

Breathing space scheme: consultation on a policy proposal

Energy UK Response January 2019

About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 680,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests over £12.5bn annually, delivers around £84bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

These high-level principles underpin Energy UK's response to HM Treasury's (HMT) Consultation on Breathing space scheme policy proposal. This is a high-level industry view; Energy UK's members may hold different views on particular issues, and may send in individual responses, in particular around their own specific processes. We would be happy to discuss any of the points made in further detail with HMT or any other interested party if this is considered to be beneficial.

Executive Summary

Energy UK welcomes the opportunity to respond to the HM Treasury Consultation on the implementation of a breathing space scheme for individuals in serious problem debt. Energy UK's response is set out on an issue-by-issue basis rather than direct answers to the questions in the Consultation. We believe this will better draw out the energy-specific issues that HM Treasury will need to consider in order to make the Breathing Space policy workable in the energy market.

It is important to state at the outset that Energy UK is not opposed to a breathing space scheme being implemented providing it is done correctly, taking into account the uniqueness of the energy sector, recognising its role as a universal and essential service.

The energy sector already does a great deal to assist consumers in or at risk of falling into debt. Some suppliers already have their own versions of breathing space of varying lengths depending on the individual needs of the consumer. There is also the Energy UK Safety Net for vulnerable customers, which the six largest suppliers are signed up to. These examples highlight the sector's commitment to this issue, and that it remains a priority for the sector.

Energy UK believes that what will be key to a successful breathing space scheme will be how it works in practice, taking into account how the energy sector works and its differences to other sectors. At this stage, we would suggest further work is required by HM Treasury to address some of the energy specific details if a Breathing Space scheme is to be properly implemented in the energy market.

We would also be keen to work with HM Treasury as it continues to develop a statutory debt management plan to ensure any plan is practical for the energy sector. At this stage we believe further clarification is required with regards to what HM Treasury believe the benefits of a statutory debt

management plan would be that are not already provided for under the supply licence conditions in relation to gas and electricity set and enforced by Ofgem.

To this end, we welcome the engagement we have already had with HM Treasury on this issue, and are grateful to HM Treasury officials for agreeing to attend a session with Energy UK members on 4th February 2019. We believe this will be an extremely useful part of HM Treasury's consultation process. We also would urge HM Treasury to discuss suppliers' current obligations and licence conditions with Ofgem.

Concerns and areas for consideration:

Informing suppliers & System changes/market changes

Energy UK is pleased to see more clarity on the way suppliers will be informed when a customer enters a Breathing Space, and we particularly welcome confirmation that the Insolvency Service will be involved in an administrative role as was suggested in our response to the Call for Evidence. Energy UK would also suggest that HM Treasury explores further the notification system which informs suppliers as soon after a customer enters a breathing space as possible.

The introduction of a breathing space period will require system changes within each supplier in order to ensure they can comply with it. This will differ from supplier to supplier, so more clarity on whether there will be a grace period for suppliers to become compliant would be welcome. There may also be cost implications for suppliers who have to make complicated or detailed changes to their systems. The changing nature of the market, namely the differing sizes and maturity of suppliers, means that different suppliers will face different challenges.

Debt advice sector capacity

As previously raised by Energy UK, the debt advice sector has seen increasing demand, and HM Treasury should ensure there is the capacity for an upsurge in referrals that may occur. When considering if there will be enough capacity to manage an increased demand as a result of intervention, it is important to recognise the time that would be required to recruit and fully train new debt advisors to meet this need. We note that the consultation considers this by saying:

"...be easy to offer and administer for debt advisers. The government recognises that the debt advice sector is currently undergoing significant change, and is keen to ensure that the plan is simple to administer, alongside providing a predictable funding stream."

However, more detail is key here. Energy UK members work very closely with debt advice agencies and so are keenly aware of the work they already do, including any additional burdens Breathing Space may put them under.

Existing similar Breathing Space schemes

A number of Energy UK members have raised the fact that they already operate their own similar Breathing Space schemes, and how well these will fit with the policy proposed by HM Treasury. Individual suppliers may go into more detail in their own responses, and Energy UK would urge HM Treasury to explore further what suppliers do already.

Mental Health Definition

Energy UK welcomes HM Treasury demonstrating they have considered mental health issues in the consultation. However, some Energy UK members have expressed concern that the definition around mental health is too narrow. Whilst the provision for people receiving NHS treatment for a mental health crisis to receive Breathing Space is supported by Energy UK, consideration should also be given to the wider impact a customer suffering from poor mental health can have.

