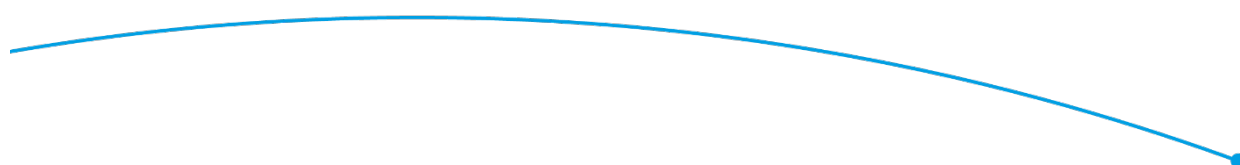




Department for
Business, Energy
& Industrial Strategy

DRAFT DOMESTIC GAS AND ELECTRICITY (TARIFF CAP) BILL



Cm 9516

October 2017



DRAFT DOMESTIC GAS AND ELECTRICITY (TARIFF CAP) BILL

Presented to Parliament
by the Secretary of State for Business,
Energy and Industrial Strategy
by Command of Her Majesty

October 2017



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FOREWORD

The Government wants markets to thrive and we continue to promote competition as the best driver of value and service for customers. The Government is prepared to act, however, where markets are not working for all consumers, and the energy market is a clear example of this.

Last year the Competition and Markets Authority found that customers of energy suppliers were paying £1.4 billion a year more than they would be in a truly competitive market. Vulnerable and low income customers are more likely to be on the most expensive standard variable tariffs. This simply does not tally with this Government's commitment to build a stronger, fairer Britain where everyone plays by the same rules.

We welcome Ofgem's commitment to protect a further million families, meaning over five million families will be protected from expensive standard variable tariffs for the first time; and we welcome Ofgem's statement that suppliers must step up efforts to get more of their customers on default tariffs onto better value deals. But this doesn't address the scale of the detriment suffered by the consumers on expensive default tariffs. I am therefore pleased to publish for pre-legislative scrutiny the Government's proposals for a temporary price cap for customers who are on standard variable tariffs (SVTs) or a tariff that the customer did not choose to be on (default tariffs).

The draft Bill provides for a temporary price cap for domestic customers on SVTs and default tariffs. This cap will be temporary and set by the independent energy regulator, Ofgem. It will initially last until the end of 2020, with the potential to be extended by up to three years if needed.

We very much welcome the forthcoming Parliamentary scrutiny on whether the draft Bill achieves its aim of protecting customers until the conditions for effective competition in this market are in place.

A handwritten signature in black ink, appearing to read 'Greg Clark'.

Rt Hon Greg Clark MP
Secretary of State for Business, Energy and Industrial Strategy

Domestic Gas and Electricity (Tariff Cap) Bill

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TO

Make provision for the imposition of a cap on rates charged to domestic customers for the supply of gas and electricity; and for connected purposes

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The cap

1 Cap on standard variable and default rates

- (1) As soon as practicable after this Act is passed, the Gas and Electricity Markets Authority (“the Authority”) must modify the standard supply licence conditions so that they include conditions (“tariff cap conditions”) that impose a cap on all standard variable and default rates that may be charged by the holders of supply licences for the supply of gas or electricity under domestic supply contracts. 5
But this is subject to section 3 (exemption for prepayment meters and tariffs with environmental claims). 10
- (2) The Authority –
(a) may modify the tariff cap conditions from time to time, but
(b) must secure that such conditions continue to be included in the standard supply licence conditions until they cease to have effect by virtue of section 7. 15
- (3) The “standard supply licence conditions” are the standard conditions incorporated in supply licences by virtue of section 8 of the Gas Act 1986 or section 8A of the Electricity Act 1989.
- (4) In relation to a domestic supply contract –
(a) “standard variable rate” means a rate or amount charged for, or in relation to, the supply of gas or electricity under the contract that is not fixed for a period specified in the contract, and 20

