

# Consultation

## Supplier Guaranteed Standards of Performance for Switching: Consultation on introduction of further Guaranteed Standards and Automatic Compensation

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This paper sets out how Ofgem intends to introduce the three remaining switching related Supplier Guaranteed Standards of Performance from our June 2018 consultation. These revised Guaranteed Standards will ensure that suppliers provide compensation when domestic customer switches are delayed, when customers are erroneously switched, or when the issuance of final bills is delayed. This paper also contains a draft Statutory Instrument to implement these Guaranteed Standards, and forms the statutory consultation on that Statutory Instrument.

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

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## Foreword

Today, we are consulting on new Guaranteed Standards for switching energy supplier.

This is the final stage in our work to set minimum standards of service when consumers switch to or away from a supplier – and to compensate customers if they are not met.

The vast majority of switches proceed without a hitch. However, in 2018 we said that too many customers suffer hassle when trying to switch – whether it’s a delay to the switch itself, or getting a final bill or credit balance refunded. Even worse, too many customers are still being erroneously switched, or experience delays in getting their supply restored after an erroneous switch. These problems can make consumers disengaged from the market, and miss out on the benefits of switching.

Our Guaranteed Standards are intended to help solve this problem. Customers can be confident that if their switch does go wrong, they will receive redress for the inconvenience suffered. Suppliers will have a stronger financial incentive to make sure that they get the switch right first time.

In May 2019, we introduced the first tranche of these Guaranteed Standards, meaning that consumers are now being compensated when their suppliers fail to restore their supply after an erroneous switch, or to refund a credit balance after a switch. In May and June 2019, more than £140,000 was returned to consumers.

Back in 2018, we decided to take more time to develop Guaranteed Standards for delayed switches, for those suppliers who cause erroneous switches, and for delays in issuing final bills. We’ve worked with suppliers to make sure that these Guaranteed Standards are targeted at those who are responsible for things going wrong. The Guaranteed Standards proposed in this consultation are the result of that work.

These new Guaranteed Standards complete our work to introduce switching compensation, and we’re confident that they will incentivise suppliers to look after their customers and penalise those who get things wrong. As we said last year, this will make the market work better for everyone.

This is just one part of our work to make retail markets work better for consumers. When combined with our work on Faster and More Reliable Switching, to be introduced in 2021, it will mean that consumers will be able to switch quickly and confidently, and to be reassured that they will be compensated if problems do occur.

I look forward to working with you as we implement these measures.

**DERMOT NOLAN**

**Chief Executive Officer**

## Executive summary

# Introduction of further Supplier Guaranteed Standards of Performance in Switching and Automatic Compensation

### Ofgem's rationale and previous intervention

We are committed to making the energy market work better for consumers. A major pillar of this work is to improve customers' experience of switching. We are taking measures to improve consumers' experience of switching and provide reassurance that they will be compensated if things do go wrong.

For this reason, in June 2018 we consulted on the introduction of new Guaranteed Standards of Performance aimed at the most common, or the most harmful, switching related problems. Failure by suppliers to meet these Guaranteed Standards would result in customers receiving automatic compensation payments for problems incurred whilst switching.

In November 2018, we announced our decision to split the implementation of these new Guaranteed Standards into two tranches. We introduced automatic compensation payments if suppliers failed to agree that an erroneous switch had happened, to inform the customer of this decision, and to restore a customer to their original supplier on a timely basis. We also introduced compensation where suppliers failed to return a customer's credit balance after issuing a final bill. This first tranche of Guaranteed Standards came into effect in May 2019.

### Guaranteed Standards for delayed and erroneous switches, and delays to issuing final bills

Our June 2018 consultation contained proposed Guaranteed Standards requiring suppliers to complete a switch within 21 days, issue final bills within six weeks of a switch and to ensure that customers are not erroneously switched. In our initial proposal, we argued that both gaining and losing suppliers should be required to make compensation payments to customers.

Some respondents to this consultation noted that the proposed allocation of compensation payments under these Guaranteed Standards would not accurately represent which suppliers were responsible for the detriment caused and argued that this would have significant unintended adverse consequences that would lead to poor outcomes for consumers.

As a result of this feedback, we decided to undertake further work with the industry to ensure that these Guaranteed Standards target the underlying causes of customers' switching problems to the greatest extent possible. We convened an industry Working Group to look at the available data and to establish which parties should bear the responsibility for making compensation payments.

Based on evidence gathered from this Working Group and elsewhere, we are now introducing revised Guaranteed Standards in these areas. The new Guaranteed Standards are summarised below.

- **Guaranteed Standard A:** Customers will receive a standard payment of £30 if their new supplier fails complete a switch within 21 calendar days the date the gaining supplier receives sufficient information to ensure that a contract has been entered into by the Customer and to identify the relevant meter point or meter points to which the supplier transfer request relates, unless there are valid reasons for a delay to the switch.
- **Guaranteed Standard C:** Customers will receive a standard payment of £30 from the erroneously gaining supplier if they are erroneously switched.

- **Guaranteed Standard E:** Customers will receive a standard payment of £30 if their old supplier fails to issue a final bill within six weeks of a switch.

We have revised Guaranteed Standards A and C from the proposals contained in our June consultation. Where previously we proposed both the gaining and losing supplier would have been required to make a compensation payment in the event of a failure to meet either Guaranteed Standard, under our new proposals only the gaining supplier will pay. We believe that these new Guaranteed Standards are better targeted at the parties most responsible for detriment, and for that reason will offer a more effective incentive for suppliers to take preventative measures to ensure that they do not happen.

### Next steps

This document contains a policy consultation and draft Statutory Instrument in Appendix 1, and also constitutes a consultation on that Statutory Instrument. Subject to consultation responses, we expect to make the Statutory Instrument around the turn of the year, with a two-month implementation period to follow.

If the Statutory Instrument is made, it will be subject to consideration for 21 days by the Joint Committee on Statutory Instruments. Suppliers will then have a two-month period to implement the Guaranteed Standards contained within it, after which they will be required to make compensation payments in the event of a failure under the Guaranteed Standards.

**Table: Proposed New Guaranteed Standards**

Guaranteed Standards		Compensation incurred by	£
A	To ensure a switch is completed within 21 calendar days from the date the gaining supplier receives sufficient information to ensure that a contract has been entered into by the Customer and to identify the relevant meter point or meter points to which the supplier transfer request relates, unless there are valid reasons for delay to switch.	Gaining supplier	£30
C	To ensure a consumer is not erroneously transferred.	Gaining supplier	£30
E	To issue final bills within six weeks of a switch.	Losing supplier	£30

## 1. Introduction

### What are we consulting on?

1.1. The purpose of this consultation is to introduce the second phase of Guaranteed Standards for Switching, to follow those which were implemented in May 2019. Whilst we have already consulted upon these Guaranteed Standards and made clear that we consider them to be necessary in our November 2018 decision, in that document we announced our intention of undertaking further work to ensure the best allocation of responsibility for compensation in those areas.

1.2. These Guaranteed Standards represent an important part of our work to improve consumer outcomes in retail markets, and are therefore consistent with the aims of our Forward Work Programme.

#### Section 1: Introduction

1.3. This section introduces this document, and provides details on how stakeholders should respond to our consultation.

#### Section 2: Guaranteed Standards in Switching: Ofgem's work so far

1.4. In this section we summarise the work that was undertaken up to our November 2018 decision, and the introduction of the first phase of Guaranteed Standards.

#### Section 3: Summary of output from the Guaranteed Standards Phase 2 Working Group

1.5. In this section we summarise the stakeholder engagement work that we have undertaken and sessions that we have held in order to explore the data and to arrive at the best possible allocation of compensation.

#### Section 4: Revised proposals for Guaranteed Standards

1.6. In this section we set out revised proposals for the three Guaranteed Standards covered by this consultation.

#### Section 5: Implementing the Guaranteed Standards

1.7. This section provides guidance on the implementation of these Guaranteed Standards, and also of the previous tranche.

#### Section 6: Next Steps

1.8. This section sets out our plans for the next steps in our work on Guaranteed Standards.

### Context and related publications

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

1.10. We are leading various initiatives to encourage and improve consumer engagement with the retail energy market. These include the implementation of new arrangements enabling faster and more reliable switching, the rollout of smart meters, and reform of electricity settlement arrangements.

1.11. In 2017 we announced our intention to introduce new supplier Guaranteed Standards of Performance ('Guaranteed Standards') relating to customers' experience of switching. Guaranteed Standards create a mechanism where customers receive automatic redress if suppliers' service levels fall below our expectations.<sup>1</sup> This reflects the one of the key priorities of our Forward Work Plan, to enable a better functioning retail market.

1.12. On 12 June 2018 we published a consultation on introducing Supplier Guaranteed Standards of Performance for switching compensation (the 'June consultation'). We proposed to introduce six new Guaranteed Standards to provide automatic compensation for consumers who suffer detriment when a change of energy supplier goes wrong.<sup>2</sup>

1.13. On 23 November 2018 we published our intended way forward on the outcome of that consultation, and also published for consultation a draft Statutory Instrument (SI) implementing four of those Guaranteed Standards.<sup>3</sup>

1.14. On 13 February 2019 we published our final decision and SI on the first tranche of Guaranteed Standards. These Guaranteed Standards were implemented on 1 May 2019.<sup>4</sup>

1.15. Following the publication of our decision on the first tranche of Guaranteed Standards, we have also published minutes and other materials from meetings of the Working Group convened to develop this second tranche of Guaranteed Standards. These can be found on our website.<sup>5</sup>

## Consultation stages

1.16. This document comprises a policy consultation and draft SI. We are combining a consultation on the policy elements of the revised Guaranteed Standards with a statutory

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<sup>1</sup> Open letter: creating incentives for suppliers to improve switching performance" at open-letter-creating-incentives-suppliers-improve-switching-performance, 6 December 2017

<sup>2</sup> "Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation" at [https://www.ofgem.gov.uk/system/files/docs/2018/06/policy\\_consultation\\_on\\_gsop\\_switching\\_compensation\\_for\\_publn\\_v2.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/06/policy_consultation_on_gsop_switching_compensation_for_publn_v2.pdf), 12 June 2018

<sup>3</sup> "Supplier Guaranteed Standards of Performance: Decision on Switching Compensation" at <https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-standards-performance-decision-switching-compensation>, 23 November 2018

<sup>4</sup> "Supplier Guaranteed Standards of Performance for Switching - Final Decision and Statutory Instrument" at <https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-standards-performance-switching-final-decision-and-statutory-instrument>, 13 February 2019

<sup>5</sup> "Switching Compensation: Guaranteed Standards of Performance" at <https://www.ofgem.gov.uk/publications-and-updates/switching-compensation-guaranteed-standards-performance>

consultation on that SI, as required by section 40B of the Electricity Act 1989<sup>6</sup> and section 33BAA of the Gas Act 1986.<sup>7</sup>

1.17. We consider that this is appropriate given that the consultation updates elements of the work that we have already addressed as part of our June 2018 consultation.

1.18. The policy consultation and statutory consultation on the SI will close on 1 November 2019.

## How to respond

1.19. We want to hear from anyone interested in this consultation. Please send your response to [SwitchingCompensation@ofgem.gov.uk](mailto:SwitchingCompensation@ofgem.gov.uk).

1.20. We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

1.21. We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

## Your response, data and confidentiality

1.22. You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

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

1.24. If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.

1.25. If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We

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<sup>6</sup> See "Electricity Act 1989" at <http://www.legislation.gov.uk/ukpga/1989/29/section/40B>.

