

**ENERGY**  
**SMART METERS**  
**DRAFT MODIFICATIONS TO THE CONDITIONS OF THE SMART METER**  
**COMMUNICATION LICENCES (SMART METERS No. 4 of 2017)**

Presented to Parliament pursuant to section 89 of the Energy Act 2008



*Draft licence modifications laid before Parliament under section 89(3) of the Energy Act 2008; draft to lie for forty days pursuant to section 89(4) of that Act, during which period either House of Parliament may resolve that the licence modifications not be made.*

## **ENERGY**

### **SMART METERS**

#### **DRAFT MODIFICATIONS TO THE CONDITIONS OF THE SMART METER COMMUNICATION LICENCES (SMART METERS No. 4 of 2017)**

The Secretary of State makes the following licence modifications in exercise of the powers conferred by section 88(1) of the Energy Act 2008 ("the Act").

The Secretary of State has consulted the holder of the smart meter communication licences, the Gas and Electricity Markets Authority and such other persons as the Secretary of State considered appropriate in accordance with section 89(1) of the Act.

A draft of these modifications has been laid before Parliament in accordance with section 89(3) of the Act. Neither House of Parliament resolved, within the 40-day period referred to in section 89(4) of the Act, that the Secretary of State should not make the modifications.

#### **Interpretation**

- 1 In these modifications "smart meter communication licences" means –
  - (a) the licence granted to Smart DCC Limited on 20 September 2013 pursuant to sections 7AB(2) and (4) of the Gas Act 1986; and
  - (b) the licence granted to Smart DCC Limited on 20 September 2013 pursuant to sections 6(1A) and (1C) of the Electricity Act 1989.

#### **Modifications to the smart meter communication licences**

- 2 The conditions of the smart meter communication licences are modified, in accordance with paragraphs 3 to 5 below, with effect from the day after the day on which these modifications are made.
- 3 In Condition 35 –
  - (a) in paragraph 35.5 –
    - (i) in the existing definition of "Baseline Margin Performance (BMP) Adjustment", after "determined in accordance with" delete "Part E" and insert "Part F"; and
    - (ii) after the existing definition of "Pass-Through Costs", insert a new definition as follows –

**"Project** means an activity, or group of related activities, that is:

- (a) being undertaken, or planned to be undertaken, by the Licensee;

(b) intended to support a change to the nature or scope of the Services; and

(c) identified as being a 'Project', for the purposes of the Price Control Conditions, in a direction given by the Secretary of State to the Licensee, and:

(i) constitutes an activity, or group of related activities, specified in that direction;

(ii) takes place during such period of time as is specified in that direction; and

(iii) is undertaken for any such purpose as may be specified in that direction,

and any individual project shall be represented by the subscript n.";

(b) in paragraph 35.8 –

(i) after the existing abbreviated term "Baseline Margin Performance Adjustment BMPA" insert a new abbreviated term as follows –

"Baseline Margin Project Performance Adjustment BMPPA";

and

(ii) after the existing abbreviated term "Pass-Through Costs PTC" insert new abbreviated terms as follows –

"Project Activity Amount PAA

Project Activity Performance Factor PF

Project Activity Weighting Factor WF

Project Baseline Margin PBM

Project Performance Adjustment PPA".

4 In Condition 36 –

(a) in paragraph 36.8 –

(i) in the definition of "CRSR<sub>t</sub>", after "accordance with Part D" insert "below";

(ii) in the definition of "BM<sub>t</sub>" –

(A) after "pursuant to the provisions of" delete "Part D" and insert "Part E"; and

- (B) after "has the meaning given to that term in" delete "Part G" and insert "Part H";
- (iii) in the definition of "BMPPA<sub>t</sub>", after "in accordance with" delete "Part E" and insert "Part F"; and
- (iv) in the definition of "K<sub>t</sub>", after "formula set out in" delete "Part F" and insert "Part G";
- (b) in paragraph 36.12, in the formula after "BMIPA<sub>t</sub> + BMOPA<sub>t</sub>" insert "+ BMPPA<sub>t</sub>";
- (c) after existing paragraph 36.16, insert new paragraph 36.17 as follows –
 