- (b) “default rate” means a rate or amount charged for, or in relation to, the supply of gas or electricity under the contract that applies if the customer under the contract fails to choose an alternative rate.
- (5) Any power under this section to make modifications includes power to make consequential, incidental, supplemental and transitional modifications of the standard supply licence conditions. 5
- (6) In exercising functions under this section, the Authority must have regard to the following matters –
- (a) the need to protect existing and future domestic customers who pay standard variable and default rates; 10
 - (b) the need to create incentives for holders of supply licences to improve their efficiency;
 - (c) the need to set the cap at a level that enables effective competition for domestic supply contracts;
 - (d) the need to maintain incentives for domestic customers to switch to different domestic supply contracts; 15
 - (e) the need to ensure that holders of supply licences who operate efficiently are able to finance activities authorised by the licence.
- 2 Tariff cap conditions**
- (1) Tariff cap conditions – 20
- (a) must set out how the cap is to be calculated, and may make provision about assumptions required to be made in making the calculation;
 - (b) may make provision for specifying how a standard variable or default rate is to be identified;
 - (c) may make provision requiring information to be provided by holders of supply licences to the Authority or the Secretary of State for the purposes of exercising functions relating to tariff cap conditions; 25
 - (d) may confer functions on the Authority;
 - (e) may make different provision for different areas or different cases;
 - (f) may do any of the things authorised for supply licences by section 7B(5)(a), (6) or (7) of the Gas Act 1986 or section 7(3), (4), (5) or (6A) of the Electricity Act 1989. 30
- (2) But tariff cap conditions may not –
- (a) exempt holders of supply licences from their application, or
 - (b) make different provision for different holders of supply licences. 35
- (3) The Authority must consult such persons as it considers appropriate on the provisions which are to set out how the cap is to be calculated.
- (4) Consultation undertaken before this Act is passed is as effective for the purposes of subsection (3) as consultation undertaken after it is passed.
- 3 Exemption for prepayment meters and tariffs with environmental claims** 40
- (1) Tariff cap conditions do not apply in relation to domestic customers who –
- (a) benefit from the cap on rates or amounts charged for, or in relation to, the supply of gas or electricity provided for by the Energy Market Investigation (Prepayment Charge Restriction) Order 2016, made by the Competition and Markets Authority, or 45

- (b) benefit from a cap on such rates or amounts that is a replacement for the cap provided for by that Order.
- (2) Tariff cap conditions do not apply in relation to any supply of electricity by a holder of a supply licence who, in relation to the supply, has complied with—
 - (a) Condition 21D.4(a) of the standard electricity supply licence conditions (obligation to ensure that claimed environmental benefits are a result of consumers choosing to purchase the tariff), or 5
 - (b) an obligation that is a replacement for the obligation imposed by Condition 21D.4(a).
- (3) “The standard electricity supply licence conditions” are the conditions incorporated in supply licences by virtue of section 8A of the Electricity Act 1989. 10

Procedure

4 Notice of proposed modifications

- (1) Before making any modifications under section 1, the Authority must take the following steps. 15
- (2) The Authority must give notice—
 - (a) stating that it proposes to make the modifications,
 - (b) setting out the proposed modifications and their effect, and
 - (c) specifying the time before which representations with respect to the proposed modifications may be made. 20
- (3) That time must not be before the end of the period of 28 days beginning with the day on which the notice is published.
- (4) The notice must be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the proposed modifications, and a copy of the notice must be sent to—
 - (a) each holder of a supply licence,
 - (b) the Secretary of State,
 - (c) Citizens Advice, and 30
 - (d) Citizens Advice Scotland.
- (5) The Authority must consider any representations which are made before the time specified in the notice.
- (6) Steps taken before this Act is passed are as effective for the purposes of this section as steps taken after it is passed. 35

5 Publication and effect of modifications

- (1) This section applies if, after taking the steps described in section 4, the Authority decides to proceed with the modifications.
- (2) The Authority must—
 - (a) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by them, 40

- (b) state the effect of the modifications,
 - (c) state how it has taken account of any representations made before the time specified in the notice mentioned in section 4, and
 - (d) state the reason for any differences between the modifications and those set out in the notice. 5
- (3) Each modification has effect from the day specified by the Authority in relation to it.
- (4) That day must be after the end of the period of 56 days beginning with the day on which the modification is published.

Review and termination 10

6 Review of competition for domestic supply contracts

- (1) The Authority must carry out a review into whether conditions are in place for effective competition for domestic supply contracts.
- (2) Such a review must, among other things, consider the extent to which progress has been made in installing smart meters for use by domestic customers. 15
- (3) Such a review must be carried out—
- (a) in the year 2020,
 - (b) if the tariff cap conditions are extended to have effect for the year 2021, in that year, and
 - (c) if the tariff cap conditions are further extended to have effect for the year 2022, in that year. 20
- (4) As soon as practicable after conducting the review, the Authority must—
- (a) produce a report on the outcome, which must include a recommendation as to whether or not the Authority considers that the tariff cap conditions should be extended to have effect for the following year, and
 - (b) publish the report and send a copy to the Secretary of State. 25
- (5) The Authority must comply with subsections (3) and (4) on or before 31 August in the year in which the review is to be carried out.
- (6) After considering the report the Secretary of State must publish a statement setting out whether the Secretary of State considers that conditions are in place for effective competition for domestic supply contracts. 30
- (7) The report must be published on or before 31 October in the year in which the review is to be carried out.

