

**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**

**WHEREAS:**

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")<sup>1</sup> gives notice ("Notice") that it proposes to modify the standard conditions of the electricity supply licence by introducing standard condition 28AB.
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 on preparatory steps to facilitate data-matching for an extended vulnerable 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 28AB in schedule 2 to this Notice. In summary, the main effects of the proposals are to require suppliers to undertake preparatory steps to facilitate Data-Matching which will allow them to identify domestic customers for the purposes of an extended vulnerable safeguard tariff and to set out the obligations to complete this Data-Matching exercise at a later date.
5. The envisaged text for the proposed modification to introduce standard condition 28AB is set out in schedule 1 to this Notice.
6. A copy of the proposed modification/modifications 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 [foi@ofgem.gov.uk](mailto:foi@ofgem.gov.uk).
7. Any representations with respect to the proposed licence modification/modifications must be made by 5pm on **31 May 2018** to: The Retail Price Regulation Team, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email to [RetailPriceRegulation@ofgem.gov.uk](mailto:RetailPriceRegulation@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.

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<sup>1</sup> The terms "the Authority", "we" and "us" are used interchangeably in this document.

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**Anna Rossington**  
**Associate Partner, Retail Price Protection**  
**Duly authorised on behalf of the**  
**Gas and Electricity Markets Authority**

**3 May 2018**

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

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

### **Condition 28AB. Preparatory steps to facilitate Data-Matching and completing Data-Matching for the purpose of charging restrictions for certain Domestic Customers**

#### **Part 1: Preparatory steps to facilitate Data-Matching**

28AB.1: For the purposes of facilitating Data-Matching at a later date, the licensee must comply with all of the following requirements within the timescale set out in paragraph 28AB.2:

- (a) the licensee must ensure that it has the operational capability in place (including in relation to staffing and IT systems), in order to easily collate Relevant Information;
- (b) the licensee must collate Relevant Information about each of its Domestic Customers in a manner which:
  - (i) is complete and accurate;
  - (ii) complies with any requirements as to format or medium as may be specified by the Relevant Secretary of State in Writing; and
  - (iii) complies at all times with any data protection legislation and privacy laws, including the Data Protection Act 1998 and the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data);
- (c) the licensee must comply with all steps (including but not limited to conducting impact assessments relating to compliance with data protection and privacy laws) that the Relevant Secretary of State considers are reasonably necessary as a condition to entering into an data sharing agreement with the licensee in respect of Data-Matching; and

- (d) the licensee must take all reasonable steps to enter into a data sharing agreement with the Relevant Secretary of State in respect of Data-Matching.
- 28AB.2 The licensee must comply with and complete all of the requirements set out in paragraph 28AB.1 by 30 September 2018, unless the Authority instructs the licensee not to do so (or to do so by a later date) by publishing a statement in Writing.
- 28AB.3 Where the Authority has published a statement in Writing pursuant to paragraph 28AB.2, the licensee must comply with Part 1 of this condition by:
- (a) the date specified in that statement; or
  - (b) where applicable, a future date specified in any further statement in Writing the Authority may publish at a later date.

**Part 2: Data-Matching**

- 28AB.4 Subject to paragraph 28AB.5, the licensee must conduct and complete Data-Matching within 56 days after the Authority's decision to implement a restriction on Charges for Supply Activities in relation to Relevant Domestic Customers is published in accordance with section 23(7)(a) of the Electricity Act 1989, unless the Authority instructs the licensee not to do so (or to do so at a later date) by publishing a statement in Writing.
- 28AB.5 This paragraph applies where the licensee has complied with the steps described in bullet points (a) and (b) of the definition of Data-Matching, but is unable to comply with bullet point (c) of that definition because the Relevant Secretary of State has not, within the Requisite Period, provided information which indicated whether or not each Eligible Domestic Customer is in receipt of Relevant Benefits.
- 28AB.6 Where paragraph 28AB.5 applies, the licensee:
- (a) is not to be considered as breaching the step described in bullet point (c) of the definition of Data-Matching;
  - (b) must, as soon as practicable after the circumstances described in paragraph 28AB.5 apply, inform the Authority and the Relevant Secretary of State in Writing that it has not received information which indicates whether or not each Eligible Domestic Customer is in receipt of Relevant Benefits, and ask the Relevant Secretary of State to provide that information.