"36.17 For the purposes of paragraph 36.12, the value of BMPPA<sub>t</sub> shall be determined in accordance with the provisions of Part D of Condition 38 (Determination of the BMP Adjustment).";
- (d) renumber existing paragraphs 36.17 to 36.20 as paragraphs 36.18 to 36.21, respectively;
- (e) in renumbered paragraph 36.21, after "Appendices 1" delete "and 2" and insert "to 3";
- (f) in Appendix 1 to Condition 36, in the heading, before "**of this condition**") delete "**Part C**" and insert "**Part E**";
- (g) in Appendix 2 to Condition 36 –
  - (i) in paragraph A1, after "In accordance with" delete "Part D" and insert "Part E"; and
  - (ii) in paragraph A4 –
    - (A) in sub-paragraph A4(b), after "Mandatory Business of the Licensee;" delete "and";
    - (B) after sub-paragraph A4(b), insert new paragraph A4(c) as follows –
 

"(c) separately identify the value of any element of the proposed Relevant Adjustment that relates to a Project n (the **Project Baseline Margin**), so that it is clearly distinguishable both from:

      - (i) the value of any element of the proposed Relevant Adjustment that relates to any other Project n; and
      - (ii) the value of the elements of the proposed Relevant Adjustment that do not relate to a Project; and"; and
  - (C) renumber existing sub-paragraph A4(c) as sub-paragraph A4(d);
- (iii) in paragraph A5, in sub-paragraph A5(a), after "to which the change (or changes) would relate" insert ", in each case identifying separately the change (or changes) relating to the Project Baseline Margin for any Project n";
- (iv) in paragraph A11 –
  - (A) in sub-paragraph A11(a), after "proposed Relevant Adjustment;" delete "and";

- (B) in sub-paragraph A11(b), after "proposed Relevant Adjustment" delete "." and insert ";"; and
- (C) after sub-paragraph A11(b) insert new sub-paragraph A11(c) as follows –

"(c) separately identify the value of any Project Baseline Margin that relates to a Project n, so that it is clearly distinguishable both from:

- (i) the value of any element of the Relevant Adjustment that relates to any other Project n; and
- (ii) the value of the elements of the Relevant Adjustment that do not relate to a Project.";

(v) after existing paragraph A14, insert –

- (A) a new heading as follows –

**"Part E Relationship to Baseline Margin Project Performance Adjustment Scheme";** and

- (B) a new paragraph A15 as follows –

"A.15 For the purposes of:

(a) any proposal for a Relevant Adjustment under paragraph A2;

(b) any determination of a Relevant Adjustment under paragraph A7,

no account shall be taken of a Baseline Margin Project Performance Adjustment Scheme that has been, or may be, made by the Secretary of State under Appendix 1 of Condition 38."; and

(vi) after new paragraph A15 –

- (A) delete the existing heading **"Part E: Interpretation"** and insert new heading **"Part F: Interpretation"**;

- (B) renumber existing paragraph A15 as paragraph A16; and

- (C) in renumbered paragraph A16, after the existing definition of **"Determination Period"** insert a new definition as follows –

**"Project Baseline Margin"** has the meaning given to that term in paragraph A4(c).".

5 In Condition 38 –

(a) in paragraph 38.2 –

(i) after "amounts of the Baseline Margin Implementation Performance Adjustment term (BMIPA)" delete "and the" and insert ",";

(ii) after "Baseline Margin Operational Performance Adjustment term (BMOPA)" insert ", and Baseline Margin Project Performance Adjustment term (BMPPA)"; and

- (iii) after "that have effect in" delete "Part E" and insert "Part F";
- (b) in paragraph 38.3, after "application of the BMIPA" delete "term and the BMOPA term in Part E" and insert ", BMOPA and BMPPA terms in Part F";
- (c) in paragraph 38.4, after "For the purposes of sub-paragraph" delete "11(a)" and insert "13(a)";
- (d) in paragraph 38.8, after "For the purposes of sub-paragraph" delete "12(b)" and insert "14(b)";
- (e) in paragraph 38.9, after "but no later than" delete "31 October 2018" and insert "31 August 2020";
- (f) in paragraph 38.10 –
  - (i) insert a new sub-paragraph 38.10(a) as follows –
 

