergreen tariffs that are not an SVT are bundled with telephone and broadband products, or other innovative products.

One supplier disputed the viability of the WHD as a proxy, highlighting that many customers on SVTs were transient, and that they had made an active choice to stay on an SVT while they looked for a fixed contract. This supplier noted that our proposals would achieve a more focused impact if they applied to those customers who had been on a SVT for 1 year or more.

However, many respondents reiterated our own views, stating that if Ofgem decided to introduce further price protections (beyond a WHD safeguard tariff) then these should be based on a more refined and comprehensive scope. These respondents agreed with our proposals, stating that using the WHD proxy was an appropriate measure in the short run, and that in the longer term the safeguard tariff should be expanded to include broader proxies for vulnerability. Responses also highlighted that the WHD only represents a portion of those who are likely to display tendencies of vulnerability. The specific points included:

- Various respondents highlighted that the Broader Group of the WHD is administered on a first come first served basis, and some WHD-eligible customers would miss out;
- Various respondents highlighted that there are likely to be many eligible customers (some of whom are in difficult financial circumstances) that will simply not have applied, and those who are vulnerable for reasons other than financial hardship would not be protected; and
- We received various recommendations from respondents on additional proxy measures we could include in any further expansions, such as WHD eligibility and Cold Weather Payments (CWP).

In addition, we received multiple queries looking to clarify how we define groups of customers in the proposed licence drafting and as a result, better understand which customers should receive the safeguard tariff protection. For instance, whether the safeguard tariff should apply to those customers who have already rolled onto a fixed term tariff, and a response seeking clarifications around the definition of an identified customer. We respond to these points below and within the implementation section later within this document.

c) Our view

We welcome the pragmatic response from many stakeholders, recognising that our proposals are intended to allow swift protections to be applied to customers this winter. In light of this, we have decided not to amend our initial approach and will extend the prepayment safeguard tariff already in place for prepayment customers to include those consumers who receive WHD rebates. We also confirm that innovative tariffs which have an evergreen component or any other evergreen tariffs are not exempted from the cap.

We also thank stakeholders for their responses outlining other criteria and proxies that could be used to target vulnerable customers if the safeguard tariff was extended. We agree that the WHD proxy only makes up a proportion of those customers who could be considered vulnerable, and these responses will feed into our future work on financial protections.

However, as we set out in the statutory consultation we are limited in the possible options which are available to us to allow protections for vulnerable customers this winter. To use anything other than those in receipt of WHD, such as anyone eligible for WHD, would require a parallel data matching exercise or an alternative approach which we do not think is possible to implement for this winter.

A WHD safeguard tariff for these consumers will provide protection for people who are already targeted as fuel-poor. We believe that protecting a smaller group sooner, then expanding the scope for next winter is better than waiting until we can protect a larger group.

We understand that the WHD is not a comprehensive proxy to protect vulnerable customers. We therefore expect suppliers to do all they can in addition to our protections to help those vulnerable customers who do not receive safeguard tariff protection, such as those customers on single fuel gas contracts.

In addition, several granular clarifications have been put through within the licence drafting to reflect responses. For instance, we have created a specific definition to clarify when a customer is identified in relation to both the WHD Core and the Broader Groups.

Supplier inclusion scope

a) Statutory consultation proposal

We proposed that our WHD safeguard tariff would apply to suppliers that are WHD Compulsory Suppliers, as data matching and protocols are already in place to identify these customers. Not all suppliers currently participate in the WHD scheme. The scheme applies to electricity suppliers and associated Scheme Gas Suppliers with over 250,000 domestic customers.⁸

b) Stakeholder views

The larger suppliers were generally critical that our proposals only apply the WHD safeguard tariff to existing WHD Compulsory Suppliers. Many noted that this would provide a competitive advantage to suppliers not obligated under the scheme, while one supplier highlighted that proposals would also unduly impact those suppliers with fewer single fuel gas customers. One supplier also proposed that our proposals would disproportionately impact challenger suppliers, as the larger suppliers would cross subsidise their costs without substantial tariff changes.