28AB.7 Where the Authority has published a statement in Writing pursuant to paragraph 28AB.4, the licensee must comply with Part 2 of this condition on and from:

- (a) the date specified in that statement; or
- (b) where applicable, a future date specified in any further statement in Writing the Authority may publish at a later date.

28AB.8 Part 2 of this condition will only take effect on and from the date which is immediately after the day the Authority publishes a decision to implement a restriction on Charges for Supply Activities in relation to Relevant Domestic Customers in accordance with section 23(7)(a) of the Electricity Act 1989.

Exemption for new entrants and small suppliers

28AB.9 Subject to paragraph 28AB.10, the licensee is not required to comply with this Condition if it satisfies at least one of the following conditions (the "Relevant Conditions"):

- (a) it had less than 50,000 Domestic Customers on 31<sup>st</sup> March 2018; or
- (b) it has been active in the market for less than 3 years as of 31<sup>st</sup> December 2018.

28AB.10 Paragraph 28AB.9 does not apply where the licensee has an Affiliate Licensee which does not satisfy one of the Relevant Conditions.

### **Part 3 Suppliers which benefit from the exemption in 28AB.9**

28AB.11 Throughout the First Relevant Period the Exempt Licensee must ensure that it promotes the availability of Relevant Tariffs to Domestic Customers, including (but not limited to) by:

- (a) seeking appropriate opportunities during the course of its interactions with Domestic Customers to inform them about the availability of such tariffs; and
- (b) publishing information about the availability of such tariffs on its website in a prominent place.

28AB.12 Where, within the First Relevant Period, a Domestic Customer requests that an Exempt Licensee supplies them via a Relevant Tariff, the Exempt Licensee must, within the Second Relevant Period, either:

- (a) deem the Domestic Customer to be a Relevant Domestic Customer; or
- (b) identify whether that Domestic Customer is a Relevant Domestic Customer by taking the following steps:

- (i) obtaining information from that Domestic Customer (with their express consent) about one or more Relevant Benefits they claim to be receiving; and
- (ii) in a manner compliant with data protection laws verify whether that Domestic Customer is in fact in receipt of one or more Relevant Benefits; and
- (iii) must, if the Exempt Licensee refuses to supply the Domestic Customer via a Relevant Tariff because of the outcome of that verification, keep for a period of 5 years a record of the outcome of the verification and the reasons why the Exempt Licensee reached the view that the Domestic Customer was not in receipt of one or more Relevant Benefits.

28AB.13 Part 3 of this condition will only take effect on and from the date the Authority publishes a decision to implement a restriction on Charges for Supply Activities in relation to Relevant Domestic Customers in accordance with section 23(7)(a) of the Electricity Act 1989.

#### **Termination of condition**

28AB.14 This condition will cease to have effect on a date specified by the Authority by publishing a statement in Writing.

#### **Definitions for Part 1, Part 2 and Part 3**

28AB.15 For the purposes of this condition:

**'Data-Matching'** means all of:

- (a) reviewing and updating the Relevant Information previously collated pursuant to paragraph 28AB.1(b);
- (b) disclosing the Relevant Information which relates to Eligible Domestic Customers to the Relevant Secretary of State, in such a manner which complies at all times with:
  - (i) the agreement entered into between the licensee and the Relevant Secretary of State pursuant to paragraph 28AB.1(d); and
  - (ii) any data protection legislation and privacy laws, including the Data Protection Act 1998 and the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data);

(c) receiving information from the Relevant Secretary of State which indicates whether or not each Eligible Domestic Customer is in receipt of Relevant Benefits;

**'Eligible Domestic Customers'** means Domestic Customers which meet all of the following criteria:

(a) they do not benefit from a restriction on charges provided for by standard condition 28A; and

(b) they are supplied via an Evergreen Supply Contract, Deemed Contract or 28AA Default Fixed Term Contract.

**'Exempted Licensee'** means a licensee that benefits from the exemption provided for in paragraph 28AB.8.

**'First Relevant Period'** means a period of 51 days commencing with the day after the Authority publishes a decision to implement a restriction on Charges for Supply Activities in relation to Relevant Domestic Customers in accordance with section 23(7)(a) of the Electricity Act 1989.