"(a) must not relate to any Project Baseline Margin";
  - (ii) renumber existing sub-paragraph 38.10(a) as sub-paragraph 38.10(b);
  - (iii) in renumbered sub-paragraph 38.10(b), after "value of  $BM_t$ " insert "excluding any Project Baseline Margin"; and
  - (iv) renumber existing sub-paragraph 38.10(b) as sub-paragraph 38.10(c);
- (g) after paragraph 38.10, insert –
  - (i) a new heading as follows –

**"Part D: Calculation of the value of the BMPPA term"; and**

- (ii) new paragraphs 38.11 to 38.13 as follows -

38.11 For the purposes of paragraph 17 of Condition 36, the value of the BMPPA term in Regulatory Year  $t$  is to be expressed as an amount in £ million to three decimal places, and calculated in accordance with the following formula:

$$BMPPA_t = \left( \sum_{All\ n} PPA_{n,t} \right) \times -1$$

38.12 For the purposes of paragraph 38.11:

$PPA_{n,t}$  means a **Project Performance Adjustment**, being the amount of an adjustment that is determined in respect of Project  $n$  in Regulatory Year  $t$  in accordance with the terms of a BMPPA Scheme made by the Secretary of State under Appendix 1 (Baseline Margin Project Performance Adjustment Schemes) which has effect as part of this condition.

38.13 Where in respect of any Regulatory Year  $t$  the Secretary of State has not made any BMPPA Scheme that results in the determination of a Project Performance Adjustment in that Regulatory Year, the value of BMPPA shall be zero."; and

- (h) after new paragraph 38.13 –

- (i) delete the heading "**Part D: Interpretation**" and insert a new heading "**Part E: Interpretation**";
- (ii) renumber existing paragraph 38.11 as paragraph 38.14;
- (iii) in renumbered paragraph 38.14, after the existing definition of "**Performance Auditor**" insert an new definition as follows –

"**Project Baseline Margin** has the meaning given to that term in Appendix 2 to Condition 36 (Adjustment Mechanism for the BM term)."; and

- (iv) after paragraph 38.14, insert a new Appendix (Appendix 1) as shown in Schedule 1.

*Name*

Parliamentary Under-Secretary of State

Date:

Department for Business, Energy and Industrial Strategy



## SCHEDULE 1

### New Appendix to Condition 38

#### "Appendix 1: Baseline Margin Project Performance Adjustment Scheme

##### Introduction

- A1. For the purposes of Part D above, this Appendix 1 provides for the Secretary of State to make a Baseline Margin Project Performance Adjustment Scheme, and to determine the nature and terms of operation of that scheme, in order to calculate the value of BMPPA in any Regulatory Year.

##### Part A: Baseline Margin Project Performance Adjustment Scheme

- A2. The Secretary of State may at any time, by notice in writing given to the Licensee, make a scheme for the purposes of this Appendix, which shall be known as a **Baseline Margin Project Performance Adjustment Scheme** (or **BMPPA Scheme**).
- A3. A BMPPA Scheme made under paragraph A2 may relate to one or more Projects in respect of which a Project Baseline Margin has been (or is deemed to have been) determined, or may subsequently be (or be deemed to be) determined.
- A4. A BMPPA Scheme made under paragraph A2 must include, in respect of each Project to which the scheme relates:
- (a) a description of one or more activities which are being carried out, or are to be carried out, by the Licensee for the purposes of undertaking that Project (each a **Project Activity**);
  - (b) a weighting factor in relation to each such Project Activity, corresponding to the proportion of that Project which the Project Activity is deemed to represent for the purposes of the scheme (a **Project Activity Weighting Factor**), where:
    - (i) that factor is a number between 0 (zero) and 1 (one);
    - (ii) the total of all such factors in relation to all Project Activities described in the scheme shall not exceed 1 (one);
  - (c) a description of a performance target relating to each Project Activity (a **Project Activity Milestone**); and
  - (d) a performance factor in relation to each Project Activity Milestone, representing a measure of the Licensee's performance of the Project Activity relative to the target (a **Project Activity Performance Factor**), where:
    - (i) that factor is a number falling within in a range of numbers equal to or less than 1 (one), which may in particular include negative numbers;
    - (ii) that number may vary within that range in accordance with such aspects of the performance of the Licensee, measured by reference to the Project Activity Milestone, as may be described in the scheme.