In addition, one supplier proposed that Ofgem should look to further data sharing arrangements with the Department for Work and Pensions (DWP) to allow for matching of eligible customers who are supplied by non-participating suppliers.

Some respondents did acknowledge that targeting existing WHD Compulsory Suppliers is the only realistic option on which to develop a WHD safeguard tariff by February 2018.

c) Our view

We have decided not to amend our proposed approach and will mandate that the safeguard tariff will apply to the suppliers that are deemed WHD Compulsory Suppliers. Again, we understand the concerns raised by suppliers, but are driven by our need to act quickly and provide protections to those who need it most this winter. Ideally our proposals would look to capture vulnerable customers from those non-obligated suppliers, but the need for quick protection has limited the possible scope. We also note that this initial cap is a temporary measure. We are already working on extending protections to a broader set of vulnerable customers next winter and, during the design of these protections, we will pay due consideration to the issue of supplier scope.

Timing

a) Statutory consultation proposal

This proposal is designed to provide temporary protection. As a result, we proposed the temporary safeguard tariff remains in place no longer than December 2019 or could be removed or amended earlier if we think it is appropriate to do so. For instance, if we introduced price protections for more vulnerable consumers next winter. The WHD safeguard tariff could be replaced by a wider vulnerable safeguard tariff, or, depending on the timelines, a government price cap for SVTs. We also proposed that the WHD safeguard tariff should apply to those consumers who are currently receiving WHD or received it in the previous scheme year.

⁸ This is as defined within the WHD regulations. An obligated supplier is a supplier with over 250,000 customer accounts, with dual fuel counting as two accounts. Some smaller suppliers also participate in the scheme voluntarily.

b) Stakeholder views

Respondents offered limited comment on the timing of the safeguard tariff, although two suppliers proposed that the policy approach embodied in the conditions requires review. One supplier explicitly proposed to change the sunset date, proposing that if any review resulted in proposals for policy measures to be applied beyond 30 September 2018, these should be subject to their own statutory consultation.

Suppliers did provide more substantive comments on how our proposals could be implemented in practice – we have addressed these below and within the implementation section. This included several suppliers who highlighted that there is a potential ambiguity in the definition of “current” and “preceding” scheme years, resulting from the fact that scheme years (SYs) and charge restriction periods (CRPs) are not aligned. While one supplier queried if a customer verified on or before 31 March, must be placed on the safeguard tariff by 30 April.

c) Our view

We have decided to provide minimal amendments to our licence drafting on the issues of timing. The WHD proxy will only protect a limited subset of vulnerable customers and we are already looking to expand our protections for vulnerable customers for winter 2018. We plan to review the temporary safeguard tariff ahead of next winter and therefore do not believe amendments to the current sunset clause are necessary. If we decide to expand the scope of the safeguard tariff, this would be subject to policy and statutory consultation, as well as an impact assessment.

The original policy intent was that customers would be eligible for the safeguard tariff if they were identified in the current or previous scheme year. We have provided amendments to the licence drafting to clarify what this means in practice.

We have also amended our approach to customers identified in Scheme Year 6 of the WHD. Customers identified in Scheme Year 6, will now remain Relevant 28AA Customers up until 31 March 2019. We are aware that this approach will lead to some customers in Scheme Year 6 receiving 14 months of protection instead of only two.

This approach will better reflect our overall policy intent of protecting vulnerable customers. This should ensure that customers do not suffer a poor customer journey and fall out of protection after only a short period on the safeguard tariff, including in the event that there is a delay in a new scheme year being designated in the Regulations. This approach also looks to ensure that those customers who are transient recipients of the WHD are not left unprotected during any period where their applications are reappraised for the consecutive scheme year. On other issues of timing:

- To clarify, our definition of identified means that customers can become no longer eligible for the safeguard tariff, if they were neither identified in the current or preceding scheme year. Our drafting amendments clarify this. Where a customer is no longer eligible for the safeguard tariff the supplier must comply with all usual requirements should it wish to make a change to the customer’s tariff; and
- We also confirm that the policy intent of our proposals is to tie tariff protection directly to the WHD scheme, which we are aware could evolve over time. Our policy position is that our safeguard tariff rules would automatically reflect changes to the WHD regulations from time to time (and we have amended the licence condition drafting to make this clear).