<sup>7</sup> See "Electricity Act 1989" at <http://www.legislation.gov.uk/ukpga/1986/44/section/33BAA>.

won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

## General feedback

1.26. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

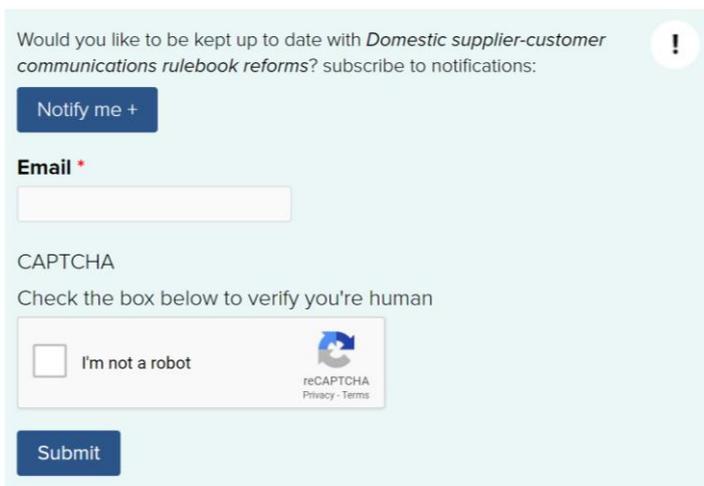
- Do you have any comments about the overall process of this consultation?
- Do you have any comments about its tone and content?
- Was it easy to read and understand? Or could it have been better written?
- Were its conclusions balanced?
- Did it make reasoned recommendations for improvement?
- Any further comments?

Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk)

## How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations).

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Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:



## 2. Guaranteed Standards in Switching: Ofgem's work so far

### Section summary

This section summarises the background to this consultation and the work that we have undertaken so far to introduce Guaranteed Standards, including the June 2018 consultation and November 2018 decision.

### Ofgem's work on Guaranteed Standards

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

2.2. We are leading various initiatives to encourage and improve consumer engagement with the retail energy market. These include the implementation of new arrangements enabling faster and more reliable switching, the rollout of smart meters, and reform of electricity settlement arrangements.

2.3. In addition to making switching faster and more reliable, in December 2017 we announced our intention to introduce new supplier Guaranteed Standards of Performance ('Guaranteed Standards') relating to customers' experience of switching.<sup>8</sup> Guaranteed Standards create a mechanism where customers automatically receive compensation if suppliers' service levels fall below our expectations. This reflects one of the key priorities of our Forward Work Plan, to enable a better functioning retail market.

2.4. On 12 June 2018 we published a consultation on introducing Supplier Guaranteed Standards of Performance for switching compensation (the 'June 2018 consultation').<sup>9</sup> We proposed to introduce six new Guaranteed Standards to provide automatic compensation for consumers who suffer detriment when a change of energy supplier goes wrong.

2.5. On 23 November 2018 we published a decision and draft SI to implement four new Guaranteed Standards (the 'November 2018 decision'),<sup>10</sup> and this was followed by a final SI after a statutory consultation (the 'February 2019 decision').<sup>11</sup>

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<sup>8</sup> "Creating incentives for suppliers to improve switching performance" at [https://www.ofgem.gov.uk/system/files/docs/2017/12/open\\_letter\\_-\\_creating\\_incentives\\_to\\_improve\\_switching\\_performance\\_1.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/12/open_letter_-_creating_incentives_to_improve_switching_performance_1.pdf), 6 December 2017

<sup>9</sup> "Supplier Guaranteed Standards of Performance: Consultation on Switching Compensation" at [https://www.ofgem.gov.uk/system/files/docs/2018/06/policy\\_consultation\\_on\\_gsop\\_switching\\_compensation\\_for\\_publn\\_v2.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/06/policy_consultation_on_gsop_switching_compensation_for_publn_v2.pdf), 12 June 2018

<sup>10</sup> "Way Forward on the introduction of Supplier Guaranteed Standards of Performance for Switching, and consultation on a Statutory Instrument to bring them into force", at [https://www.ofgem.gov.uk/system/files/docs/2018/12/way\\_forward\\_on\\_supplier\\_guaranteed\\_standards\\_or\\_switching\\_and\\_si\\_consultation\\_on\\_a\\_statutory\\_instrument\\_to\\_bring\\_them\\_into\\_force.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/12/way_forward_on_supplier_guaranteed_standards_or_switching_and_si_consultation_on_a_statutory_instrument_to_bring_them_into_force.pdf), 23 November 2018

<sup>11</sup> "Supplier Guaranteed Standards of Performance for Switching – Final Decision and Statutory Instrument" at

2.6. In the November 2018 decision, we split implementation of the new Guaranteed Standards into two tranches. The first tranche, addressing the treatment of consumers who suffer an erroneous switch and the return of credit balances after the issuance of a final bill, was implemented following the publication of the February 2019 decision. These Guaranteed Standards became effective on 1<sup>st</sup> May 2019. For the three remaining Guaranteed Standards (covering responsibility for delays to switches, delays to the issuance of final bills, and responsibility for causing (rather than resolving) erroneous switches, we indicated that we would work with industry to assess the most appropriate means of apportioning responsibility for paying compensation in order to minimise unintended adverse consequences.

2.7. To achieve this we convened a Working Group, whose aims were to undertake further work to identify the causes of erroneous switches, delayed switches, and delays to the issuance of final bills, and to provide critical appraisal of Ofgem's proposals. Our revised proposals for these Guaranteed Standards are informed by the advice of this Working Group, and build on the earlier analysis undertaken as part of the June 2018 consultation.

2.8. We have not sought to revisit the basis of our analysis or our justification for introducing new Guaranteed Standards in the areas covered by the SI. We consider that this was sufficiently addressed in the June 2018 consultation and in the November 2018 decision, and our assessment of the importance and suitability of Guaranteed Standards in addressing these problems has not changed. The intention of this paper is to highlight how we have incorporated the analysis undertaken since the publication of the November 2018 decision in order to produce the fairest achievable allocation of compensation.

### **Assessment of costs and benefits**

2.9. Alongside our June 2018 consultation paper, we published a document outlining our proposed approach to assessing the impact of our proposals. We subsequently issued a Request for Information (RfI) in July 2018, with the aim of collecting data on the costs and benefits of the proposals.

2.10. Alongside this document, we have published a revised Impact Assessment setting out the changes to our assessment of benefits and costs that the proposed changes to the Guaranteed Standards will have. We also consider the impact of information relating to the cost of the proposals that has come to light since the publication of these documents.

### **This document**

2.11. In the next section, we summarise the work of the Working Group and summarise the views expressed by members of the Working Group. In section 4, we outline our proposals for the revised Guaranteed Standards and explore how these were influenced by discussions at the Working Group. In section 5, we explore in more detail some of the issues arising from this decision and from the June 2018 consultation and November 2018 decision. In section 6, we outline the next steps that stakeholders can expect from this work.

2.12. A draft SI, intended to implement the second phase of Guaranteed Standards, is contained in Annex 1 to this document.

## 3. Summary of output from the Guaranteed Standards Phase 2 Working Group

### Section summary

In this section we summarise the work undertaken and approach taken since the publication of the November 2018 decision.

### Questions

**Question 1:** Do you agree with our assessment that the likely costs and logistical difficulties of implementing an allocation of compensation on a case by case basis would be likely to outweigh the benefits? If not, why not?

## The Guaranteed Standards Phase 2 Working Group

3.1. This section summarises the work of the Guaranteed Standards in Switching Phase 2 Working Group, which was convened following our November 2018 decision. The work of this group has informed the policy decisions in this document.

### Formation and purpose of the Working Group

3.2. In our November 2018 decision we announced our intention to liaise with industry to collect further data on the three remaining Guaranteed Standards, and to examine how to achieve the fairest allocation of responsibility for compensation between suppliers. Some respondents to our June 2018 consultation argued that it should be possible to arrive at an allocation of compensation payments which better reflected actual responsibility for the detriment caused.

3.3. With this in mind, we convened a Working Group to identify potential sources of data and inform policy development, with the aim of informing the proposals in this consultation. Membership of the Working Group was open to all suppliers and it met in a number of sessions between late 2018 and summer 2019. Minutes and other materials from Working Group sessions are available on Ofgem's website.<sup>12</sup> The work of the Working Group has informed the development of the Guaranteed Standards in this consultation.

3.4. Throughout this document we have summarised the views of stakeholders who attended the Working Groups. We have captured what we consider a fair representation of the discussions within the sessions and the views of the Working Group. It does not necessarily reflect the views of all participants or the totality of the discussion within each session. Where the Working Group expressed conflicting views, we have tried to capture this,

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<sup>12</sup> Available at <https://www.ofgem.gov.uk/publications-and-updates/switching-compensation-guaranteed-standards-performance>, retrieved 5 August 2019

although again this may not reflect all views expressed by Working Group members at the meetings.

### **Causes of and responsibility for consumer detriment**

3.5. Firstly, the Working Group determined common reasons for delays occurring to switches and issuance of final bills, and for erroneous switches, and identified which party was responsible for detriment in these instances. Based on this assessment, the Working Group identified which parties were most likely to be responsible for the detriment events covered by the Guaranteed Standards. The reasons given by Working Group members are summarised in Appendix 2.

### **Implementation approaches**

3.6. Based on this assessment of responsibility for detriment, the Working Group considered how to develop a model which ensured that the party who was most responsible for the detriment (either the gaining or losing supplier) incurred responsibility for the compensation payment.

3.7. The Working Group considered how the supplier identified as being responsible for the detriment could be identified and made to pay compensation to the customer on a case-by-case basis. To achieve this, the whole switching process (and billing processes following a switch away) would need to be determined by an agreed process map, and flow data would be used to identify where the process had broken down causing a delay to the switch, delay to the issue of a final bill, or an erroneous switch, and which supplier's actions had caused this breakdown.

3.8. Under this model, both suppliers would need to reach a bilateral agreement regarding which party was responsible based on this process map and the flow data. Compensation would be distributed either by the responsible party on a case-by-case basis or by one party in all cases and then reconciled between suppliers afterwards. All of this activity would need to be completed within a reasonable period of time in order to allow the compensation payment to be made within the required timeframe.

3.9. An arbitration and dispute resolution process would be required to settle disputes between providers (although Working Group members were of the opinion that this service could be provided by an established dispute resolution service).

3.10. The view of the Working Group was that whilst the production of such a mechanism was feasible, it would be excessively costly and complex to produce and to maintain. In addition, it would require its own governance processes and rules, which would also incur a significant cost in resources to establish and maintain. The process maps would need to be produced by experts to ensure that they reflected the reality of the underlying processes, and would need to be embedded within industry codes to ensure that they were effectively maintained. After some discussion, the Working Group was unable to identify a preferable route which would allow the allocation of compensation on a case-by-case basis.

3.11. With this in mind, the Working Group agreed that the only alternative approach was that compensation should be paid by the same party (or parties) in all cases where a switch was delayed, an erroneous switch occurred, or the issue of a final bill was delayed. This would require the most appropriate party or parties to be identified for each of the proposed Guaranteed Standards, based on an assessment of which party or parties was responsible for detriment in most cases.

## Questions

**Question 1:** Do you agree with our assessment that the likely costs and logistical difficulties of implementing an allocation of compensation on a case by case basis would be likely to outweigh the benefits?

## Proposed allocation of responsibility under the revised Guaranteed Standards

3.12. Whilst Working Group members were in agreement that to build a mechanism to determine responsibility for compensation on a case-by-case basis was likely to be unduly costly and cumbersome, it was agreed that the Working Group should seek to identify the most appropriate allocation of compensation that would be applied for each breach of the Guaranteed Standards under consideration.