7 Extension and termination of tariff cap conditions 35

- (1) The tariff cap conditions cease to have effect at the end of the year 2020 unless the statement published by the Secretary of State in that year under section 6 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts, in which case the conditions have effect for the year 2021. 40
- (2) If the tariff cap conditions are extended by virtue of subsection (1) they cease to have effect at the end of the year 2021 unless the statement published by the

Secretary of State in that year under section 6 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts, in which case the conditions have effect for the year 2022.

- (3) If the tariff cap conditions are extended by virtue of subsection (2) they cease to have effect at the end of the year 2022 unless the statement published by the Secretary of State in that year under section 6 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts, in which case the conditions – 5
- (a) have effect for the year 2023, and
- (b) cease to have effect at the end of that year. 10
- (4) On the tariff cap conditions ceasing to have effect as provided by this section, the powers of the Authority under section 1 cease to be exercisable.

Consequential modification of conditions

8 Consequential modification of standard supply licence conditions

- (1) The Authority may make such modifications of any standard supply licence conditions as it considers necessary or expedient in consequence of the tariff cap conditions ceasing to have effect as provided by section 7. 15
- (2) The Authority must –
- (a) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by them, and 20
- (b) state the effect of the modifications.
- (3) Each modification has effect from the day specified by the Authority in relation to it.

Final provisions 25

9 Amendments of the Utilities Act 2000

- (1) The Utilities Act 2000 is amended as follows.
- (2) In section 33(1) (standard conditions of electricity licences), omit the “or” after paragraph (f) and after paragraph (g) insert “, or
- (h) under section 1 or 8 of the Domestic Gas and Electricity (Tariff Cap) Act 2018.” 30
- (3) In section 81(2) (standard conditions of gas licences), for “or under section 139 of the Energy Act 2013” substitute “, under section 139 of the Energy Act 2013 or under section 1 or 8 of the Domestic Gas and Electricity (Tariff Cap) Act 2018”. 35

10 Interpretation

In this Act –

“the Authority” has the meaning given by section 1(1);

“deemed supply contract” means a contract deemed to exist pursuant to any of the following provisions – 40

- (a) paragraph 8 of Schedule 2B to the Gas Act 1986;
 - (b) paragraph 3 of Schedule 6 to the Electricity Act 1989;
 - (c) paragraph 19 of Schedule 5 to the Gas Act 1995;
 - (d) paragraph 23 of Schedule 7 to the Utilities Act 2000;
- “default rate” has the meaning given by section 1(4); 5
- “domestic customer” means a customer under a domestic supply contract;
- “domestic supply contract” means a contract (including a deemed supply contract) for the supply of gas or electricity at domestic premises wholly or mainly for domestic purposes;
- “modify” includes amend, add to or remove, and references to modifications are to be construed accordingly; 10
- “standard supply licence conditions” has the meaning given by section 1(3);
- “standard variable rate” has the meaning given by section 1(4);
- “supply” – 15
- (a) in relation to gas, is to be read in accordance with section 48(2) of the Gas Act 1986;
 - (b) in relation to electricity, is to be read in accordance with section 4(4) of the Electricity Act 1989;
- “supply licence” means a licence under section 7A(1) of the Gas Act 1986 or section 6(1)(d) of the Electricity Act 1989; 20
- “tariff cap conditions” has the meaning given by section 1(1).

11 Extent and commencement

- (1) This Act extends to England and Wales and Scotland.
- (2) This Act comes into force on the day on which it is passed. 25

12 Short title

This Act may be cited as the Domestic Gas and Electricity (Tariff Cap) Act 2018.

DOMESTIC GAS AND ELECTRICITY (TARIFF CAP) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Domestic Gas and Electricity (Tariff Cap) Bill as published in Draft on 12 October 2017

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Draft Bill and to help inform debate on it. They do not form part of the Draft Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Draft Bill means in practice; provide background information on the development of policy; and provide additional information on how the Draft Bill, if enacted, would affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Draft Bill. They are not, and are not intended to be, a comprehensive description of the Draft Bill.