**'Relevant Benefits'** means the welfare benefits which the Authority and the Relevant Secretary of State agree are relevant and which are published from time to time.;

**'Relevant Domestic Customers'** means Domestic Customers:

(a) with respect to whom the licensee may be required to comply with a restriction on Charges for Supply Activities should the Relevant Secretary of State indicate that such Domestic Customer is in receipt of Relevant Benefits pursuant to part (c) of the definition of Data-Matching set out at paragraph 28AB.8 or where Part 3 applies; and

(b) which, as at the date the licensee received information from the Relevant Secretary of State indicating that the Domestic Customer is in receipt of Relevant Benefits and the point at which the licensee is required to comply with a restriction on Charges for Supply Activities, satisfies the criteria contained in the definition of Eligible Domestic Customer.

**'Relevant Information'** means the information the Relevant Secretary of State may specify in Writing;

**'Relevant Secretary of State'** means the Secretary of State for Work and Pensions and any Minister within that Secretary of State's department or such other Secretary of State or Minister from time to time which has responsibilities for matters relating to pensions and welfare benefits;

**'Relevant Tariff'** means a Tariff which complies with a restriction on Charges for Supply Activities for Relevant Domestic Customers;

**'Requisite Period'** means the 56 day time period which applies by virtue of paragraph 28AB.4, including in circumstances where the licensee is instructed to comply with that 56 day time period at a later date on the basis of a statement in Writing published by the Authority;

**'Second Relevant Period'** means a period of 56 days commencing with the day after the Authority publishes a decision to implement a restriction on Charges for Supply Activities in relation to Relevant Domestic Customers in accordance with section 23(7)(a) of the Electricity Act 1989.

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

### **Condition 28AB. Preparatory steps to facilitate Data-Matching and completing Data-Matching for the purpose of charging restrictions for certain Domestic Customers**

#### **Overarching policy intent**

The Authority's overall policy intention is to extend price protection to a broader group of disengaged vulnerable customers. With this licence condition, we are requiring large and medium-sized suppliers to undertake preparatory steps to facilitate a Data-Matching exercise with the Department for Work and Pensions (DWP) that will allow suppliers to identify domestic customers for the purposes of this extended price protection. We are also setting an obligation for suppliers to complete this Data-Matching exercise at a future date when the decision is made to extend price protection. This Data-Matching exercise will not apply to the smallest or least mature suppliers and instead these exempt suppliers will be required to manually process requests from their customers claiming eligibility for price protection under the extended vulnerable safeguard tariff during the period when the large and medium-sized suppliers are running the Data-Matching exercise.

#### **Part 1: Preparatory steps to facilitate Data-Matching**

##### **28AB.1**

The intended effect of this clause is that suppliers take all necessary preparatory steps to facilitate an efficient running of a Data-Matching exercise at a later date. This includes putting in place the necessary operational capability, gathering and recording accurate data in an appropriate format and medium which complies with data protection and privacy laws, and taking other steps required by the Department for Work and Pensions (DWP) to prepare for data-matching. This clause is also intended to ensure that suppliers conduct impact assessments where necessary and take all reasonable steps to enter into a contractual agreement with DWP.

##### **28AB.2**

The intended effect of this clause is to set a timeframe within which suppliers must complete the preparatory steps set out in the preceding clause. This clause also gives the Authority the power to set an alternative timetable for the completion of the preparatory steps if this is deemed necessary by publishing a Statement in Writing or to instruct the licensee not to complete the requirements set out in clause 28AB.1.

##### **28AB.3**

The intended effect of this clause is to establish the parameters that will apply to any Statement in Writing the Authority may publish in relation to clause 28AB.2 to determine an alternative timeframe for the completion of the preparatory steps.

#### **Part 2: Data-Matching**

##### **28AB.4**

The intended effect of this clause is to ensure that the actual Data-Matching exercise is conducted and completed within a specified timeframe commencing on the day after the Authority has taken the decision to extend the vulnerable safeguard tariff. This clause also gives the Authority the power to set an alternative timetable for the completion of the Data-Matching exercise via publishing a Statement in Writing if this is deemed necessary.

##### **28AB.5**

The intended effect of this clause is to give the Authority the power to allow suppliers additional time to complete the Data-Matching exercise if DWP experience unforeseen delays with completing the Data-Matching process that are outside of suppliers' control. This means that where there is a delay on DWP's part that is outside of the supplier's control, the supplier will not be found to be in breach of their licence obligations.

#### 28AB.6

The intended effect of this clause is to clarify that the licensee will not be considered to be in breach of their licence obligations in certain circumstances where clause 28AB.5 applies. It is also intended to require the licensee to inform the Authority and the Secretary of State in writing when they have not received the data at the end of the Data-Matching exercise, i.e. within the Requisite Period.