3.13. All Working Group members who attended the sessions were in agreement that in the case of Guaranteed Standard A (delayed switches) the most appropriate party was the gaining supplier, and in the case of Guaranteed Standard E (delays to issuance of final bills) the most appropriate party was the losing supplier. The reasons for this are explored in the next section.

3.14. In the case of Guaranteed Standard C (responsibility for erroneous switches), the majority of respondents expressed the view that the most appropriate party to bear responsibility for compensation payments was the gaining supplier. However, a minority of respondents expressed the view that the incidence of erroneous switches which were caused by misidentified meter point numbers resulting from errors in historic data was sufficiently significant that this could not be stated with confidence. We consider these conflicting opinions in the next section.

## Other issues

3.15. In addition to the main work of the Working Group, a number of other issues were raised by Working Group members with regard to Guaranteed Standards A, C and E. Some of these points are summarised in the next section.

## 4. Revised proposals for Guaranteed Standards

### Section summary

This section contains our revised proposals for Guaranteed Standards covering delayed switches, responsibility for erroneous switches, and delays to the issuance of final bills.

### Questions

**Question 2:** Do you agree that gaining suppliers only should bear responsibility for making compensation payments under Guaranteed Standard A? If not, why not?

**Question 3:** Do you agree that measuring Guaranteed Standard A from the receipt of sufficient information to ensure that a contract has been entered into by the customer and to identify the relevant meter points to which the switch relates allows enough opportunity for a gaining supplier to effectively validate the switch? If not, why not?

**Question 4:** Do you agree that gaining suppliers will be able to measure when sufficient information is received for the purposes of reporting on Guaranteed Standard A? If not, why not?

**Question 5:** Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard A? If not, why not?

**Question 6:** Are there any other reasons for failing to complete a switch within 21 days which could warrant an exemption from paying compensation under Guaranteed Standard A?

**Question 7:** Do you agree that suppliers implementing the Debt Assignment Protocol should not be exempt from making compensation payments if they fail to complete a switch within 21 days? If not, why not?

**Question 8:** Do you agree with our proposal that responsibility for compensation under Guaranteed Standard C should be borne by gaining suppliers only? If not, why not?

**Question 9:** Do you agree that the trigger for making a compensation payment under Guaranteed Standard C should be the agreement between suppliers that a switch was undertaken with no valid contract in place? If not, why not?

**Question 10:** Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard C? If not, why not?

**Question 11:** Are there other reasons under which a supplier should be exempted from making a compensation payment under Guaranteed Standard C?

**Question 12:** Do you agree that responsibility for compensation for issuing a final bill after six weeks should be borne by losing suppliers only under Guaranteed Standard E? If not, why not?

**Question 13:** Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard E? If not, why not?

**Question 14:** Are there any other reasons for failing to issue a final bill within six weeks which warrant an exemption from paying compensation under Guaranteed Standard E?

## Our revised proposals for Guaranteed Standards A, C and E

4.1. In our June 2018 consultation we originally proposed six new Guaranteed Standards. Following consultation, in our November 2018 decision we expanded this to seven new standards, of which we held back implementation of three to undertake further development work. Table 1 shows the Guaranteed Standards held back for this second phase of development as they were consulted upon in June 2018.

**Table 1: Guaranteed Standards as proposed in the June 2018 consultation**

Guaranteed Standards		Compensation incurred by	£
A	To ensure a switch is completed within 21 calendar days from the date the consumer enters into a contract with the gaining supplier, or from the date an erroneous switch is agreed, unless there are valid reasons for delay to switch.	Gaining supplier	£30
		Losing supplier	£15
C	To ensure a consumer is not erroneously transferred.	Gaining supplier	£30
		Losing supplier	£15
E	To issue final bills within six weeks of a switch.	Losing supplier	£30

4.2. In this section, we outline how we have revised our proposals for these Guaranteed Standards and the reasons for these changes.

### Guaranteed Standard A: Compensation for delayed switches

4.3. In our June 2018 consultation, we proposed that both gaining and losing suppliers should be responsible for paying compensation to a customer where a switch was not completed 21 days after the supplier enters into a contract with the gaining supplier, or from the date an erroneous switch is agreed.

4.4. In our November 2018 decision, we indicated our intention to split this Guaranteed Standard into two separate parts. We decided to undertake further work on a Guaranteed Standard to ensure that switches were completed within 21 days. A separate Guaranteed Standard requiring suppliers to return customers who suffer an erroneous switch within 21 working days was implemented in May 2019.

4.5. The Working Group's assessment of the likely causes of delayed switches are set out in Appendix 2 and are summarised below.

4.6. There was widespread agreement amongst Working Group members that whilst it is possible that the behaviour of a losing supplier may cause a delay to a switch, in practice the number of ways in which this could happen is limited, and in the majority of cases the behaviour of a losing supplier is unlikely to be the cause of a delayed switch.

4.7. The view of the Working Group was that the principal cause of avoidable delays to switching was misidentification of meter points due to poor address data. Address data issues can be caused by input error at contract inception (by customer or supplier), inconsistencies between input data and historic industry data, or errors in industry data. In the majority of instances, these delays are caused by the action (or inaction) of the gaining supplier.

4.8. The principal means in which a losing supplier could directly act to delay a switch is limited to raising a vexatious objection. In addition, a switch may be delayed by *omissions* of activity by the losing supplier, most notably where an incumbent supplier omits to update third party industry databases such as the Electricity Central Online Enquiry Service (ECOES) and the gas Data Enquiry Service (DES) with data it holds about the customer's meter technical details or address during its incumbency, which in turn can result in delays whilst the correct meter is identified.

4.9. However, the gaining supplier is able to influence the likelihood of a delay to a switch through effective validation, and is in a unique position to contact the customer to confirm customer information at the inception of a switch, so this should not necessarily cause a delay if the gaining supplier is able to acquire enough information to progress the switch at the point of sale.

4.10. The widespread view of Working Group members was that the likelihood of the losing supplier being responsible for a delayed switch was not significant enough to warrant a payment being made by the losing supplier in each instance of a delayed switch. We recognise the strength of this argument, and for this reason we have amended the Guaranteed Standard so that only the gaining supplier bears responsibility for compensation in the event of a delayed switch.

4.11. This is not to say that we consider that there are no circumstances where the behaviour of a losing supplier can increase the likelihood of a delay to a switch. However, based on evidence from the Working Group, we do not think that the likelihood is sufficient to warrant the losing supplier making a compensation payment for each delayed switch.

4.12. In our June 2018 consultation, we proposed that in the event of a delayed switch, a gaining supplier should make a payment of £30 and a losing supplier a payment of £15 to the consumer. We have amended this so that in the event of a failure to meet the Guaranteed Standard, a gaining supplier will meet a single Standard Payment of £30.

4.13. We feel that this revised Guaranteed Standard better targets the responsibility for compensation at those who are responsible for the detriment. This will provide an improved incentive for these suppliers to improve validation, which in turn will reduce the overall incidence of delays and erroneous transfers and lead to better outcomes for consumers. A standard payment of £30 from the gaining supplier represents an appropriate amount of compensation for the customer, and is aligned with the total payment for delayed switches with that for other Guaranteed Standards.

4.14. Whilst this represents a reduction in the benefit provided to customers when compared with the proposal in the June 2018 consultation, by more effectively targeting those parties who are responsible for the detriment, it is more likely to effectively penalise poor performance by suppliers. If suppliers are subject to a Guaranteed Standard which is poorly

targeted, they will be less able to avoid incurring these costs through effective validation and other good switching practices. Where suppliers believe that costs will be incurred by them and their competitors regardless of mitigating activities that they undertake, they will be less likely to incur the cost of validating customers at acquisition, and more likely to pass on the costs of the compensation to customers through higher prices.

4.15. Working Group members noted that the timeframe adopted for the Guaranteed Standard should allow enough time to complete a switch without incentivising suppliers to rush any of the elements of the customer on-boarding process. Some Working Group members argued that the timeframe adopted for a switch under this Guaranteed Standard should be consistent with measures set out in SLCs in the Gas and Electricity supply licences. This measure requires the completion of a switch 21 calendar days after a 'relevant date', one interpretation of which is at the end of the statutory cooling off period, which in total adds up to 35 days after a switch.

4.16. Table 2 shows different measures of target switch duration which are used throughout the industry.

**Table 2: Differing measures of switch duration**

Origin	Measure	Maximum duration
June 2018 consultation	21 days from "the date that the consumer enters into the contract with the gaining supplier".	21 days after entering into the contract
Gas and Electricity Supplier Licences	Supplier licences require licensees to take all reasonable steps to complete a transfer within 21 days of the 'relevant date' (either (i) the day on which a customer enters into a contract with a new electricity or gas Supplier; or (ii) the earlier of the day on which the cooling-off period ends, the day on which the customer and the licensee agree that the transfer may proceed during the cooling off Period; and 14 days after the day on which the customer entered into the contract.)	Up to 35 calendar days after entering into the contract
Energy Switch Guarantee	The switch will take no more than 21 days from the date the customer's new provider receives their completed application.	21 days plus time taken by consumer to send application to supplier
Ofgem retail market monitoring	Switching time is measured here by the number of calendar days it takes from when a supplier submits a switching request to the transfer taking place.	21 days from submission of switching request

4.17. We consider that the 21 day duration of a switch provides sufficient time for the gaining supplier to effectively validate a switch. In the June 2018 consultation, we noted that many suppliers commence the switching process during the 'cooling off' window, and this has been confirmed by our subsequent engagement with suppliers. We also noted that from the customer's perspective, the initiation of the contract with the supplier represents the start of their switch.

4.18. However, we recognise that in some cases it is likely that a gaining supplier will be required to collect data beyond that which is provided by the customer at the point of application, or to validate data that has been provided, in order to ensure that the switch is likely to proceed without further delay or undue risk of an erroneous switch (which may

require that they contact the customer directly to confirm some details). With this in mind, and based on feedback from the Working Group, we have changed the wording of the Guaranteed Standard to allow for further validation of relevant data.

4.19. Under the new proposed Guaranteed Standards, the gaining supplier only shall make a £30 payment to the customer if the supplier transfer<sup>13</sup> has not been completed after 21 days from *the date the new (gaining) supplier receives sufficient information to ensure that a contract has been entered into by the Customer and to identify the relevant meter point or meter points to which the supplier transfer request relates*. This measure is comparable with that used for targeting switch duration within the Energy Switch Guarantee, as identified in Table 2 above.

4.20. This amendment recognises that suppliers should be able to gather enough information from consumers to conduct effective validation on the customer to ensure that the switch should not be delayed because of data quality issues at the point of sale, and that it is not necessarily within the supplier's control when this information is returned by the customer.

4.21. By reflecting this in the measure used by the Guaranteed Standard, we consider that this creates the opportunity for more effective validation by gaining suppliers and allows them to militate against some of the factors that may create an increased risk of delays or erroneous switches (such as customer input error or issues with historic industry data).

4.22. Our proposed new Guaranteed Standard is shown in Table 3 below.

**Table 3: Proposed Guaranteed Standard: Delayed switches**

Guaranteed Standard		Compensation incurred by	£
A	To ensure a switch is completed within 21 calendar days from the date the new supplier receives sufficient information to ensure that a contract has been entered into by the Customer and to identify the relevant meter point or meter points to which the supplier transfer request relates, unless there are valid reasons for delay to switch.	Gaining supplier	£30

**Question 2:** Do you agree that gaining suppliers should bear responsibility for making compensation payments under Guaranteed Standard A? If not, why not?