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Overview of the Draft Bill

- 1 This Draft Bill has a single purpose, which once enacted, is to require a temporary price cap on certain energy tariffs for domestic customers in Great Britain.

Policy background

Energy Market Background

- 2 The supply of electricity and gas is a licensed activity under the Electricity Act 1989 and the Gas Act 1986 respectively. This Draft Bill contains stand-alone provisions that will place a duty on the Authority (Ofgem) to modify the standard supply licence conditions to impose a cap on the amount that energy suppliers can charge their domestic customers who are on standard variable tariffs¹ or default tariffs². The provisions also provide Ofgem with a power to modify those licence conditions.
- 3 The gas and electricity retail markets were liberalised over the period from 1989 and reached the point where all customers are able to choose their supplier in 2003. Since 2010, many new companies have entered the market, with some of these companies growing significantly and establishing a foothold in the market. These new entrants often base their business model on attracting customers through low-cost fixed-priced deals, typically lasting a year. This has resulted in a two-tier market in which engaged customers are able to benefit from the most competitive tariffs available while those who are unable or unwilling to switch tariff remain on poorer value standard variable tariffs.
- 4 There is a wide variation in the prices that different domestic customers pay for energy, despite the fact that electricity and gas are homogenous products. Most customers of the Big Six energy companies could make considerable savings from switching suppliers, and/or tariffs. According to Ofgem, the average bill for a typical dual fuel household on a standard variable tariff with one of the Big Six suppliers was £1142; in contrast the cheapest tariff available over the same period was £824, a difference of £318.³
- 5 After a sustained period of real terms reduction in price in the years following privatisation, domestic gas and electricity prices have increased significantly over the last ten years. Average domestic electricity prices rose by around 36% between 2006 and 2016, and average domestic gas prices rose by around 43% in real terms over the same period.⁴
- 6 In 2013 the Prime Minister asked Ofgem and the Office of Fair Trading to assess the market. This

¹ On its website, Ofgem defines a standard variable tariff as “a supply contract with an indefinite length that does not have a fixed-term applying to the terms and conditions. It’s an energy supplier’s basic offer. If a customer does not choose a specific energy plan, for example after their fixed tariff ends, they are moved to a standard variable tariff] SVT until they choose a new one. A customer can also make an active choice to select an SVT”

² A default tariff is one that a consumer is put on if they do not make a positive action to choose an alternative tariff. Currently once a consumer’s fixed tariff has ended, they are automatically placed on a standard variable tariff as the default tariff.

³ August 2017 – Data from the Ofgem Data Portal. Available [here](#).

⁴ From the Domestic energy prices indices available [here](#)

led directly to Ofgem’s referral of the market for investigation by the Competition and Markets Authority (CMA) in June 2014. The CMA published its final report on 24 June 2016.⁵

- 7 The CMA reported that weak consumer response gives rise to an adverse effect on competition (AEC) in the domestic retail market and that the Big Six suppliers have unilateral market power over their standard variable tariff customers. The report set out that customers of the Big Six pay an average of £1.4bn a year more than they would in a truly competitive market. The CMA proposed a number of remedies focused on reforming the regulatory framework and enhancing consumer engagement to improve competition.
- 8 However, the CMA acknowledged that their remedies would take time to implement. They also identified that the roll-out of smart meters is a necessary element for addressing the issues their report highlighted.
- 9 The CMA also concluded that a price cap should apply to domestic customers on prepayment meters for a transitional period (2017 to the end of 2020). This is because prepayment customers have not been able to benefit from competitive prices in the same way as other customers due to various additional competition constraints, including the availability of tariffs, and the fact that their bills are particularly high. The temporary price cap for customers with prepayment meters came into force in April 2017 and covers approximately 4.5 million customers.⁶
- 10 Ofgem has reported that differences between typical tariffs offered to people who switch and customers of larger companies who do not switch rose above £350 per year in February 2016, and have typically been well above £225 per year⁷. Around two thirds of people, approximately 18 million⁸, remain on standard variable tariffs, and in 2016 7.8 million gas and electricity switches took place⁹. The CMA found that those who least can afford it are more likely to be on standard variable tariffs.

Government’s commitment

- 11 In the Queen’s Speech following the 2017 General Election, the Government committed to help to reduce energy bills.

Reference: The Gracious Speech, 2017

“My government will ensure fairer markets for consumers; this will include bringing forward measures to help tackle unfair practices in the energy market to help reduce energy bills.”