3. Methodology

Prepayment cap methodology

a) Statutory consultation proposal

We proposed to extend the prepayment safeguard tariff already in place for prepayment customers to those who receive WHD rebates. Our proposals would limit the amount a supplier can charge per unit of energy to the same level as the existing prepayment safeguard tariff. The safeguard limit will move in line with prepayment safeguard tariff when it is updated every April and October.

b) Stakeholder views

On protections for this winter (2017-18)

We received a number of responses from suppliers, consumer groups, third party consultancies and others on our proposals to use the framework of the prepayment cap for protections this winter. In the context of the WHD safeguard tariff, respondents were generally accepting of our proposals. Stakeholders understood the decision to use the prepayment methodology in order to ready protections as soon as possible. Although respondents highlighted that acceptance was on the basis that the cap will only be temporary.

Some respondents did however provide specific comment on issues related to the methodology for the WHD safeguard tariff. These points included:

- Several suppliers highlighted that the costs to serve Standard Credit customers were too low, because the prepayment safeguard tariff uses the payment method uplift for prepayment, rather than the higher uplift for Standard Credit calculated by the Competition and Markets Authority (CMA)⁹, while one consumer group said that using the prepayment uplift was acceptable to allow protections to be applied this winter, even though it said there were lower costs for supplying credit meter customers;
- Several larger suppliers disputed that sufficient headroom was in place within the CMA methodology to encourage switching below the cap; and
- A consultancy proposed that the cap was offering disproportionate protection to the biggest consumers and more limited protection to those with lower consumption.

In addition, a supplier said that in certain circumstances some customers' bills could increase. Where a supplier has a SVT with a higher fixed element (Standing Charge) than that of the prepayment cap, an eligible customer would likely be moved to the WHD safeguard tariff. However, this customer's SVT could have a significantly cheaper variable element (lower unit rate) than any safeguard tariff. Therefore, for customers who consume higher amounts of energy, it could be advantageous to stay on the SVT, as their consumption patterns lead this to being cheaper.

This supplier proposed to extend the rules to state that no charging element (i.e. Standing Charge or Unit rate(s)) can be higher than the suppliers published SVT. This would look to ensure that customers at all consumption rates would see benefits from the WHD safeguard tariff.

On future price protections

Respondents also provided comment on extending the current prepayment methodology for any future price protections. Respondents from different stakeholder groups provided

⁹ CMA Energy Market Investigation – Appendix 9.8
<https://www.gov.uk/cma-cases/energy-market-investigation#final-report>

challenge and evidence on their perceived shortfalls in this methodology, including comments on the benchmark, policy and wholesale costs.

c) *Our view*

We have decided not to amend our proposed approach and will limit the amount a supplier can charge per unit of energy to the same level as the existing prepayment safeguard tariff, which was set by the CMA as part of its energy market investigation. We think that the need for speedy protection outweighs any issues when applying the prepayment methodology directly to certain vulnerable consumers.

On issues around uplifts and headroom, we have not altered the prepayment methodology. The prepayment methodology includes the cost to the supplier of serving prepayment customers, calculated from the cost of a consumer paying by direct debit, plus a £63 uplift to reflect the additional costs of prepayment. Our WHD safeguard tariff will apply to a mixture of customers paying by both direct debit and standard credit – the average cost to serve will therefore be a blend of the cost to serve for direct debit (£0 uplift) and standard credit (£100 uplift according to the CMA’s analysis).

The combination of headroom and prepayment uplift will help to reduce the risk that suppliers could end up making a loss on average from supplying consumers on the safeguard tariff. The safeguard tariff will always be an approximation to some extent, due to the complexities of designing a benchmark that reflects efficient costs and the fact that indices will not precisely track actual cost changes.