- A5. For the purposes of sub-paragraph A4(c), a Project Activity Milestone may be related to such factors concerning the performance by the Licensee of a Project Activity as the Secretary of State considers appropriate, which may include in particular any one or more (or any combination) of the following:
- (a) the date on which the Project Activity takes place;
  - (b) the number of steps, events, actions or outputs that constitute (or are generated by) the Project Activity;
  - (c) any measure of quality associated with the steps, events, actions or outputs that constitute (or are generated by) the Project Activity;
  - (d) the results of an audit or assessment carried out by any person in respect of any matter relating to the performance by the Licensee of the Project Activity; and
  - (e) a determination made by the Secretary of State or the Authority in respect of any matter relating to the performance by the Licensee of the Project Activity.
- A6. For the purposes of sub-paragraph A4(d)(ii), a Project Activity Performance Factor may vary by reference to such aspects of the performance by the Licensee of a Project Activity as the Secretary of State considers appropriate, which may include in particular any one or more (or any combination) of the factors specified at sub-paragraphs A5(a) to (e).
- A7. In paragraphs A5 and A6, any reference to a Project Activity shall be read as including a reference to any part of that Project Activity.
- A8. A BMPPA Scheme made under paragraph A2 may also include such provision as the Secretary of State considers appropriate for the purpose of interpreting and giving effect to the scheme (the **BMPPA Scheme Principles**).
- A9. For the purposes of paragraph A8, BMPPA Scheme Principles may include in particular provisions for the purpose of any one or more (or any combination) of the following:
- (a) interpreting the provisions of the scheme in relation to any Project Activity Milestone or Project Activity Performance Factor;
  - (b) identifying whether the Licensee has reached any Project Activity Milestone;
  - (c) identifying whether any Project Activity has been completed;
  - (d) calculating any Project Activity Performance Factor;
  - (e) requiring an audit or assessment to be carried out by any person in respect of any matter relating to the performance by the Licensee of the Project Activity; and
  - (f) the determination by the Secretary of State or the Authority in respect of any matter relating to the performance by the Licensee of the Project Activity.
- A10. Where a BMPPA Scheme includes any BMPPA Scheme Principles:
- (a) the scheme shall be interpreted and applied in accordance with those principles; and

- (b) any question as to the calculation of a Project Performance Adjustment under the scheme shall be determined, and the amount of that adjustment calculated, in accordance with those principles.

A11. The Secretary of State may amend an existing BMPPA Scheme at any time by notice in writing given to the Licensee.

**Part B: Consultation**

A12. Before making or amending a BMPPA Scheme, the Secretary of State must first:

- (a) consult with the Authority, the Licensee and the SEC Parties on a draft of the proposed scheme (or of the amendments to it); and
- (b) take into account any responses received to the consultation before finalising and making the scheme (or the amendments to it).

**Part C: Calculation of PPA**

A13. For the purposes of Part D above, the Project Performance Adjustment in respect of any Project n in Regulatory Year t shall be calculated in accordance with the following formula:

$$PPA_{n,t} = \sum_{All\ PA} PAA_{PA,t}$$

A14. In paragraph A13:

$PPA_{n,t}$  has the meaning given to it in paragraph 38.12;

$PAA_{PA,t}$  means a **Project Activity Amount**, being the amount determined in relation to each Project Activity PA in respect of Project n in Regulatory Year t, and calculated in accordance with the provisions of paragraphs A15 to A18.

Regulatory Years before completion of the Project Activity

A15. In each Regulatory Year t prior to that in which the circumstances described in paragraph A16 occur, the value of the PAA term in respect of a Project Activity PA shall be 0 (zero).