### Definitions used in this Guaranteed Standard

4.23. Generally we consider that 21 calendar days constitutes an adequate period of time for a supplier to complete a customer switch. For the purposes of this Guaranteed Standard, a supplier transfer should be considered as complete when the customer is registered with the gaining supplier. Other activity outside of registering the customer, such as setting up the customer's personal account and collecting bank details, are not subject to the terms of the

<sup>13</sup> For the purposes of this Guaranteed Standard, we consider 'supplier transfer' to be interchangeable with a switch.

Guaranteed Standard, although of course the supplier should attempt to conclude these without undue delay.

4.24. We consider that 'receipt of sufficient information to ensure that a contract has been entered into by the customer and to identify the relevant meter point or meter points to which the supplier transfer request relates' is the point in time at which the supplier has collected all the information that it considers it needs from the customer in order to reliably identify the customer and location to enable the switch to proceed.

4.25. If the information initially provided by the customer is incomplete or the supplier requires further information from the customer to ensure that it is accurate, the supplier has the opportunity to request further information before the 21-day period starts in order to resolve the switch. Further requested information would be likely to include confirmation of the complete postal address for the premises being switched, but may include other contextual information if the supplier identifies a high risk of an erroneous switch.

4.26. In most cases, the supplier should receive sufficient information either at the same time as the customer enters into a contract or very shortly afterwards. The 21 day period would be timed from receipt by the supplier of the last piece of information requested from the customer. If this information is sent electronically or provided over the telephone or in person by the customer, it is reasonable to consider this as being equivalent to the date on which the last information is provided to the supplier by the prospective customer. It should therefore be measurable by gaining suppliers, for reporting purposes, and should also be understood by the customer.

4.27. This should not be a reason for suppliers to unnecessarily delay acquiring this information or processing the switch; any additional information should be requested from the customer on a timely basis.

4.28. Some respondents to our June consultation asked whether the occurrence of bank holidays within the 21 day period would represent a valid reason for a delay to a switch. We have considered whether the Guaranteed Standard should be aligned with a number of working days rather than calendar days. We have decided to retain a link to calendar days for the purpose of this measure. We consider that a 21 calendar day switch from the receipt of a completed customer application should offer enough time to complete a supplier transfer, even if that period includes bank holiday periods.

**Question 3:** Do you agree that measuring Guaranteed Standard A from the receipt of sufficient information to ensure that a contract has been entered into by the Customer and to identify the relevant meter points to which the switch relates allows enough opportunity for a gaining supplier to effectively validate the switch? If not, why not?

**Question 4:** Do you agree that gaining suppliers will be able to measure when sufficient information is received for the purposes of reporting on Guaranteed Standard A? If not, why not?

### Exceptions and exemptions from this Guaranteed Standard

4.29. A number of respondents to the June 2018 consultation asked for clarification on what would be considered as a 'valid reason' for a delay.

4.30. Generally speaking, we would consider a valid reason for a delay to be where a switch has taken longer than 21 days due to actions deliberately taken by the consumer, or where the switch has been delayed for reasons which are genuinely outside the control of the supplier or one of its agents.

4.31. For this reason, we have created a specific exception within the Guaranteed Standard where the customer notifies the gaining supplier that he or she does not wish the supplier transfer to take place (either under their statutory 14-day right to withdraw ('cooling off' as defined in the Supply licence) or where the gaining supplier and consumer agree to a similar agreement outside the 14-day 'cooling off' period). Similarly, suppliers will be excepted from making a compensation payment where the Customer specifically requests that the supplier transfer should be completed at a later date (for example, a switch ahead of a move of house).

4.32. Similarly, the supplier will be excepted from making a payment under the Guaranteed Standard where a customer's switch request cannot be effected due to a previous, valid switch request at the same meter point still being processed (commonly known as a 'lock-out' period and captured under industry codes).

4.33. Other reasons for a switch being delayed for reasons that are genuinely outside a supplier's control are captured by an existing exemption.<sup>14</sup> Some respondents to the June consultation encouraged us to consider delays caused by factors deemed to be outside the supplier's control (such as delays caused by information received from price comparison websites, or the poor quality of industry data). We would consider that these reasons are not captured by this exemption. A supplier should be responsible for, and has the opportunity to, verify any data that it receives from a price comparison website that it uses as a route to market; similarly, whilst the maintenance of historic industry data may not be the direct responsibility of the gaining supplier, it can reasonably be said that failing to ensure that the correct meter point is switched represents an omission by that supplier.

4.34. One respondent to our June consultation asked why we indicated that delays caused by the Debt Assignment Protocol (DAP) would not be considered as valid delays. The DAP is a process which allows charges owed by a prepayment customer to a supplier to be assigned to a gaining supplier after a switch, and as such is a valuable tool to enable customers using prepayment meters to fully access the retail energy market. Based on our assessment of the process implementing the Protocol as set out in the agreed procedures of the Master Registration Agreement (MRA)<sup>15</sup> and Supply Point Administration Agreement (SPAA)<sup>16</sup>, we consider that implementing the protocol should not prevent suppliers from switching a customer within 21 days, and therefore suppliers implementing the DAP in a switch should not be exempted from making compensation payments if they fail to complete a switch within 21 days.

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<sup>14</sup> S. 9(3) (e) (ii) of the existing regulations exempt a supplier from making a standard payment if it was not reasonably practicable for them to do so as a result of "the act or default of a person who is not an officer, employee or agent of the supplier and who is not a person acting on behalf of an agent of the supplier." See <http://www.legislation.gov.uk/uksi/2015/1544/regulation/9/made>.

<sup>15</sup> See "Procedure for the Assignment of Debt in Relation to Prepayment Meters", at <https://www.mrasco.com/mra-products/mra-agreed-procedures/>, retrieved 18 September 2019.

<sup>16</sup> See schedule 9 of the Supply Point Administration Agreement, "Assignment of Debt in Relation to Prepayment Meters Agreed Procedure" at <https://www.spaa.co.uk/spaa-products/>, retrieved 18 September 2019.

4.35. Working Group members noted that losing suppliers are able to influence the duration of a switch length through the objections process.<sup>17</sup> In particular, losing suppliers can misuse the objections process to prevent individual consumers from switching, and also can object to all switches to a particular supplier. In our view, this misuse of the objections process should be regarded as a compliance issue rather than something to be addressed through Guaranteed Standards.

4.36. For this reason, whilst the majority of objections should be resolved quickly and should allow for a switch to be completed within 21 days, we note that there may be some instances where resolution takes longer for reasons outside the control of the supplier. For this reason, we propose that a gaining supplier will be exempted from making a compensation payment where the losing supplier has objected to a switch in accordance with Standard Licence Condition (SLC) 14.4 of the Gas and Electricity Supplier Licence (an objection), and where the objection is unresolved for reasons *outside the gaining supplier's control*.

4.37. As with the reasons for exemption for the requirement to pay compensation, exempted 'reasons outside the supplier's control' would encompass a delay occurring due to the actions of the customer themselves or of a party who is not the supplier themselves or a party acting as an agent of the supplier, and where the supplier was not reasonably able to influence those actions under normal circumstances. For example, if a delay to a switch resulted from an objection that was unresolved because a customer with a credit meter had failed to repay a debit balance on their account with the previous supplier, the gaining supplier would be exempt from making a payment.

**Question 5:** Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard A? If not, why not?

**Question 6:** Are there any other reasons for failing to complete a switch within 21 days which warrant an exemption from paying compensation under Guaranteed Standard A?

**Question 7:** Do you agree that suppliers implementing the Debt Assignment Protocol should not be exempt from making compensation payments if they fail to complete a switch within 21 days? If not, why not?

## **Guaranteed Standard C: Compensation for erroneous switches**

4.38. An erroneous switch takes place when a meter point is registered to a new supplier without a valid contract being in place between the customer who is responsible for that meter point and the gaining supplier. In our June 2018 consultation, we proposed a new Guaranteed Standard for consumers who are erroneously switched. Under that proposed Guaranteed Standard, both gaining and losing suppliers would have been required to pay compensation to a customer where an erroneous switch takes place.

4.39. After considering responses to that consultation, in our November 2018 decision we agreed to undertake further analysis to identify the underlying causes of erroneous switches

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<sup>17</sup> The 'Objections Process' refers to the process for blocking a supplier transfer as set out in Standard Licence Condition 14 of the Gas and Electricity supply licences.

and to ensure that responsibility for paying compensation was as well targeted at the causes of detriment as possible. This analysis has been undertaken by the Working Group and the results are summarised below and in Appendix 2.

4.40. The Working Group’s view was that the majority of erroneous switches are caused by mis-identification of meter points, and that the majority of cases of misidentification are caused by issues with address data quality. These issues are caused by input errors (either by the customer or the gaining supplier or their agent) during customer acquisition, process errors initiated by the gaining supplier, or errors in historic industry address data (contained within UK Link or MPAS databases, or ECOES and DES reporting services that rely on these databases) which lead to misidentification of the meter point.

4.41. Other causes of erroneous switches are crossed meters (where a meter is apportioned to an incorrect meter point number at installation), fraudulent switches (where a third party initiates a switch at a property without the owner’s consent), and mis-selling (where a switch is deliberately initiated by a supplier or their agent without a valid contract, or through deception).

4.42. Whilst most Working Group members broadly agreed that the majority of individual causes of erroneous switches would be the responsibility of the gaining supplier, including meter point misidentification which arises from errors in the data collected or processed by the gaining supplier. However, some argued that a significant number were caused by errors in historic industry address data, which is outside the control of the gaining supplier. These errors are either the responsibility of the losing supplier (since incumbent suppliers are required by the supply licence to update owners of industry data with any new data that they hold), or the third parties who maintain these databases, who may fail to act on new information. To improve these data requires co-operation between numerous parties.

4.43. Table 4 below shows the causes of erroneous switches based on ElectraLink data, supporting the view of Working Group members that misidentification of meter points is the primary cause of erroneous switches. However, we have been unable to identify data (nor does data appear to exist at the required granularity), which would allow us to identify the root causes of erroneous switches below the levels held within existing industry data. In particular we have been unable to identify the root cause of those erroneous switches which result from misidentification of meter points (for example, whether caused by gaining supplier error or historic data error), and the relative frequency with which these causes occur.

**Table 4: Erroneous switches by cause, 2018 calendar year, by ElectraLink reason code (Source: Ofgem analysis of ElectraLink data)**

Electricity			Gas		
Reason		Number of erroneous switches	Reason		Number of erroneous switches
D	Incorrect MPAN Selected	39708	I	Incorrect MPRN Selected	40373
C	Cancelled Contract Not Actioned	7733	U	Cancelled contract not actioned	8832
B	Misleading Information / Suspected Fraudulent Marketing Practice and / or Training Issues	6615	M	Misleading Information / Suspected Fraudulent Marketing Practice and / or Training Issues	5225

Electricity			Gas		
Reason		Number of erroneous switches	Reason		Number of erroneous switches
E	Customer Service Returners	5540	C	Customer Service Returners	4715
F	Technical Issues	1989	R	Technical Issues	125
A	Forgery (Proven)	1231	F	Forgery (Proven)	635

4.44. We have some sympathy for the argument that there are some causes of erroneous switches which are outside the gaining supplier’s immediate control. These are acts of omission by losing suppliers (for example, failing to update industry databases with more recent data that they hold), or those caused by crossed meters. However, these are still causes of valid erroneous switches and represent detriment for the consumer which they should not reasonably be expected to face, and which it is reasonable that they should expect to be compensated.

4.45. Ofgem’s own market reporting and other sources of industry data shows high rates of variation in erroneous switch rates between individual suppliers, and our compliance work has resulted in a reduction in erroneous switch rates achieved by some suppliers who have enhanced their validation and customer verification processes when instructed to do . This indicates that a significant number of erroneous switches could be avoided due to action on the part of the gaining supplier, either through effective validation or by taking some other risk-based approach (such as using industry data to identify which meter points have previously been erroneously switched and taking a risk-based approach to on-boarding these customers).