We have also considered the proposal to amend the cap to limit each specific charging element to be no higher than the corresponding WHD customer’s SVT. We believe this solution could cause undue complications during implementation. We also note that a provision currently exists within the cap framework to allow for an alternative compliance assessment in specific circumstances. We encourage suppliers to consider applying to request a direction where relevant.

We thank suppliers for their more granular critiques relating to the prepayment methodology. These submissions will help form our view on the methodology for any future financial protections.

Other methodologies

a) *Statutory consultation proposal*

Within the technical document¹⁰ which accompanied our statutory consultation letter, we considered alternative methodologies. For various reasons outlined within our technical document, we discounted the use of these options, deciding that the prepayment methodology best fit the objectives and circumstances.

b) *Stakeholder feedback*

We received a number of responses from stakeholders with suggestions on other methodologies to consider for future price protections, after the implementation of the WHD safeguard tariff. There were also a significant number of submissions proposing that Ofgem conduct a review of the prepayment methodology.

One supplier highlighted that any further caps should be based on an entirely new benchmark formed from a bottom up cost assessment, while another supplier proposed the use of a relative cap. We also received one contribution from a consultancy, which proposed that the cap should be based on capping of the standing charge.

¹⁰ Technical Document

https://www.ofgem.gov.uk/system/files/docs/2017/10/financial_protections_for_vulnerable_consumers_-_technical_document.pdf

c) *Our view*

We are grateful for the proposed methodology changes and alternatives which were submitted. On those alternatives which we have already considered, we refer respondents to our technical document as our views have not changed on the viability of these options.¹¹ We will issue a consultation later this month on our expansion of price protections for next winter (2018-19). We thank suppliers for their submissions related to possible methodologies for this extension, and will consider these in due course.

The level of the prepayment safeguard tariff will be updated on 1 April 2018, with the new level announced on 7 February 2018. The level will be revised according to the methodology set out in standard condition 28A ("SLC 28A") of the gas and electricity supply licences. Ofgem does not have the power to make changes to the CMA's price cap methodology. If such changes were justified, for example through evidence of a material change in circumstances, this would be a matter for the CMA through a variation to the Price Cap Order.

4. Implementation

Statutory consultation proposal

In October we published draft modifications to the electricity and gas supply licences required to implement our proposals. Within these we highlighted that the WHD safeguard tariff is intended as a short-term measure and we would take a proportionate approach to monitoring and evaluation, recognising that, over a short period, the potential for indirect impacts may be smaller compared to a remedy which is in place for longer.

Communication

a) *Stakeholder feedback*

We received varied responses on how communications related to the safeguard tariff should be shared with consumers. Various consumer groups proposed that Ofgem and suppliers publicise the implementation of the safeguard tariff as widely as possible. One consumer group also noted the importance of using sensitive language in any correspondence.

In addition, we received multiple responses from industry groups and suppliers outlining their concerns and seeking clarifications around communications to customers. These included:

- That in certain circumstances, suppliers would be required to notify customers that their tariff was changing multiple times in short succession; and
- Clarifications on whether Tariff Information Labels should be aligned to ensure the rates being provided are that of the safeguard tariff rather than the SVT at the point the contract comes to an end.

b) *Our view*

We appreciate supplier concerns about the risk that poorly communicating any tariff changes to customers could potentially lead to confusion and a poor customer journey. As most suppliers know, we are now prioritising reforms to the rules relating to supplier-customer communications. Our intent is to remove unnecessary prescriptive rules from the supply licences and rely more on principles that place responsibility more firmly on suppliers to ensure consumers are getting what they need from supplier-customer communications.

¹¹ Technical Document – Chapter 3

https://www.ofgem.gov.uk/system/files/docs/2017/10/financial_protections_for_vulnerable_consumers_-_technical_document.pdf

Consistent with this intent, we strongly encourage suppliers to think carefully about how – within the existing regulatory framework – they could ensure upcoming communications make consumers aware of the protection they will be receiving, without unnecessarily confusing the customer.

On the issues of notifying customers that their tariff will be changing multiple times in short succession, we encourage suppliers to provide such information as clearly as possible in a timely manner. We are aware that consumers could receive multiple notifications, but believe the benefits of protection from the WHD safeguard tariff, even for a limited time, justify this. We also note that a supplier is not obliged to return a customer to their previous default tariff, and would be free to engage with this customer and enable them to make an informed choice about any better value deals they may offer.