Regulatory Year in which the Project Activity is completed

A16. In any Regulatory Year t in which:

- (a) the Project Activity PA is first completed; or
- (b) if that Project Activity PA had been completed, the Project Activity Performance Factor would be 1 (one),

the value of the PAA term shall be calculated in accordance with paragraph A17.

A17. Where this paragraph applies, the value of the PAA term shall be calculated in accordance with the following formula:

$$PAA_{PA,t} = WF_{PA} \cdot PF_{PA} \left( PBM_{n,t} + \sum_{All\ I} PBM_{n,I} \right)$$

Where:

$WF_{PA}$  means the Project Activity Weighting Factor of that Project Activity PA, in accordance with the BMPPA scheme.

$PF_{PA}$  means the Project Activity Performance Factor of that Project Activity PA, calculated in accordance with the provisions of the BMPPA Scheme (and in the circumstances described in paragraph A.16(b), its value shall be 1 (one)).

$PBM_{n,t}$  means the amount of the Project Baseline Margin in respect of Project n in Regulatory Year t which has been (or is deemed to have been) determined for that Regulatory Year, multiplied by the price index adjuster (PIBM) for that Regulatory Year and divided by PIBM for the Regulatory Year in which that Project Baseline Margin was (or is deemed to have been) determined,

and for these purposes PIBM in the Regulatory Year 2013/14 shall have the value of 1 and in each subsequent Regulatory Year shall be derived from the following formula:

$$PIBM_t = \left[ 1 + \frac{RPI_t}{100} \right] \times PIBM_{t-1}$$

where  $RPI_t$  means the percentage change (whether it is positive or negative) between (i) the arithmetic average of the Retail Prices Index numbers published or determined with respect to each of the six months from July to December (inclusive) in Regulatory Year t-2 and (ii) the arithmetic average of the Retail Prices Index numbers published or determined with respect to the same months in Regulatory Year t-1 (and “Retail Prices Index” has the meaning given to that term in Part H of Condition 36 (Determination of the Licensee’s Allowed Revenue)).

$PBM_{n,t}$  means the value of  $PBM_n$  in any preceding Regulatory Year, indexed up to Regulatory Year t by reference to the Average Specified Rate, so that:

(a) in relation to  $PBM_n$  for Regulatory Year t-1:

$$PBM_{n,t} = PBM_{n,t-1} \left[ 1 + \frac{(ASR_t)}{100} \right]$$

(b) in relation to  $PBM_n$  for Regulatory Year t-2:

$$PBM_{n,t} = PBM_{n,t-2} \left[ \left( 1 + \frac{(ASR_t)}{100} \right) \cdot \left( 1 + \frac{(ASR_{t-1})}{100} \right) \right]$$

(c) in Regulatory Year t-3 and any preceding Regulatory Year,  $PBM_{n,t}$  shall be calculated using the same method as in sub-paragraphs (a) and (b).

Regulatory Years after the Project Activity is completed

A18. In each Regulatory Year t after that in which the circumstances described in paragraph A16 have occurred, the value of the PAA term shall be calculated in accordance with the following formula:

$$PAA_{PA,t} = WF_{PA} \cdot PF_{PA} \cdot PBM_{n,t}$$

For the purposes of paragraph A18, the meaning of each formula term shall be the same as in paragraph A17.

**Part D: Interpretation**

A19. For the purposes of this Appendix:

**Baseline Margin Project Performance Scheme** (or **BMPPA Scheme**) has the meaning given to that term in paragraph A2.

**BMPPA Scheme Principles** has the meaning given to that term in paragraph A8.

**Project Activity** has the meaning given to that term in paragraph A4(a).

**Project Activity Amount** has the meaning given to that term in paragraph A14.

**Project Activity Milestone** has the meaning given to that term in paragraph A4(c).

**Project Activity Performance Factor** has the meaning given to that term in paragraph A4(d).

**Project Activity Weighting Factor** has the meaning given to that term in paragraph A4(b).

**Project Baseline Margin** has the meaning given to that term in Appendix 2 to Condition 36 (Adjustment Mechanism for the BM term).".