4.46. In addition, the risk that erroneous switches are caused by historic data errors may be mitigated to a large extent by enhanced validation by the gaining supplier. This validation may include identifying meter points at risk (using commercially available data to identify whether a meter point has previously been erroneously switched) or contacting a customer for further information. Our revision of Guaranteed Standard A, relating to delayed switches, should allow suppliers the time to undertake an appropriate amount of verification without fear of increasing the risk of a compensation payment for a delayed switch.

4.47. Further mitigation of this risk will be provided by the introduction of the Retail Energy Location (REL) database as part of the new Central Switching Service (CSS). The purpose of the REL is to link every gas and electricity meter point to a high-quality address location. This should dramatically reduce the incidence of MPAN and MPRN misidentification arising from historic address data. Work is already being undertaken by the cross-sectoral Faster Switching Expert Group (FSEG) to improve address data ahead of the introduction of the REL and CSS. Our expectation is that the REL will be go-live in 2021. For this reason, we expect that the incidence of erroneous switches caused by errors in historic address data will diminish over time, and should see a step-change after the introduction of the REL.

4.48. For these reasons, we agree with the view of the majority of Working Group members that, within the bounds of what is economic and technically feasible to implement, an allocation of compensation where the gaining supplier bears responsibility represents the fairest which is practicable at this time.

4.49. We recognise that in a minority of cases this means that gaining suppliers will pay compensation for erroneous switches for which they are not directly responsible. However, based on the evidence that we have been able to gather, our expectation is that this will be in

a minority of cases, and that to incur the sum of those compensation payments will be manageable for those suppliers.

4.50. Based on our discussions with the Working Group, we consider that this allocation of compensation represents an improvement on that proposed in the June 2018 consultation. The June 2018 consultation would have resulted in both parties paying compensation for every erroneous transfer, meaning that in the vast majority of cases compensation at some level would have been paid by a party for detriment which they were not directly responsible.

4.51. In addition, we consider that the risk of gaining suppliers incurring compensation payments as a result of the activity of others can be mitigated to a large extent by effective validation, and will be reduced significantly in the short to medium term by data improvement activity that was already in place.

4.52. With this in mind, we have amended the allocation of compensation arising from this Guaranteed Standard from that set out in the June 2018 consultation. Under our revised proposal for this Guaranteed Standard, in the event of an erroneous switch the gaining supplier only will be responsible for making a standard compensation payment of £30.

**Question 8:** Do you agree with our proposal that responsibility for compensation under Guaranteed Standard C should be borne by gaining suppliers only?

**Question 9:** Do you agree that the trigger for making a compensation payment under Guaranteed Standard C should be the agreement between suppliers that a switch was undertaken with no valid contract in place?

4.53. Under the terms of the Guaranteed Standard, the gaining supplier shall make a £30 payment to the customer upon the agreement of an erroneous switch between gaining and losing suppliers. The trigger for a compensation payment to be made will be the agreement between suppliers that no valid contract exists (or has existed) for the switch. If the gaining and losing supplier agree that no erroneous transfer has taken place, then no compensation payment will be due.

4.54. If the gaining supplier fails to make a compensation payment to the customer within 10 working days of agreement between suppliers, an Additional Standard Payment will be due, unless the gaining supplier has been unable to contact the consumer after making reasonable endeavours to do so (see below). This will only be applicable to those Guaranteed Standards where a supplier may be required to make reasonable endeavours to locate a customer for whom it has no contact details.

### **Customer corroboration and validation**

4.55. Some Working Group members identified mandated customer corroboration of meter point numbers (i.e. requiring consumers to input their MPAN and/or MPRN at the point of switching) as a potential solution that would reduce the number of erroneous switches.

4.56. Whilst this could prevent some erroneous switches, it is highly likely that it would act as a significant deterrent to switching. Despite attempts to highlight the role of the MPAN or MPRN on customer bills, levels of awareness remain low and evidence from consumer behavioural research suggests that to add an extra stage to the initial switching process would lead to increased attrition of consumers from the switching process, having the effect

of reducing overall levels of switching and potentially leading to worse overall outcomes. For this reason we do not propose to mandate it as part of our work on these Guaranteed Standards.

4.57. However, we recognise that corroboration of MPAN and MPRN data may be a highly effective tool for preventing delays and erroneous switches, and the amendment to the drafting of this Guaranteed Standard A allows suppliers the opportunity to undertake this on a targeted basis as a secondary validation after the switch has been initiated. For example, if a supplier identifies a location which is at a high risk of an erroneous switch, they may consider requesting that the customer provides the relevant MPAN and MPRN for that location.

### **Exemption for Customer Service Returners**

4.58. Working Group members were keen to identify causes of erroneous switches that were not directly caused by either supplier, and to ensure that those causes would be covered by exclusions or exemptions from a requirement to pay compensation.

4.59. Numerous Working Group members noted that the process for returning a customer after an erroneous switch is also used to return customers to their previous supplier during the 14 day 'cooling off' period. We consider that any switch where a valid contract between customer and supplier has previously existed, even if this contract is subsequently cancelled should not be treated (and recorded) as an erroneous switch.

4.60. Where a switch is initiated with a valid contract in place with the consumer, and this contract is terminated by the customer's decision to withdraw (either for within the statutory 14 day 'cooling off' period or by a mutual agreement between customer and gaining supplier, which may take place after the end of the 14 day 'cooling-off' period), no compensation payment will be required under the Guaranteed Standard.

### **Exemption for suspected fraudulent customer behaviour**

4.61. We consider that it is inappropriate for a compensation payment to be made where either supplier has good reason to believe that the behaviour of the customer notifying them of the erroneous switch is fraudulent (for example attempting to bring about a switch using a forged contract). We have therefore created a specific exemption for such circumstances.

4.62. It should be noted that some genuine erroneous switches are the result of fraud by a party other than the notifying customer (for example, a person fraudulently switching a meter point that they did not control in order to obtain an incentive for switching). This would fall outside this exemption, and a compensation payment would still be due to the customer who had suffered the erroneous switch.

### **Providing compensation where no customer relationship exists**

4.63. An erroneous switch creates the possibility that a supplier may be required to make a compensation payment to a consumer with whom it has no previous relationship and no contact details. We examine the circumstances in which this might occur in the next section.

**Question 10:** Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard C?

**Question 11:** Are there other reasons under which a supplier should be exempted from making a compensation payment under Guaranteed Standard C?

### Erroneous Transfer Performance Assurance Board

4.64. Some Working Group members invited Ofgem to consider whether the work of the Erroneous Transfer Performance Assurance Board could be used as an alternative to Guaranteed Standards. Whilst we continue to support the establishment of the Performance Assurance Board, we do not consider that it will replace the role of a compensation scheme in providing redress to consumers. However, it is possible that the board can perform an important role in identifying the root causes of erroneous switches, and will contribute to reducing the incidence of compensation payments.

### Implementation of the Guaranteed Standard

4.65. Some Working Group members expressed the view that the existing Guaranteed Standards covering the restoration of supply after an erroneous switch represented sufficient compensation for a customer. Others members suggested that introduction of the Guaranteed Standard could be delayed until after the introduction of the Retail Energy Location (REL) database in order to minimise the risk of gaining suppliers incurring compensation for erroneous switches which result from errors in historic industry data.

4.66. We do not agree with either of these suggestions. An erroneous switch that is resolved in good time can still cause undue distress to the consumer, still represents a significant amount of inconvenience and will take time and effort to resolve. This is consumer detriment and warrants a compensation payment. This detriment is particularly egregious as it will be experienced by a customer who is not party to the initial switch request and may feel powerless to influence it. In these circumstances, it is reasonable for customers who were affected by erroneous switches to be compensated, even if the switch is resolved within the timeframe set out in industry codes.

4.67. We also feel that there are no good grounds to further delay the implementation of this Guaranteed Standard. We are introducing this measure after several attempts by industry to address the issue of erroneous switches. We do not consider that to further delay the implementation of measures to remedy consumer detriment is warranted by the risks identified within the Working Group.

4.68. The proposed Guaranteed Standard is set out in table 5 below.

**Table 5: Proposed Guaranteed Standard: Erroneous switches**

Guaranteed Standards	Title	Compensation incurred by	£
C	To ensure a consumer is not erroneously transferred.	Gaining supplier	£30

## **Guaranteed Standard E: Compensation for delays in issuing final bills**

4.69. In our June 2018 consultation, we proposed that losing suppliers should make a £30 standard payment if they failed to provide a final bill to a customer within six weeks of a switch.

4.70. Some respondents to the June 2018 consultation noted that the issuance of final bills could be influenced by the provision of meter reads at a switch, which is the responsibility of the gaining supplier. With this in mind, we deferred the implementation of this Guaranteed Standard in order to give further consideration to this issue.

4.71. The Working Group considered the ways in which either supplier could affect the issuance of a final bill, and these reasons are summarised below and in Appendix 2.

4.72. Final bills are issued based either on actual meter readings in the possession of the gaining supplier, on estimated meter readings based on data from the losing supplier's incumbency, or through meter readings procured through the missing reads procedures, which are recorded in SPAA in gas and MRA in electricity. Working Group members argued that gaining suppliers could only influence the timing of the issue of final bills by failing to provide the losing supplier with a meter reading in time for them to issue a final bill, or to respond to a request made within the missing reads process.

4.73. However, a losing supplier may still issue a final bill based on estimated meter readings if they are not in possession of an actual meter reading. Many final bills are already issued on the basis of estimates, particularly where final bills are issued following changes of tenancy. Whilst estimated bills should be based on historic usage data at a meter point, they are liable to be less accurate than those based on actual metered data. Where actual readings are obtained after an estimated bill is issued, this can require a revised bill to be sent to customers, and for suppliers to request payment from customers after supply has ended (or to make a refund to the customer if they have been overcharged).

4.74. We agree with Working Group members that a losing supplier should always be in a position to issue a final bill to its customer after six weeks, as required under s27.17 of the gas and electricity supplier licences, and that to fail to do this constitutes significant detriment for the customer. If a losing supplier is unable to do this, it is appropriate that they should pay compensation. For these reasons, we have retained the form of the Guaranteed Standard and allocation of compensation as proposed in the Guaranteed Standard from the version as was proposed in the June 2018 consultation.

4.75. The proposed Guaranteed Standard is set out in Table 6 below. The losing supplier will be required to make a £30 compensation payment if no final bill is issued after six weeks of the termination of supply to a customer. This requirement will apply to all instances where a customer's relationship with a supplier ends and a final bill is issued. The Guaranteed Standards will apply to change of supply events (switches) and also change of tenancy or similar events where a customer is no longer responsible for the supply of electricity to a particular location, even if the supplier continues to be responsible for supplying another customer at that location.

4.76. Where subsequent information becomes available to correct an error in a final bill (as set out in s.27.18 of the Gas and Electricity Supply Licences), a corrected final bill should be issued as soon as reasonably practicable, as required under s.27.18 of the Electricity Supply Licence and s.27.18 of the Gas Supply Licence.

4.77. Whilst the gaining supplier will not bear responsibility for compensation for failing to produce an opening meter reading, this does not absolve them of this responsibility. Where an individual supplier fails to obtain opening meter readings and provide this information to the losing supplier, this will be addressed through existing compliance or code governance processes.

**Table 6: Proposed Guaranteed Standard E: Issuance of final bills**

Guaranteed Standard		Compensation incurred by	£
E	To issue final bills within six weeks of a switch.	Losing supplier	£30

**Question 12:** Do you agree that responsibility for compensation for issuing a final bill after six weeks should be borne by losing suppliers only under Guaranteed Standard E? If not, why not?