We also note that suppliers have sought other specific clarifications, such as the information displayed on tariff information labels. We highlight that unless overtly specified, our proposals are not intended to change any existing requirements for suppliers.

Use of data

a) Stakeholder feedback

One supplier raised multiple queries relating to data sharing. These included asking Ofgem to confirm that current WHD regulations and data protection law permit the use of, and sharing of, supplier customer data and the Department of Work and Pensions' data, to facilitate the implementation of the safeguard tariff.

b) Our view

On the issue of the use of data, we confirm that Ofgem has liaised with government authorities, and has been working on legislative and data protection issues with DWP and the Department for Business Energy and Industrial Strategy. Following these discussions, we consider that the way suppliers are required to identify customers for the purposes of the safeguard tariff is consistent with the WHD regulations. Further, our licence modifications place a legal requirement on suppliers to ensure that relevant groups of vulnerable customers are identified and benefit from the safeguard tariff rules. The processing of information for the purposes of the safeguard tariff rules is therefore being carried out pursuant to a legal requirement designed to protect the interests of relevant consumers.

Compliance

a) Stakeholder feedback

As part of our compliance monitoring, we proposed to cross-check safeguard tariff compliance with the number of WHD rebates paid. Multiple suppliers raised concerns with this approach. It was highlighted that the comparison will need to take account of various factors, including: 2016-17 and 2017-18 data sets; Standard Variable Tariff versus Non-Standard Variable Tariff data; losses and change of tenancy; deceased customers; and WHD payments being cumulative at end of scheme year versus cap being ongoing through the year and fluctuating.

Multiple suppliers also queried whether customers should be moved onto the safeguard tariff in situations where this might be considered less advantageous, such as if the customer preferred the security of a fixed term tariff.

In addition, we received a range of specific queries around implementation of the safeguard tariff in practice, primarily relating to customer inclusion, including:

- Whether the safeguard tariff would only apply to default fixed term contracts for a Relevant 28AA Customer;

- That some broader group applicants for certain suppliers cannot be identified until the latter portion of each scheme year, as prior to this they have not been confirmed as successful applicants;
- If a customer received WHD in 2016-17, but failed the random audit 2017-18 and was rejected for WHD, should they still receive the safeguard tariff as a preceding year recipient;
- Whether Ofgem would be publishing direction for the Assumed Consumption Splits (ACS) for multi register tariffs;
- When a customer has to be moved from the safeguard tariff back to the SVT if they no longer qualify for WHD; and
- Whether the safeguard tariff should be applied retrospectively to ensure that customers do not exceed the Relevant Maximum Charge at all times during the Charge Restriction Period.

b) Our view

On our plans to cross-check safeguard tariff compliance with the number of WHD rebates paid, we understand that these two metrics are likely to differ. It was always our intention to use these metrics only as an initial cross-check to identify potential issues to investigate further.

On the issue of moving customers onto the safeguard tariff in situations where this might be considered less advantageous, we note that the safeguard tariff is a cap on what a consumer can be charged, not a requirement to move consumers to a specific tariff. Consumers can be kept on their existing default tariff contract if this is advantageous given their specific circumstances. We note that all suppliers can apply for a direction to undertake an alternative compliance assessment. Suppliers should be working to identify where this is the case and ensure that these customers are fairly treated and their bills are not increased.

On the requirements for reasonable estimation of the average consumption split for Multi-Register Tariffs, we have published a statement in Appendix 2 below to confirm the approach which must be taken by named Obligated Licensees.