- 12 In June 2017, the Secretary of State wrote to Ofgem to ask them what action they intended to take to safeguard customers on the poorest value tariffs. In response Ofgem undertook to consult with

⁵ The relevant document, including the final report, can be found [here](#). A summary of the final report can be found [here](#).

⁶ The Energy Market Investigation (Prepayment Charge Restriction) Order 2016 can be found [here](#) and the explanatory note [here](#).

⁷ Data from the Ofgem Data Portal

⁸ Data from the Ofgem Data Portal

⁹ Data from the Ofgem Data Portal.

consumer groups to provide measures to protect vulnerable consumers. In October 2017 Ofgem announced that they will extend the price cap for customers with prepayment meters to a wider group of vulnerable customers. They also announced that suppliers will be able to roll customers coming to the end of their contracts onto another fixed deal instead of a standard variable tariff. They did not come forward with a proposal to use its powers to introduce a tariff cap for all standard variable tariffs and default tariff customers.

- 13 In October 2017, the Prime Minister announced that the Government would publish a draft Bill to require a temporary price cap on energy prices.
- 14 This Draft Bill therefore requires Ofgem to modify the standard licence conditions for gas and electricity suppliers, so as to include conditions that impose a price cap for standard variable tariffs and default tariffs offered to domestic customers with exceptions for those who benefit from protections under the pre-payment meter cap (or a replacement), and for tariffs which provide additional environmental benefits as a result of consumers choosing to purchase that tariff (these are sometimes known as 'green tariffs').
- 15 The cap applies until the end of 2020 but it may be extended, for a year on up to three occasions, if there are still concerns regarding the competitiveness of the market. A procedure for extension is set out in the Draft Bill.

Legal background

- 16 The relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

- 17 Clause 11 sets out the territorial extent of the Draft Bill; that is the jurisdictions in which the Draft Bill forms part of the law. The extent of a Bill can be different from its application. Application concerns where a Bill produces a practical effect. The Draft Bill will extend to England and Wales and Scotland and will apply in all those areas.
- 18 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the provisions of the Draft Bill relate are not within the legislative competence of the Scottish Parliament or the National Assembly for Wales, and no legislative consent motion is being sought in relation to any of the provisions of the Draft Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament or the National Assembly for Wales, the consent of the relevant devolved legislature(s) will be sought for amendments.
- 19 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Draft Bill

Clause 1: Cap on standard variable tariffs and default rates

- 20 Subsection (1) requires Ofgem to modify the standard licence conditions for gas and electricity suppliers, so as to include conditions (“tariff cap conditions”) that impose a price cap for certain tariffs offered to domestic customers. Ofgem must do this as soon as practicable after Royal Assent.
- 21 The requirement for tariff cap conditions applies to standard variable and default tariffs¹⁰, subject to Clause 3.
- 22 Under subsection (2), Ofgem may modify the tariff cap conditions, but they must be in place until they cease to have effect under Clause 7. Ofgem must consider the matters listed at subsection (6) when implementing or modifying the tariff cap conditions.

Clause 2: Tariff cap conditions

- 23 Subsection (1) requires that the tariff cap conditions set out how the cap is to be calculated. It also sets out where Ofgem has discretion regarding the content of the tariff cap conditions. Subsection (2) sets out restrictions on the content of the tariff cap conditions.
- 24 Subsections (3) requires Ofgem to consult on the provisions which set out how the cap is to be calculated, and under subsection (4) this consultation may take place before this Draft Bill is passed.

Clause 3: Exemptions for prepayment meters and tariffs with environmental claims

- 25 Clause 3 provides that the tariff cap conditions will not apply in the following cases.
- a. The tariff cap conditions do not apply to domestic customers who benefit from the tariff cap under the Energy Market Investigation (Prepayment Charge Restriction) Order 2016. That Order applies to customers who pay for their energy through a prepayment meter. Also, the tariff cap conditions do not apply to domestic customers who benefit from a cap that replaces the cap in that Order.
 - b. The tariff cap conditions do not apply to the supply of electricity by a supplier that has complied with Condition 21D.4(a) of their supply licence, or a replacement obligation, regarding that supply. Condition 21D refers to tariffs to which suppliers attach an environmental claim above and beyond the environmental benefit requirements on suppliers (these are sometimes known as ‘Green Tariffs’). Under Condition 21D.4(a) the supplier must ensure that the claimed environmental benefit is a result of consumers choosing to purchase the tariff in question.