### Conflict with the missing reads process in gas

4.78. Industry codes in electricity and gas have established processes which are designed to reduce issues arising from the use of estimated bills. These processes mandate certain communications between suppliers to ensure that meter data is shared, with the aim of reducing settlement issues. The processes are not aligned between sectors. Whereas the disputed and missing reads process in electricity is intended to be completed within six weeks, in gas it requires 56 calendar days (eight weeks) to complete.

4.79. In the Working Group sessions, some members noted that the creation of a requirement to issue compensation if no final bill was issued within six weeks of a switch would incentivise suppliers to issue estimated bills before the missing reads process in gas had been completed, undermining the effective operation of those processes. This could result in more bills being issued based on less accurate estimated data. However, other members disagreed, noting that it is common practice to issue estimated bills within six weeks of closure of an account in both sectors if no actual read was forthcoming.

4.80. Both gas and electricity supplier licences require suppliers to issue a final bill to consumers within six weeks of supplier transfer or termination of a contract.<sup>18</sup> Whilst it is clearly preferable that customers receive bills which are based on actual meter data rather than estimates, we consider that a delay of more than six weeks to issue a final bill of any sort represents an unacceptably poor outcome for consumers. We also consider that losing

<sup>18</sup> See Standard Licence Condition 27.17 of the Gas supplier licence, at [https://epr.ofgem.gov.uk//Content/Documents/Gas%20supply%20standard%20licence%20conditions%20consolidated%20-%20Current%20Version.pdf?utm\\_source=ofgem&utm\\_medium=&utm\\_term=&utm\\_content=licencecondition&utm\\_campaign=epr](https://epr.ofgem.gov.uk//Content/Documents/Gas%20supply%20standard%20licence%20conditions%20consolidated%20-%20Current%20Version.pdf?utm_source=ofgem&utm_medium=&utm_term=&utm_content=licencecondition&utm_campaign=epr), and Standard Licence Condition 27.17 of the electricity supplier licence, at [https://epr.ofgem.gov.uk//Content/Documents/Electricity%20Supply%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf?utm\\_source=ofgem&utm\\_medium=&utm\\_term=&utm\\_content=licencecondition&utm\\_campaign=epr](https://epr.ofgem.gov.uk//Content/Documents/Electricity%20Supply%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf?utm_source=ofgem&utm_medium=&utm_term=&utm_content=licencecondition&utm_campaign=epr).

suppliers should possess, or should be able to acquire, appropriate information to bill the customer with sufficient accuracy in six weeks for both fuels.

4.81. If after six weeks a supplier comes into receipt of additional information that requires a change to the estimated bill, it should consider what constitutes fair treatment of customers in those circumstances, and whether it is appropriate to request further payment from the customer or to make a further refund.

### **Separate billing by utility and sending bills by post**

4.82. We recognise that suppliers will have different methods of billing their customers. Where a supplier supplies a customer with both gas and electricity and elects to bill the customer separately, a single Standard Payment should be made for a failure to issue a final bill within six weeks on either Gas or Electricity accounts. A single Standard Payment will be made if the Supplier fails to issue a final bill within six weeks on both accounts.

4.83. For the purpose of the Guaranteed Standard, 'issue' means to produce and despatch a final bill. If the customer requests a final bill to be delivered by post, it should be despatched in a way that it should under normal circumstances reach the customer within six weeks of completion of the supplier transfer or termination of a domestic supply contract. If the supplier is not in possession of contact details for the customer or a forwarding address where the customer has moved away from the supply property, it should make reasonable endeavours to contact them (and also to provide compensation if necessary).

### **Exemption for disputed bills**

4.84. It is possible that a customer may have an ongoing dispute relating to the balance on their account with their supplier at the time of a switch, and that such a dispute may take time to resolve. For this reason, we have decided to create an exemption from the requirement to make a compensation payment under Guaranteed Standard E where there is an ongoing dispute between the old supplier and the customer which relates to the billing of that customer.

4.85. However, this exemption should only relate to genuine, ongoing disputes which precede the issue of a final bill, and should not provide a reason for a supplier not to seek to resolve these disputes and to issue a final bill within six weeks of a customer switching away. Suppliers should be able to evidence that the dispute was raised either at the time of the switch or in the intervening period before the issue of a final bill.

**Question 13:** Do you agree with the proposed exceptions and exemptions which we have applied to Guaranteed Standard E? If not, why not?

**Question 14:** Are there any other reasons for failing to issue a final bill within six weeks which warrant an exemption from paying compensation under Guaranteed Standard E?

## 5. Implementing the Guaranteed Standards

### Section summary

This section provides guidance to suppliers regarding how aspects of the new Guaranteed Standards should be interpreted. We also provide advice on interpretation of the previous tranche of Guaranteed Standards.

### Questions

**Question 15:** Do you agree with our assessment that it would not be proportionate to implement an open-ended requirement to pay compensation for enduring issues of detriment? If not, why not?

**Question 16:** Would changing reporting requirements to allow Ofgem to collect data on the time taken to issue final bills or repay credit balances present a significant additional cost when compared with the current requirements?

## Issues arising from implementation of the Guaranteed Standards

5.1. This section provides guidance to suppliers regarding the application of all Guaranteed Standards, including those introduced in the June 2018 consultation and November 2018 decision. It should be read alongside the clarification note issued by Ofgem on 10 April 2019.<sup>19</sup>

### Fair treatment of customers

5.2. Ultimately, it is impossible for Ofgem to anticipate every circumstance in which suppliers might be required to consider whether the Guaranteed Standards have been breached on an *ex ante* basis or to provide guidance to suppliers in these circumstances - and we do not consider it appropriate or desirable to do so. Under the terms of Condition 0 of the Gas and Electricity Supply Licences, suppliers are required to treat their customers fairly. It is incumbent on suppliers to interpret this as they see fit, and to make their own decisions and to develop their own policies around what constitutes fair treatment of customers. The definition of "fair" in the Standard Condition is given as:

"The licensee or any Representative would not be regarded as treating a Domestic Customer Fairly if their actions or omissions give rise to a likelihood of detriment to the Domestic Customer, unless the detriment would be reasonable in all the relevant circumstances."

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<sup>19</sup> "Guaranteed Standards for Switching: Policy intent and record keeping requirements", at <https://www.ofgem.gov.uk/publications-and-updates/guaranteed-standards-switching-policy-intent-and-record-keeping-requirements>

5.3. Whilst we make every effort to ensure that the policy intent contained within our SI is clear, it will be necessary for suppliers to use their own judgement about what constitutes fair treatment of customers. Where a supplier encounters a circumstance which is not explicitly covered by the terms of the Regulations or by existing guidance, we encourage suppliers to consider for themselves what constitutes fair treatment of customers with regard to the Regulations, and whether a payment is warranted under the Guaranteed Standards. These decisions are likely to vary from case to case and firm to firm. If and when Ofgem is alerted to occasions where a firm's behaviour presents a widespread risk of consumer detriment, we may be required to make a decision on whether the supplier is treating its customers fairly.

### **Reporting requirements**

5.4. It is essential that suppliers keep accurate records of breaches of Guaranteed Standards and compensation payments, both in order for Ofgem and suppliers themselves to track performance, and to ensure that the Guaranteed Standards are being implemented correctly by all suppliers. Ofgem is already collecting data relating to the first tranche of Guaranteed Standards, and we will expect suppliers to keep accurate records and also to complete periodic reports for the Guaranteed Standards in the second tranche. We expect that these records should be reported on a quarterly basis with other Guaranteed Standards, commencing in the quarter when the second tranche of Guaranteed Standards are first paid.

5.5. As with the first tranche Guaranteed Standards, our ultimate intention is to publish this data and that suppliers will be required to submit completed reports to Ofgem and Citizens Advice upon request. We consider that the publication of data on supplier performance is likely to be a useful tool for consumers in exercising choice over suppliers based on quality of service, and will act as a further incentive for suppliers to take steps to improve performance.

### **Limitations on Additional Standard Payments**

5.6. In our February 2019 decision, we noted that the SI as drafted did not remove the limitation on the number of Additional Standard Payments that could be made for a single failure.<sup>20</sup> This has the effect in placing a cap on redress paid to consumers for issues that endure for long periods of time. We indicated that we would consider whether this was appropriate in a subsequent SI. In July 2019, we issued a voluntary request for information (RfI), asking for information about the time taken by suppliers to return credit balances in the calendar years 2018 and 2019. Excluding nil returns, we received nine responses to this data request.

5.7. These responses indicated that supplier performance was mixed. The responses indicated that thousands of credit balances were being refunded more than 31 working days after the issuance of a final bill. Whilst three respondents' average response time was less than three days in both 2018 and 2019 (to date), other respondents averaged 10 days to return credit balances in 2018 or 2019.

5.8. Four out of nine responding suppliers had taken longer than 300 days to return a credit balance in 2018 or 2019 (to date), with the longest response time being 383 days. However, one supplier had returned no credit balances more than 30 working days after the issuance of

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<sup>20</sup> See 'Supplier Guaranteed Standards of Performance for Switching - Final Decision and Statutory Instrument', at <https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-standards-performance-switching-final-decision-and-statutory-instrument>.

a credit balance, with another taking no longer than 62 days in 2018 or 2019. This indicates that it is possible for suppliers to build systems that ensure timely return of credit balances.

5.9. We also analysed data from ElectraLink showing typical lengths taken to accept or reject a reported erroneous switch after raising. Table 7 below shows the percentage share of reported erroneous switches which took more than 20 and 30 working days to accept or reject, and also the percentage which took more than 21 and 31 days to re-register after acceptance, based on data for 2018 (the most recent calendar year). This indicated that more than 8% of reported erroneous switches in gas and almost 6% in electricity for all suppliers took longer than 30 working days to be accepted by the supplier, and over 5% in gas and almost 6% in electricity are re-registered after more than 31 working days.

**Table 7: Acceptance, rejection and re-registration of erroneous switches (source: Ofgem analysis of ElectraLink data)**

		Gas		Electricity	
GS	Measure	20 days	30 days	20 days	30 days
B	Percentage of accepted erroneous switch reports actioned more than x working days after raising	11.3	8.1	8.2	5.7
B	Percentage of rejected erroneous switch reports actioned more than x working days after raising	8.6	6.2	6.9	5.1
		21 days	31 days	21 days	31 days
A1	Percentage of erroneously switched customers re-registered more than x days after acceptance	9.5	5.2	9.1	5.7

5.10. According to Ofgem’s own data, there has been relatively little change in the average switch duration for domestic customers for almost five years, with the average duration of both gas and electricity switches being between 15 and 20 days.<sup>21</sup> Whilst we do not have data on the proportion of switches which take longer than 21 or 31 days to resolve, it is statistically likely that some switches to take significantly longer than the 21 day requirement.

5.11. Whilst these data show that there is some potential for unresolved issues of detriment to continue for lengthy periods after an additional Standard Payment is made, it is also apparent that we lacked evidence around the context surrounding these additional episodes of detriment. We also noted that an open-ended requirement to pay compensation might not be proportionate for cases of detriment where the supplier is genuinely engaged but which are particularly difficult to resolve, and that we did not have enough contextual information about the causes of these enduring episodes to assess whether such a requirement was appropriate. For this reason, we do not feel that we have sufficient evidence to warrant a change to the existing legislation to implement a potentially open-ended requirement for compensation.