Related to this, it would be useful to have some clarification from HM Treasury as to whether a person acting on behalf of a customer through Power of Attorney would be able to access Breathing Space for them through the process. Energy UK would support this.

Pre-Payment Meters (PPMs)

With regards to the breathing space proposal, consideration must be given to how it will work for customers with PPMs. If a customer with a PPM is in debt, their debt will be scheduled on their meter, including a set weekly recovery rate. For non-smart PPMs suppliers do not have a direct route to automatically make changes to these settings.

Rather, if a supplier wants to make any adjustments to the debt scheduled on a non-smart PPM, they must send a digital message via a Prepayment Meter Infrastructure Provider (Post Office, PayPoint and PayZone) to the local vendor where a customer normally tops up. When the customer next adds credit to their key or card, the message will be added to the card and will then be transferred to the meter when the card/key is next inserted into the meter (i.e. the act of topping up), at which point the digital message can be executed. It is, therefore, not possible for a supplier to automatically cease debt collection on a non-smart operate PPM. There is, therefore, a risk that debt may still be collected following the start of a breath space period until the next time a customer tops up.

This point around PPMs was made previously in Energy UK's original response to the Call for Evidence, however, it has not been addressed in the Consultation. The only reference to PPMs concerns suppliers being prohibited from installing new PPMs once a customer is in a Breathing Space, which Energy UK supports.

Energy UK would again urge HM Treasury to consider this issue.

Energy UK has previously sent HM Treasury a high-level pathway of how a payment holiday to stop debt being collected could be applied on a PPM meter, put together by one of Energy UK's members. NB - This should be treated as illustrative as different suppliers have different processes.

How a payment holiday could work for a customer with a conventional PPM:

1. Customer contacts to say that they're in payment difficulty with debt weekly recovery rate and consumption.
2. Agree with customer to pause Weekly Recovery Rate (WRR) for X days and agree what the WRR will be at the end of the payment holiday should the company be unable to get in contact with the customer to have an Ability to Pay (ATP) conversation.
3. Company sends message to outlet (the shops where the customer normally tops up) via the Prepayment Meter Infrastructure Provider (PPMIP).
4. Customer would then need to go and vend (i.e. purchase credit) – the message would then be added to their key.
5. Customer then tops up meter and the debt would be removed from the meter, as per the message on the key. This may not work straight away if other messages have also been sent to the outlet and are queued to go onto the key. If it is not possible to place the message onto the key to remove the debt at the time of the first vend, the customer would then have to keep vending until the message is added to the meter.
6. After the agreed period is over, the company would have to contact the customer and have an ATP conversation. If the company was unable to get in contact with the customer, then the debt would be set at the rate agreed when the breathing space was set-up.
7. The company would then send another message for the customer to pick up at their outlet the next time they vend.
8. Customer would need to vend and then the debt would be reinstated on the meter.

How a payment holiday could work for a customer with a Smart PPM:

1. Customer contacts to say that they're in payment difficulty with debt WRR and consumption.

2. Agree with customer to pause WRR for XXX days and agree what the WRR will be at the end of the payment holiday should the company be unable to get in contact with the customer to have an ATP conversation.
3. Debt removed from the meter remotely.
4. After the agreed period is over, the company would have to contact the customer and have an ATP conversation. If the company was unable to get in contact with the customer, then the debt would be set at the rate agreed when the breathing space was set-up.
5. Debt reinstated to the meter remotely.

Domestic debt objections

Under their supply licence, suppliers have the right to block a customer from switching to another supplier when they have built up a debt.

Energy UK believes HM Treasury needs to ensure that suppliers retain this right to issue debt objections during any Breathing Space period.

This position is backed up by a recent decision by Ofgem, which looked at whether to scrap debt objections, and concluded that this would be detrimental to customers as a whole by pushing prices up. Energy UK believe that the same risks apply if debt objections were not possible during a Breathing Space period. Ofgem's verdict states that:

"Based on the data available to us, we have concluded that removing debt objections would be likely to increase debt across suppliers' customer bases as customers switch away, leaving a debt which is harder for suppliers to recover. This would be likely to produce an increase in debt across suppliers' customer bases, leading to increased debt management costs and increased risks of customer bad debt. These effects are likely to be passed on through higher bills to domestic consumers."

Energy UK would advise that HMT needs to consider the impact on the Debt Assignment Protocol. It would be useful to have an idea around what impact this would potentially have on the customers move from one supplier to another taking their debt with them.