#### 28AB.7

The intended effect of this clause is to establish the parameters that will apply to any Statement in Writing the Authority may publish in relation to clause 28AB.4 to determine an alternative timeframe for the completion of the Data-Matching exercise.

#### 28AB.8

The intended effect of this clause is to confirm that suppliers will only be required to conduct the actual Data-Matching exercise described in Part 2 of this condition commencing on the day after the Authority has made a decision to extend the vulnerable safeguard tariff.

### **Exemption for new entrants and small suppliers**

#### 28AB.9

The intended effect of this clause is to exclude the preceding licence conditions from applying to certain suppliers who have a specified number of consumers or who have been operating in the market for a specified total period.

#### 28AB.10

The intended effect of this clause is to ensure that Affiliate suppliers are covered by the Data-Matching provisions in Parts 1 and 2 of the condition.

### **Part 3 Suppliers which benefit from the exemption in 28AB.9**

#### 28AB.11

The intended effect of this clause is to ensure that the smallest suppliers who are not conducting the Data-Matching exercise raise awareness of their customers' ability to claim eligibility for placement on an extended vulnerable safeguard tariff.

#### 28AB.12

The intended effect of this clause is to require suppliers that benefit from the exemption in 28AB.9 to manually process requests from their customers claiming eligibility for price protection under the extended vulnerable safeguard tariff within a specified time period. This clause requires that they do this by either deeming their customer as being eligible for price protection or by undertaking a verification exercise using information obtained from the customer. This clause also requires suppliers to keep records for a specified period where they determine that a customer claiming eligibility is not in fact eligible.

#### 28AB.13

The intended effect of this clause is to confirm that suppliers will only be required to conduct the actual Data-Matching exercise described in Part 3 of this condition commencing on the day after the Authority has made a decision to extend the vulnerable safeguard tariff.

### **Termination of condition**

#### 28AB.14

The intended effect of this clause is to provide the Authority with the power to terminate the licence condition if necessary.

### **Definitions for Part 1, Part 2 and Part 3**

The intended effect of this clause is to define key terms used in the preceding clauses.

#### **'Data-Matching'**

The intended effect of this definition is to provide clarity on what is meant by the Data-Matching exercise including what activities fall within the scope of the exercise.

#### **'Eligible Domestic Customers'**

The intended effect of this definition is to categorise those customers who do not already benefit from the prepayment safeguard tariff and who are on a default deal as being eligible for price protection under the extended vulnerable safeguard tariff, subject to their being in receipt of one or more relevant welfare benefits.

#### **'Exempted Licensee'**

The intended effect of this definition is to categorise those suppliers who are not obligated to take part in the Data-Matching exercise.

#### **'First Relevant Period'**

The intended effect of this definition is to explain that the time during which a domestic customer can request to be placed on the extended vulnerable safeguard tariff relates to 51 days after the Authority has made a decision to extend price protection.

#### **'Relevant Benefits'**

The intended effect of this definition is to explain that the list of welfare benefits that will be used to identify Domestic Customers as being eligible for price protection will be agreed between the Authority and DWP and will be published from time to time.

#### **'Relevant Domestic Customers'**

The intended effect of this definition is to categorise those customers who do not already benefit from the prepayment safeguard tariff and who are on a default deal and who are in receipt of a relevant welfare benefit as being eligible for price protection under the extended vulnerable safeguard tariff.

#### **'Relevant Information'**

The intended effect of this definition is to describe information, such as customer name and address details that the licensee may need to collate and share with DWP to complete the Data-Matching exercise.

#### **'Relevant Secretary of State'**

The intended effect of this definition is to define the Relevant Secretary of State as the Secretary of State for Work and Pensions or another Minister in the government department responsible for administering welfare benefits.

#### **'Relevant Tariff'**

The intended effect of this definition is to categorise the types of tariff that can be included under the extended vulnerable safeguard tariff.

#### **'Requisite Period'**

The intended effect of this definition is to clarify that the 56 day time period which applies by virtue of paragraph 28AB.4 could commence on the day after the Authority publishes a decision to implement a restriction on Charges for Supply Activities in relation to Relevant Domestic Customers or on a later date on the basis of a statement in Writing published by the Authority

#### **'Second Relevant Period'**

The intended effect of this definition is to set the timeframe within which a supplier that's conducting manual Data-Matching must either deem a customer as being eligible or verify a customer's eligibility for protection under an extended vulnerable safeguard tariff.