5.12. It should be noted that an Additional Standard Payment is also triggered by the non-payment of a Standard Payment, so it would be possible for episodes of detriment to endure

<sup>21</sup> Data for average switching time for domestic customers can be found at <https://www.ofgem.gov.uk/data-portal/retail-market-indicators>. These data are calculated based on the average number of days from when a supplier submits a transfer request, so is likely to represent the same or a longer period than the measure used in the proposed Guaranteed Standard A.

even after a Standard Payment had been made without an Additional Standard Payment becoming necessary.

5.13. However, we will consider implementing measures which are proportionate in order to mitigate this detriment. This might include extending our reporting requirements placed upon suppliers to include the number of delayed and erroneous switches which are un-actioned or unresolved for long periods, in addition to the more data on the time taken by suppliers to issue final bills or repay credit balances. In addition, we may use data from other sources to identify supplier performance in restoring customers to their original supplier after an erroneous transfer, or other relevant issues of detriment. Appropriate regulatory action could then be taken on the basis of this information.

5.14. We welcome further evidence in support of or opposition to this decision. In particular, we welcome views on why some events (final bills, return of credit balances) might be delayed for exceptionally long periods, and whether there are mitigating reasons for such delays. We would also welcome evidence on whether collecting data on the length of time taken to issue final bills or repay credit balances would present a significant additional cost in addition to existing reporting requirements.

**Question 15:** Do you agree with our assessment that it would not be proportionate to implement an open-ended requirement to pay compensation for enduring issues of detriment? If not, why not?

**Question 16:** Would changing reporting requirements to allow Ofgem to collect data on the time taken to issue final bills or repay credit balances present a significant additional cost when compared with the current requirements?

### **Price Comparison Websites and Auto-switching**

5.15. Price comparison websites and other third party intermediaries have been a feature of the retail energy market for many years, and recent years have seen the growth of auto-switching sites, who are third parties who may make a series of switches at a meter point or meter points with the customer's consent. We expect that suppliers should consider how they can meet the needs of consumers when dealing with auto-switching sites (and other intermediaries).

5.16. Some suppliers have expressed concern that they may be liable to make compensation payments for switches where information has been incorrectly entered or supplied by third party intermediaries, resulting in an erroneous switch or in a delay.

5.17. We expect that suppliers should be aware of these risks and apply an appropriate level of validation to the customer details that they obtain from these services before progressing the switch, in order to ensure that the switch proceeds without error or undue delay.

5.18. Whilst suppliers should not refuse to work with third party intermediaries or auto-switching sites without good reason, they should also be aware of other relevant obligations contained within supply licences. In particular, standard licence condition (SLC) 0 requires suppliers to ensure that their customers are treated fairly, and SLC 14A.10 of the gas and electricity supply licences place suppliers under obligation to prevent erroneous transfers. If a supplier feels that the use of a particular route to market risks contravening those licence

conditions, they should consider what actions are appropriate to prevent detriment for consumers.

### **Change of Supply and Change of Tenancy**

5.19. We have received a number of enquiries from suppliers asking whether the Guaranteed Standards should apply to Change of Tenancy events (where an individual customer's account with a supplier terminates, but the supplier continues to supply the meter point) in addition to Change of Supply events (a conventional switch).

5.20. Under the terms of the SI published in February 2019,<sup>22</sup> regulation 6D<sup>23</sup> applies where:

"a customer transfers to another supplier under a valid contract... or the supplier's responsibility for the supply of electricity or gas to the customer has otherwise terminated".

5.21. We consider that this is appropriately clear that this Regulation applies to Change of Tenancy events in addition to Change of Supply events.

5.22. It is our intention that Guaranteed Standard E should apply in all instances where a final bill is issued to the customer, regardless of whether this is a Change of Tenancy or Change of Supply. If the supplier's relationship with the individual customer ceases and they have reason to issue a final bill, then the proposed Guaranteed Standard will apply. We have adopted a similar wording in the proposals for the new SI in Appendix 1, and we consider this to appropriately clear.

5.23. There are some circumstances where supply might cease to a meter point and a final bill will not be issued, and a supplier should consider whether the standard set out in the SI has been met before deciding whether compensation is due. For example, if a site has been de-energised or a meter is physically removed and not replaced, it is likely that the customer will be issued a final bill and the regulation will apply. If a site served by a meter point has been de-energised but a customer relationship continues in some way so that no final bill is issued (for example where a supplier serves multiple meter points at a domestic property, and only one of the meter points is de-energised), it is likely that the Guaranteed Standards would not apply in these circumstances.

5.24. It is possible that there may be some circumstances where a final bill is issued and the customer's relationship with the supplier continues. For example, a dual fuel customer might switch either electricity or gas supply away from a supplier, but remain with that supplier for the other fuel. In these circumstances, the supplier should consider which actions deliver the right customer outcomes and treats the customer fairly, both with regard to issue of final bills (the proposed Guaranteed Standard E) and the return of credit balances (the existing Regulation 6D).

### **Switches and final bills issued before the implementation date**

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<sup>22</sup> See "The Electricity and Gas (Standards of Performance) (Suppliers) (Amendment) Regulations 2019" at <http://www.legislation.gov.uk/uksi/2019/218/contents/made>.

<sup>23</sup> Regulation 6D requires suppliers to refund a customer's credit balance within 10 working days of the issue of a final bill, with a £30 standard payment being due to the customer for failure to do so.

5.25. We propose that Guaranteed Standards A and C in this consultation will apply to switches or erroneous switches which occur after the implementation date of the SI. Guaranteed Standard E will apply to circumstances where the customer's account is terminated after the implementation date. We will confirm this in our Decision document.

#### **Application to domestic customers only**

5.26. As with the previous tranche, all the Guaranteed Standards introduced by the new SI proposals in Appendix 1 apply only to domestic customers.

#### **Dual fuel switches with different supply end dates**

5.27. We consider that all Guaranteed Standards apply at 'customer account level' rather than meter point level. Our open letter, published in April 2019, seeks to clarify this by saying that it would not be necessary for a supplier to make two separate Guaranteed Standard payments if (for example) a breach of the same Guaranteed Standard occurred in both gas and electricity accounts during a dual fuel switch.<sup>24</sup> However, it is incumbent on suppliers to form an opinion of what constitutes a switch event. If a customer chooses to switch away their gas and electricity supply away from a supplier (or close their accounts for another reason) on two entirely separate occasions, a supplier might reasonably conclude these to be different events for which two compensation payments might be due if Guaranteed Standards are not met.

#### **Compensation payments to customers with whom a supplier does not have a direct billing relationship**

5.28. An erroneous switch creates the possibility that a supplier may have a responsibility to make a compensation payment to a consumer with whom it has no previous relationship. A supplier is only likely to have no direct relationship with a customer where they are the erroneously gaining supplier in an erroneous switch and have not been contacted by the customer at the meter point that has been erroneously switched.

5.29. A number of suppliers have expressed concerns regarding how to approach compensation payments in these circumstances. We recognise that this will create some difficulties for suppliers, but we consider that this should not absolve the supplier of a requirement to compensate the customer.

5.30. In our February 2019 decision document we stated that where a gaining supplier has no existing relationship with a customer who has suffered an erroneous switch, and the supplier has not been contacted directly by the consumer, the supplier should make reasonable endeavours to establish the customer's identity in order to make a compensation payment.<sup>25</sup> In that decision document we made it clear that this applied to the existing regulation 6A, but it is equally applicable to the proposed Guaranteed Standard C.

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<sup>24</sup> "Guaranteed Standards for Switching: Policy intent and record keeping requirements", at <https://www.ofgem.gov.uk/publications-and-updates/guaranteed-standards-switching-policy-intent-and-record-keeping-requirements>

<sup>25</sup> "Supplier Guaranteed Standards of Performance for Switching – Final Decision and Statutory Instrument", at [https://www.ofgem.gov.uk/system/files/docs/2019/02/final\\_decision\\_on\\_si\\_for\\_switching\\_compensation.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/02/final_decision_on_si_for_switching_compensation.pdf)

5.31. In this instance, 'reasonable endeavours' might include, but should not be limited to, using open source information to locate the customer, contacting the losing supplier to obtain details of how to make a compensation payment, or requesting that the losing supplier reminds the customer of their right to compensation and encourages them to contact the gaining supplier directly. However it is not possible for us to offer an interpretation of this for every circumstance that suppliers are likely to face. We recommend that that suppliers should actively consider what actions that they are able to take to contact the customer.

5.32. Some parties have also contacted us about data protection considerations, in addition to logistical challenges, to obtaining a customer's details in order to make a compensation payment. Suppliers will have their own interpretation of the requirements of GDPR and it is not Ofgem's intention to provide guidance on processing customers' personal data. In our February 2019 decision document we stated:

"We consider that in most cases a supplier would have the opportunity to obtain a customer's details (for example from the counterparty supplier, or address details from existing industry data) in a manner which allows them to be compliant with data protection legislation, and they should make every effort to do so."<sup>26</sup>

5.33. We would note that suppliers and other stakeholders and regulated firms currently share customer data to enable a switch to be processed. Suppliers may use these channels to establish whether they can obtain data which would allow them to contact the customer.

5.34. Whilst the absence of a customer relationship does not absolve a supplier from responsibility to make the compensation payment, where a supplier has made reasonable endeavours to contact a customer and is unable to ascertain a customer's identity to make a payment, then the supplier will be exempt from making a payment. This should be recorded in the supplier's quarterly reporting as a 'declined payment or exempted event'. However, if the supplier subsequently becomes aware of the customer's details (for example if it is contacted by the customer or its counterparty supplier), then it should make the payment that is due.

5.35. We propose to introduce a further exemption from the requirement to make an Additional Standard Payment in this SI. If, after making reasonable endeavours, the gaining supplier is still unable to contact a customer to make a compensation payment, the supplier will be exempt from the requirement to make an Additional Standard Payment after 10 working days after the original Standard Payment is due. If the customer subsequently contacts the supplier to claim their compensation, the supplier should make the payment within 10 working days of verifying the customer's identity, and an Additional Standard Payment will be due if it fails to do so. This exemption will apply equally to the proposed Guaranteed Standard C and existing Regulation 6A, where a supplier may be required to make a payment to a customer with whom it has no customer relationship, and who may not have contacted the supplier.

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<sup>26</sup> "Supplier Guaranteed Standards of Performance for Switching – Final Decision and Statutory Instrument", at [https://www.ofgem.gov.uk/system/files/docs/2019/02/final\\_decision\\_on\\_si\\_for\\_switching\\_compensation.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/02/final_decision_on_si_for_switching_compensation.pdf)

## 6. Next steps

### Implementation of the second phase of Guaranteed Standards

6.1. We consider that these new Guaranteed Standards will support the effective operation of the retail market by providing recompense to customers who suffer detriment as a result of poor supplier behaviour, and will improve customers' confidence in the operation of the retail market. The approach that we propose to take in order to implement them is set out below.

#### Publication of Statutory Instrument and Statutory Consultation

6.2. The previous sections of this document contain a number of questions on the policy aspects of implementation of this second phase of Guaranteed Standards. Appendix 1 contains the SI which we intend to make after a two-month consultation period, subject to consultation responses.

6.3. This document forms a statutory consultation on that SI. We consider that, given that these Guaranteed Standards have also been given consideration in our June 2018 consultation, this is an appropriate length of time for the SI and other issues to be considered by stakeholders. The consultation will close on 1 November 2019.

6.4. At the end of this two month consultation period, we will consider any responses ahead of publishing a final decision on the SI. Subject to responses to the consultation, the SI will be made and will then be subject to a 21-day inspection period from the Joint Committee on SIs. At the end of this period, suppliers will have a two-month period to implement the Guaranteed Standards as drafted within the SI. After this implementation period they will be required to make payments and comply with other associated provisions under the Guaranteed Standards, in addition to the existing Guaranteed Standards implemented in May 2019.