Further detail on Ofgem's decision can be found here: <https://www.ofgem.gov.uk/publications-andupdates/decision-review-domestic-and-non-domestic-objections>.

Further Points

Some suppliers have also raised concerns over the 14 day period for raising objections, as they feel that this is too short and would like to see it increased to 21 days, which brings the proposed policy in line with the equivalent scheme in Scotland.

Energy UK has also received feedback from some members that further clarity around whether existing payment plans would cease when a person enters a Breathing Space. Members agree that the consultation is clear that action should stop, but are unclear around whether existing debt repayment activity, such as Debt Management Plans, budget schemes or debt recovery would cease. Additionally, some members are concerned that ceasing of existing repayment facilities would imply that suppliers cease Third Party Deductions. These also include debt repayment, and suppliers have indicated that the pause and restart would be very complicated.

Finally, some suppliers have also raised concerns over the inclusion of sole traders being covered by Breathing Space. Members who have raised this believe that it would first be best at this point to ensure the policy works for domestic customers first, and that a distinction should be made between the home and the business premises. Members will go in to further detail in their own individual responses.

For any further questions or enquires please contact Tom Marsland: tom.marsland@energy-uk.org.uk or 020 7747 2957.

Annex 1 - How the sector operates currently

Energy UK previously submitted with the original Call for Evidence an outline of how the sector currently operates, and it is repeated here for ease of reference.

Ongoing energy usage during breathing space

If the energy sector is to be part of the breathing space scheme, then the differences between energy and other areas must be acknowledged when the policy is developed. In particular, a customer's use of energy does not stop during a breathing space period, and they will still be charged for the energy they use. This means that a customer's debt may still grow during the breathing space period.

UPDATE: Energy UK are pleased to see this point clarified in the consultation document, but HMT should be aware of the difficulties suppliers can face in differentiating between ongoing usage and debt repayment.

Ability to Pay Principles

It is important that HMT recognise that energy is regulated differently to other types of credit. In 2010 Ofgem introduced a series of Ability to Pay Principles for suppliers to abide by when assisting customers who have an energy debt and deciding on the amount of repayment. These provide the regulatory framework for energy debt. The principles state that any repayment arrangement a supplier sets up with a customer must be reasonable and take into account the customer's individual circumstances in order to ensure they are able to pay the amount, regardless of what amount will be. Adherence with the Ability to Pay Principles are taken into account by Ofgem when assessing suppliers' compliance with supply licence conditions.

Further details on the key Principles for taking ability to pay into account can found here: <https://www.ofgem.gov.uk/sites/default/files/docs/2010/06/open-letter.pdf>

Illustrative debt collection path

In line with the Ability to Pay Principles, below is an example of the steps a supplier may choose to take between issuing a bill and the warrant visit or approved remote disconnection, along with indicative timescales for each stage. Suppliers' actual debt collection pathways may, however, differ based on the supplier in question, the information the supplier holds about the customer, and the customer's individual behaviour.

- Bill Issued: Day 1
- Reminder notice: Day 10 – 28
- Second reminder notice: Day 20 – 40
- Outbound call: Day 21 – 70
- Final demand notice: Day 28 – 68
- Pre-disconnection letter: Day 35 – 92
- Collections visit: Day 36 – 92
- Human rights letter: Day 48 – 104
- Warrant obtained: Day 60 – 120
- Pre-warrant visit (if required): Day 50 – 130
- Warrant actioned (PPM fitted / Disconnection): Day 80 – 180
- Post-disconnection follow-up (if required): 1 – 10 days after disconnection

The Energy UK Safety Net

There is also voluntary regulation within the industry. Energy UK members aim to help their customers, and in particular their most vulnerable customers, and provide them with the appropriate support they need to manage their energy use. Therefore, the six largest domestic energy suppliers in Great Britain - British Gas, EDF Energy, npower, E.ON, Scottish Power, and SSE have signed up to the Safety Net. Signatories have pledged to never knowingly disconnect a vulnerable customer at any time of year,

where for reasons of age, health, disability or severe financial insecurity, that customer is unable to safeguard their personal welfare or the personal welfare of other members of the household.

In addition, the Safety Net provides enhanced measures that are integrated into all suppliers' debt management processes, an agreed universal definition of a potentially vulnerable customer, improved communication with support agencies, a range of debt management and repayment options and follow-up procedures to support vulnerable customers.

In many cases vulnerable energy customers have multiple debts and their circumstances may require a more holistic approach in order to provide effective support. In these cases, where appropriate, suppliers will signpost customers to independent advice agencies, such as Citizens Advice, National Debtline, and Step Change.