We can confirm that our proposals would only apply to default fixed term contracts for those customers who already are, or become, a Relevant 28AA Customer. And we also confirm customers should receive the safeguard tariff in 2017-18 if they received the WHD in 2016-17, regardless of their WHD status in 2017-18. We have provided further clarifications within the licence drafting on WHD inclusion. We have also set out some further clarifications on queries below:

- On the issue of retrospective charging, we confirm that suppliers do not have to comply retrospectively and have clarified SLC 28AA.1 accordingly;
- On tariff compliance, we confirm that there is no requirement to create a new specific safeguard tariff for a consumer, where the tariff the customer is on complies with the prepayment charge restriction already; and
- On the issue of customers who have previously received the WHD from a different obligated supplier, we confirm that only customers identified by their current supplier should be subject to protection.

Finally, we note that a limited number of suppliers have raised concerns that some customers are not confirmed recipients of the WHD until the latter part of a specific scheme year. We refer suppliers to our licence drafting, where we explain that the safeguard tariff

should be applied following a customer being identified to receive the WHD, not when the customer actually receives the WHD rebate.

We expect suppliers to bring these price protections in for WHD customers as soon as possible. Most recipients will be Core Group customers and suppliers should be able to swiftly identify these customers to apply the safeguard tariff. For Broader Group WHD customers, where a supplier is already able to identify a customer as in receipt of WHD (for the current or previous scheme year) they must make all the necessary arrangements now, so the customer can receive this protection from 2 February 2018.

Customer identification timelines (30 day limit)

a) Stakeholder feedback

We received multiple queries from suppliers and an industry body highlighting concerns around the requirement to move a customer onto the safeguard tariff within 30 days once they had been identified.

Some suppliers highlighted that this would be problematic both practically and as it could potentially conflict with certain licence requirements, such as the obligation to provide 42-49 days to terminate a contract, and the obligation to inform a customer of any disadvantageous Unilateral Variation 30 days prior to its commencement (SLC 23.3).

Alternatives were proposed such as:

- Increasing the 30 day provision requirement to 45 or 60 days;
- Requiring the safeguard tariff to be applied as soon as reasonably practicable after identification;
- Removing the 30 day provision entirely; or
- Changing the disadvantageous Unilateral Variation notice period from 30 days to 15 days (when a change relates to the safeguard tariff).

One large supplier also proposed amendments to definitions of applicable customers (in the draft licence conditions) to clarify what constitutes a previously or already identified customer.

b) Our view

We have made several minor changes to better express the policy intent of our proposals, and to ensure that suppliers can adequately comply with the WHD safeguard tariff, alongside their other licence requirements. We have decided to amend the licence to increase the time for suppliers to comply with the safeguard tariff to 50 days after identification.

In terms of customer impacts, customers who received the WHD in 2016-17 would not be affected by this change, and would receive their safeguard tariff protection straight away once the licence condition goes live. This is equivalent to the 910,000 figure from our impact assessment for the number of customers benefitting, given that this figure was based on one scheme year. Furthermore, the vast majority of new WHD Core Group customers for 2017-18 should also receive protection straight away, as data matching for these customers should already have taken place. There could be a limited impact on any Broader Group customers who are identified after the licence condition goes live, as they could potentially have to wait an additional 20 days for their protection.

We believe this amendment will allow suppliers sufficient time to prepare to apply the safeguard tariff, and provide them appropriate flexibility on which route they take to do this. We believe that where a supplier is not required to give additional notice on the issues above to eligible customers, we would not expect this supplier to require the full 50 days to

implement protections. We expect suppliers to implement the safeguard tariff as quickly as possible.

Other interactions with existing licence requirements

a) Stakeholder feedback

Some suppliers raised possible conflicts with additional licence rules such as SLC 22C.9 (which requires that fixed term tariff prices cannot go up) and the implementation of “informed choices”.

b) Our view

On the proposed conflict with our principle of informed choices, we note that the WHD safeguard tariff is not intended to stop a consumer from making an active choice to be transferred to a different product. Consumers are still free to choose and transfer to tariffs as they see fit. But we expect suppliers to fulfil their responsibilities and ensure all customers receive suitable information on tariff offerings that enables them to make an informed choice.

We recognise that suppliers may have some customers on default fixed term contracts that are subject to SLC 22C.9. As a result of the constraints in that existing licence condition, suppliers are prohibited from increasing charges or unilaterally varying any other terms and conditions in any way which is to the disadvantage of those customers. For example, should the Relevant Maximum Charge be recalculated and increase during the lifetime of the condition, suppliers would be unable to increase their charges.