6.5. These will be the final Guaranteed Standards that we implement arising from the work that was begun in our June 2018 consultation. We will continue to monitor suppliers' performance against these Guaranteed Standards and collect reporting data. Table 8 below shows our expected timetable for implementing these proposals.

**Table 8: Approach to implementing second phase of Guaranteed Standards**

Action	Expected Delivery
Consultation and Statutory Consultation on Impact Assessment implementing Guaranteed Standards A, C and E.	Consultation closes November 2019.
Publication of decision and final Statutory Consultation	November/December 2019
Consideration of SI by Joint Committee	21 calendar days after publication
Implementation period for suppliers	Two months after conclusion of Joint Committee scrutiny
Implementation date – first payments due	Conclusion of two-month implementation period

## Appendices

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## Appendix 1

### Draft Statutory Instrument

1.1. This appendix contains the draft SI.

#### **Statutory consultation as required by Section 40B Elec Act and section 33BAA Gas Act which sets out the procedures for prescribing or determining standards of performance**

1.2. The SI drafting below will be inserted into the SI template after consultation. For consultation purposes, only the substantive drafting is presented. This version does not yet contain footnotes on the preamble, explanatory note or seal/signature block. These will be added later.

1.3. For the purposes of this consultation, each standard will be referred to as Guaranteed Standard A, Guaranteed Standard C and Guaranteed Standard E which aligns with the consultation document. References to those Guaranteed Standards will be removed before the SI is made but are included here for info and ease of reference. The new regulations will be given the appropriate numbering for insertion into the SI when it is made.

1.4. The new standards are being 'slotted' into the existing numbering so that the regulation relates to the customer journey chronologically, therefore:

- Existing Reg 2(1) does not need updating, i.e. definition of individual standard of performance will still mean one of the standards of performance a supplier is required to meet under regulations 3 to 6D.
- Existing Reg 8(1) does not need updating, i.e. the individual standards a supplier must meet remains those set out in regulations 3 to 6D.

### **NEW DEFINITIONS**

- (1) in the definition of “new supplier” insert “, or will have,” before “responsibility”;
- (2) after the definition of “supplier” insert—

“supplier transfer” means in relation to any domestic premises at which a supplier is supplying gas or electricity, the transfer of responsibility for the supply of gas or electricity to a new supplier;”

### **NEW STANDARDS**

#### **Standard A**

##### **Obligation to complete a supplier transfer**

- 1) This regulation applies where a customer requests a supplier transfer.
- 2) This regulation does not apply where the supplier transfer cannot be completed because -
  - a) the customer notifies the new supplier that they do not wish the supplier transfer to take place;
  - b) a previous supplier transfer is being processed in relation to the same meter point; or
  - c) the customer’s current supplier objects to the supplier transfer.
- 3) Where this regulation applies the new supplier must complete the supplier transfer -
  - a) within the period of 21 days beginning on the day of receipt by the new supplier of sufficient information to -
    - i) confirm the supplier transfer relates to the customer who requested it; and
    - ii) identify the meter point or meter points, to which the supplier transfer request relates; or
  - b) where requested by the customer, on a date after the end of the period referred to in paragraph (a).

#### **Standard C**

##### **Avoidance of erroneous transfers**

- 1) This regulation applies where a new supplier proposes to complete a supplier transfer.
- 2) This regulation does not apply where a customer is transferred to a supplier appointed by the Authority following a last resort supply direction being given within 21 working days of an agreement reached in accordance with regulation 6C(1)(b).
- 3) Where this regulation applies the new supplier must only complete a supplier transfer where there is a valid contract with the customer who is subject to the supplier transfer.
- 4) Failure to meet the standard of performance in this regulation is determined when the old supplier and the new supplier have agreed that the customer has been transferred without a valid contract.

#### **Standard E**

##### **Provision of a final bill**

- 1) This regulation applies where a supplier no longer has responsibility for the supply of electricity or gas to the customer where -
  - a) a customer transfers to another supplier under a valid contract; or
  - b) a supplier’s responsibility for the supply of electricity or gas to the customer has otherwise terminated.

- 2) This regulation does not apply where responsibility for the supply of electricity or gas to a customer transfers from one supplier to another supplier without a valid contract.
- 3) Where this regulation applies a supplier must within 6 weeks of the supplier no longer having responsibility for the supply of electricity or gas, issue the customer's final bill.

### **NEW EXEMPTIONS**

In regulation 9 (Exemptions and limitations to supplier payment obligations) of the Principal Regulations

1) after paragraph (7B) insert -

“(7C) A supplier is not obliged to make a standard payment following failure to meet the individual standard of performance under regulation [Standard C], where,

- a) a customer has withdrawn a request for a supplier transfer in accordance with any term in the contract between the new supplier and the customer or by virtue of any enactment after the supplier transfer has completed; or
- b) having agreed with the old supplier that the customer has been transferred without a valid contract in accordance with regulation 6C(1), the new supplier reasonably believes this is as a result of fraudulent activity by that customer.

(7D) A new supplier is not obliged to make an additional standard payment under regulation 8(3) following a failure to make a standard payment under regulation 8(2) after failing to meet the individual standard of performance under regulation 6A or [Standard C], where -

- a) the new supplier has no contact details for the customer who has been transferred from one supplier to another without a valid contract, and that supplier can demonstrate that it has used reasonable endeavours to obtain contact details for that customer in order to make the standard payment; or
- b) the customer who has been transferred from one supplier to another without a valid contract provided the new supplier with an inaccurate or incomplete;
  - i. postal address, where the standard payment is to be sent by cheque in the post; or
  - ii. electronic payment details, where the standard payment is to be made by electronic transfer.

(7E) The old supplier is not obliged to make a standard payment following failure to meet the individual standard of performance under regulation [Standard E] where-

- a) there is an ongoing formal dispute between the old supplier and the customer, regarding billing that customer;
- b) the customer did not provide a postal address to issue the final bill to and the old supplier had no alternative electronic address to issue the final bill for that customer;

- c) the final bill was issued by the old supplier but not received by the customer because the customer provided the old supplier with an inaccurate or incomplete -
  - i) postal address, where the final bill was issued by post; or
  - ii) electronic address, where the final bill was issued by electronic communication.

## Appendix 2

### **Causes of and responsibility for detriment under Guaranteed Standards A, C and E**

1.1. This appendix summarises the causes of delayed switches, erroneous switches and delays to final bills, as discussed in Working Group sessions in early 2019.

1.2. This appendix represents Ofgem's summary of the reasons for detriment put forward by Working Group members. It does not necessarily represent the views of individual Working Group members. The content is presented as it arose from the summaries from group discussions.

**Guaranteed Standard A: Reasons for delays to switching**

Category	Reason for delay	Root cause	Responsible party
Data mismatch	Lockout	Customer signs up with multiple suppliers	Valid delay – covered by exemption from GSOP.
	Pending Withdrawal	Customer activity	Valid delay – covered by exemption from GSOP.
	Pending Pre-Move (customer gives advance warning of them moving home) – one respondent indicates this is 75% of cases	Customer activity	Valid delay – covered by exemption from GSOP.
	(Multiple) Exception(s) raised from point of sale, e.g. missing/invalid data, industry rejection.	More information and validation required with the customer. Losing or gaining supplier fails to validate data in time.	Missing data – gaining supplier. Invalid data – losing supplier or database owner.
	Customer provided data and industry mismatch.	Further information is required from the customer to validate.	Exempt if customer data is demonstrably incorrect and appropriate controls exist. Gaining supplier if controls are inappropriate.
	Incorrect Industry data rejection - Combination of Disconnected MPANs/MPRNs, Extinct rejections etc.	Failure to verify industry data.	Losing supplier.
	Other - Pending Security Deposit/Secure Terms/MPAN/MPRN etc.	Waiting on further information/customer contact to progress the sale.	Gaining supplier, unless information has been requested and not provided
Objection	Objection	Customer is in debt with a previous supplier	Valid delay if exemption is unresolved.
	Failure to move flow after an objection is resolved	Failure of losing supplier to reinstate flow	Losing supplier

**Guaranteed Standard C: Reasons for erroneous switches**

Category	Reason for erroneous switch	Root cause	Responsible party
(Address) data issues	Incorrect address selected at sign up, either by customer or gaining supplier	Unclear onboarding process. Lack of checks/control at signup.	Erroneously gaining supplier
	Incorrect address in customer database	Failure of GT/DNO to manage UK Link/MPAS database. Failure of existing supplier to resolve identified database error. Inaccurate data provided by meter installers/data providers.	Erroneously losing supplier
	Incorrect submission by supplier	Submission of incorrect details by supplier.	Erroneously gaining supplier
Supplier fraud	Customer switched without consent	Misleading/fraudulent sales process.	Erroneously gaining supplier
Process error	Failed withdrawal	Withdrawal process incorrectly applied.	Erroneously gaining supplier
	Late notification of cancellation	Supplier fails to notify cancellation of switch in time.	Erroneously gaining supplier
	'Technical issues'	Use of ET process by Suppliers to correct a technical problem.	Either/both suppliers
Customer caused	Late cancellation (after cooling off period)	ET process is used to return a customer to original supplier.	Excluded from GSOPs as valid contract exists between suppliers.
	Customer Service Returner (during cooling off process).	ET process is used to return a customer to original supplier within 14 day period required by Consumer Rights Directive.	Excluded from Guaranteed Standards as valid contract exists between suppliers.
	Forgery – customer driven	Fraudulent activity.	Excluded from Guaranteed Standards.

**Guaranteed Standard E: Reasons for delay in issuance of final bills**

Category	Reason for delay in issuance of final bills	Root cause	Responsible party
Missing reads/data	Missing opening meter reads	Quality of reads from MOPs and data from DCs.	Gaining supplier
	Missing Closing meter reads (D86)	Quality of reads from MOPs and data from DCs.	Losing supplier
	Dispute between agreed reads, insufficient time to work between agreed reads process	Quality of reads from MOPs and data from DCs.	Both suppliers
	Missing, invalid data or industry rejection	Uncorrected errors in industry data.	Losing supplier
Process error	Inability/omission by old supplier to validate reads	Error by losing supplier.	Losing supplier
	Inability by old supplier to initiate missing reads process until 30 WD after new start date.	Industry processes – old supplier is locked until 30 WD.	Losing supplier
	Failure by old supplier to initiate missing reads process	Old supplier error	Losing supplier
	Failure by new supplier to respond following initiation of missing reads process; inability of old supplier to contact new supplier	New supplier error	Gaining supplier

## Appendix 3 – Privacy notice on consultations

### Personal data

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

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

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

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

#### 2. Why we are collecting your personal data

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

#### 3. Our legal basis for processing your personal data

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

#### 3. With whom we will be sharing your personal data

We intend to publish consultation responses on our website ([ofgem.gov.uk](http://ofgem.gov.uk)) unless clearly and specifically instructed not to do so in the response itself. Any personal data included in these responses will be published with the response. Respondents may provide redacted versions of responses for publication.

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

Your personal data will be held for one year after the consultation is closed.

#### 5. Your rights

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

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3<sup>rd</sup> parties
- tell us your preferred frequency, content and format of our communications with you

6.6. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**6. Your personal data will not be sent overseas** (Note that this cannot be claimed if using Survey Monkey for the consultation as their servers are in the US. In that case use “the Data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in term of data protection will not be compromised by this”).

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

**8. Your personal data will be stored in a secure government IT system.** (If using a third party system such as Survey Monkey to gather the data, you will need to state clearly at which point the data will be moved from there to our internal systems.)

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