Clause 4: Notice of proposed modifications

- 26 Clause 4 sets out the bespoke licence modification procedure that must be followed in order to introduce tariff cap conditions. It sets out who Ofgem must notify regarding the proposed modifications and requires Ofgem to consider any representations made within the time specified in the notice. This procedure may take place before this Draft Bill is passed.

¹⁰ See the definitions in the Bill and in the footnotes of the Policy Background section of this document.

Clause 5: Publication and effect of modifications

- 27 Clause 5 sets out requirements regarding the publication of modifications. In particular, subsection (4) provides that modifications cannot take effect until at least 56 days after their publication.

Clause 6: Review of competition for domestic supply contracts

- 28 Clause 6 requires Ofgem to review the market for domestic electricity and gas supply contracts, to assess whether conditions for effective competition are in place. This includes, among other things, the roll out of Smart Meters. It must then produce and publish a report on this, and make a recommendation as to whether or not it considers that the tariff cap conditions should be extended to have effect for the following year. The Secretary of State must consider the report and recommendation and publish a statement regarding whether the conditions for effective competition are in place. This process applies in the year 2020, and in the years 2021 and 2022 if the tariff cap conditions still apply in those years (see Clause 7).

Clause 7: Extension and termination of tariff cap conditions

- 29 Clause 7 sets out the procedure for terminating the tariff cap conditions, or extending them, depending on the contents of the statement made by the Secretary of State, as per Clause 6.
- 30 The tariff cap conditions cease to have effect at the end of 2020, if the Secretary of State releases a statement that the conditions for effective competition are in place. If the Secretary of State releases a statement that the conditions for effective competition are not in place, the tariff cap conditions apply for the year 2021.
- 31 If the tariff cap conditions apply in 2021, the same process takes place in the year 2021 to determine if the tariff cap conditions must apply for the year 2022. And if the tariff cap conditions apply in 2022, the same process takes place again to determine if the tariff cap conditions must apply for the year 2023. However, the tariff cap conditions must cease to have effect at the end of the year 2023.
- 32 Once the tariff cap conditions cease to have effect, the powers afforded to Ofgem by Clause 1 cease to be exercisable, so Ofgem cannot use Clause 1 to impose further tariff cap conditions.

Clause 8: Consequential modification of standard supply licence conditions

- 33 Once the tariff cap conditions ceases to have effect, Ofgem may modify the licence to make related changes.
- 34 Ofgem is required to follow the procedure in Clause 8 regarding such modifications.

Clause 9: Amendments of the Utilities Act 2000

- 35 Clause 9 sets out consequential amendments.

Clause 10: Interpretation

- 36 This clause defines the terms used in this Draft Bill.

Commencement

37 Clause 11 provides for this Draft Bill to come in to effect on the day of Royal Assent.

Financial implications of the Draft Bill

- 38 This is enabling legislation which does not in itself trigger any immediate financial implications. It will be for the regulator Ofgem to determine how they implement the cap on domestic electricity and gas tariffs and assess the financial implication of their approach.
- 39 The CMA suggests that the cost to Ofgem of implementing the pre-payment meter cap, under the 2016 CMA Order, would be approximately £1 million.¹¹ However, as the prepayment meter cap is already in place, the additional cost of implementing a wider price cap could be below this figure due to economies of scale that could be exploited if a similar methodology is used.

Compatibility with the European Convention on Human Rights

40 These provisions may engage Article 6 (right to a fair trial) of the European Convention of Human Rights (“the ECHR”) to the extent that the modification of licence conditions is determinative of civil rights and obligations. However, there are sufficient safeguards, in particular the availability of judicial review, to ensure that there is no actual interference with Article 6 rights. They may also engage Article 1 of Protocol 1 (protection of property) of the ECHR insofar as changes to licence conditions may interfere with energy companies’ licences and their contracts with customers. We nevertheless consider that this strikes a fair balance between the general public interest, namely the protection of certain domestic consumers from unjustifiably high energy prices for a limited period until the conditions for effective competition are in place, and the rights of individual licensees. Ofgem will be able to set the cap at a level that is proportionate to the aims to be achieved. The Department believes that the provisions of the Draft Bill are compatible with the Convention rights.

¹¹ Paragraph 14.437 of the CMA’s final report. Available online at: <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>.

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 1-8	Yes	Yes	Yes	No	No	No	N/A	No

DOMESTIC GAS AND ELECTRICITY (TARIFF CAP) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Domestic Gas and Electricity (Tariff Cap) Bill as published in Draft on 12 October 2017

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