Going forward, suppliers will need to take SLC 22C.9 into account when deciding what type of default contract to use in future. While this is the position that we are taking in the context of these temporary measures, we will carefully consider any representations that are received when we consult on our proposals to expand price protections in due course.

5. Impact assessment

a) Statutory consultation proposal

Within the technical annex of our October statutory consultation, we assessed the potential impacts of the safeguard tariff measure for consumers, suppliers and wider areas of the economy. Based on quantitative and qualitative analysis, we assessed how likely our proposals are to mitigate the detriment experienced by vulnerable consumers, whilst meeting our other objectives to act quickly, complement our wider reforms and minimise market distortion.

b) Stakeholder feedback

Several suppliers and independent respondents commented on our impact assessment. One supplier contested our views on the implementation and administration costs which suppliers would bear in order to implement the safeguard tariff, noting that that the investment in IT systems would cost “several £00ks” to deliver. Another supplier proposed that our assessment was heavily reliant on the CMA benchmark analysis, which they did not believe was representative of an efficient bill.

One consultant also provided comment on multiple areas. They proposed that we had overstated our assessment of savings for vulnerable customers, because vulnerable customers are more likely to be low consumption households. In addition, this respondent highlighted problems with some of the detail in our assessment, including inconsistencies within references, the accuracy of assessment of carbon emissions, and our considerations of a Mandated Tariff Design, which we are grateful for.

c) Our view

We have decided not to amend our initial impact assessment in light of responses. We are grateful for comments on this portion of the consultation. We accept that changes to IT systems will have associated costs. But we would propose that there would unlikely be material incremental costs, such systems or similar should have already been implemented anyway for many obligated suppliers, in order to comply with the prepayment cap, and would expect this to lessen direct impacts.

We also note the possibility that vulnerable customers may be more likely to be within lower consumption brackets than the TDCV, and this could lead to an overestimation of the available savings within our impact assessment. However, we note that consumption levels for all customers, including those considered vulnerable, are likely to vary considerably. Due to time requirements and a shortfall in consumption data specifically for vulnerable WHD customers, we have not and would have not been able to factor this into our analysis.

Appendix 2 - Statement on Assumed Consumption Split

For the purposes of paragraph 28AA.6 of standard condition 28AA of the electricity supply licence ('SLC 28AA'), the Authority has decided that each of the Obligated Licensees listed below are required to adopt the same Assumed Consumption Split in accordance with sub-paragraph 28AA.6(a) of SLC 28AA.

This means that, in respect of the first Charge Restriction Period for the purposes of SLC 28AA, each of these Obligated Licensees are required to adopt the same Assumed Consumption Split as they have adopted for the purposes of the corresponding Charge Restriction Period that applies for the purposes of standard condition 28A of the electricity supply licence ('the Prepayment Charge Restriction').

List of Obligated Licensees for the purposes of paragraph 28AA.6(a) of SLC 28AA

1. British Gas Trading Limited
2. Co-Operative Energy Limited
3. E.ON Energy Solutions Limited
4. Economy Energy Trading Limited
5. Economy Energy Supply Limited
6. EDF Energy Customers Plc
7. Electricity Plus Supply Limited
8. Extra Energy Supply Limited
9. First Utility Limited
10. Flow Energy Limited
11. Npower Limited
12. Npower Northern Supply Limited
13. Npower Northern Limited
14. Npower Yorkshire Supply Limited
15. Npower Yorkshire Limited
16. Npower Direct Limited
17. OVO Electricity Limited
18. SSE Energy Supply Limited
19. Scottish Power Energy Retail Limited
20. Spark Energy Supply Limited
21. Spark Energy Limited
22. Utilita Energy Limited

If any Obligated Licensee considers that they have any Multi-Register Tariffs which are not subject to the Assumed Consumption Split adopted for the purposes of the Prepayment Charge Restriction they should inform Ofgem via CDconsultations@ofgem.gov.uk.