



Making a positive difference
for energy consumers

Domestic electricity and gas suppliers, BEIS, Citizens Advice, Citizens Advice Scotland, the Health and Safety Executive and other interested parties

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Modification of electricity and gas supply licences to remove certain RMR Simpler Tariff Choices rules

We have decided to modify electricity and gas supply licences to remove certain RMR Simpler Tariff Choices rules. The decision follows our statutory consultation letter dated 3 August 2016, which outlined our proposed changes and reasons for proposing these changes.¹ In reaching this decision we have carefully considered and taken into account responses received to our consultation. The changes, outlined below, will take effect from 28 November 2016. The notification decision documents are published alongside this letter.

Overview of consultation responses and our views

A large majority of respondents agreed with the proposed removal of the relevant Simpler Tariffs Choices rules. They agree that the changes to the RMR Simpler Tariff Choices rules will promote competition and innovation. A couple of respondents still had concerns regarding the effects of the removal of the four tariff rule and exclusive tariffs on consumer engagement. We have addressed these concerns below.

Responses generally related to five broad themes, which we have outlined below. Some respondents provided detailed comments on the drafting of licence conditions, which we have also addressed below.

Interaction with Clearer Information tools and Tariff comparability principle

About half of respondents highlighted the interactions between the proposed changes to the Simpler Tariff Choices rules with the proposed changes to the Clearer Information tools and the introduction of a new tariff comparability principle. There was some concern that, due to the different timescales of the changes, conflicting licence conditions will apply. Some respondents also highlighted that there could be confusion as to which licence conditions would apply at any given time.

We appreciate that taking a staged approach to amending the standard conditions could create some temporary uncertainty and complexity for suppliers and other stakeholders. In order to minimise this, we will continue to publish the consolidated conditions on our

¹ Ofgem. Statutory Consultations on the removal of certain Retail Market Review Simpler Tariff Choices Rules, 3 August 2016, <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultations-removal-certain-retail-market-review-simpler-tariff-choices-rules>

website every time they are updated.² Stakeholders will also be able to track the detailed changes and reasons for changes through the consultation process. We're keen to make these changes as soon as possible to give formal effect to the position we set out in our April open letter.³

We are aware that some of the Clearer Information tools in the supply licence were not designed to accommodate some of the new and innovative tariffs that we now expect to see being introduced. The approach we set out in our April open letter 2016 will continue to apply until the relevant changes are made to the Clearer Information tools.⁴ In short, we expect suppliers to adapt their approach to complying with the applicable Clearer Information rules in a way which ensures that customers (including those in vulnerable situations) are able to compare tariffs, are not misled and are able to make properly informed decisions.

We have already seen some suppliers adapt the information tools to accommodate new tariffs. We would encourage any suppliers that are concerned about their adaptation of the Clearer Information tools to discuss their concerns with us.

We have already consulted on consequential changes to some of the Clearer Information tools, and plan to issue a separate statutory consultation by the end of the year with a view to implementing further changes in the licence in early 2017.⁵

Guidance

Some respondents raised questions about the relevance of the collective switching guidance following the proposed removal of standard licence condition 22B (including the definitions relating to collective switching).⁶ With the removal of some of the Simpler Tariff Choices rules, particularly the four tariff rule and the restriction on exclusive tariffs, much of the guidance is in effect redundant, as the exceptions for collective switches will cease to exist. The rules on the Cheapest Tariff Messaging in the supply licence (as highlighted in the collective switching guidance) will continue to apply. We will maintain the current guidance for now, but as part of our review of the rulebook we intend to remove or amend any guidance that is no longer relevant.

Further amendments to the licence

Some respondents suggested that further amendments were possible in addition to those proposed by us. Some suppliers considered that changes could be made to standard licence conditions 22C, 22CA, 22CB, 22D, 23 and 31 to allow suppliers to better implement new tariffs.⁷ Potential changes to these licence conditions is out of scope for this statutory consultation process, which we do not consider is contingent on changes being made to

² For ease of reference, we publish consolidated conditions on our website: <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>. However, please note that the consolidated conditions are not a formal public register document and in the event of any conflict between this document and any relevant modification notice, the latter takes precedence.

³ Ofgem, CMA provisional remedies: removal of certain RMR 'simpler choices' rules, 14 April 2016, https://www.ofgem.gov.uk/system/files/docs/2016/04/supplier_letter-removal_of_simpler_rmr_rules_14.04_0.pdf

⁴ Ofgem, CMA provisional remedies: removal of certain RMR 'simpler choices' rules

⁵ Ofgem, Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing, 3 August 2016, <https://www.ofgem.gov.uk/publications-and-updates/helping-consumers-make-informed-choices-proposed-changes-rules-around-tariff-comparability-and-marketing>

⁶ Ofgem, Open letter – Inclusion of collective switch tariffs in the Cheapest Tariff Message, <https://www.ofgem.gov.uk/publications-and-updates/open-letter-inclusion-collective-switch-tariffs-cheapest-tariff-message>

⁷ 22C (Fixed Term Supply Contracts), 22CA (Transitional provisions for standard condition 22C covering end of fixed term notices and rollovers, 22CB (Transitional provisions for certain existing fixed term supply contracts), 22D (Dead Tariffs), 23 (Notification of Domestic Supply Contract terms), 31 (General information for Domestic Customers)

these conditions. Nevertheless we briefly set out our views on each of the relevant conditions below.

The CMA considered SLC 22C (Fixed Term Supply Contracts) and SLC 22D (Dead Tariffs) as part of its energy market investigation and decided not to recommend their removal, as it had concerns that it would not be in the interest of consumers to do so.⁸ We agree with the CMA and do not propose to amend these rules at this point in time.

We have consulted on possible changes to SLC 22CA and 22CB (both transitional provisions) in our consultation 'Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing'.⁹ We will shortly be issuing an information request to determine whether these conditions are still necessary because they apply to current tariffs, or whether it is possible to remove them.

With regard to the comments made by respondents on SLC 23 (Notification of Domestic Supply Contract terms) and SLC 31 (General information for Domestic Consumers), these SLCs do not relate to the Simpler Tariff Choices component identified by the CMA as a feature giving rise to an adverse effect on competition. Accordingly, we do not consider it necessary to amend these provisions at present. Such SLCs may be considered in the future through our work on the future of retail regulation.

Any supplier concerned that existing licence conditions could have negative effects for consumers in specific situations is invited to communicate such a concern to us and, where applicable, to apply for a derogation from the relevant licence conditions.¹⁰

Derogations

A number of respondents have queried whether existing derogations will still be required after the removal of SLC 22B. We will revoke any active derogations granted to licensees that solely relate to the rules we propose to remove. We will inform the relevant licensees of our decision.

Derogation decisions that also cover licence conditions which we do not propose to remove, will remain in force until they expire. We will inform relevant licence holders that parts of the direction, related to rules we propose to remove, will no longer apply.

We will also review and update our derogations approach in line with these and future changes to the licence.¹¹ We will highlight which new licence conditions will be open for suppliers to apply for derogations from.

Market monitoring, compliance and consumer engagement

A number of respondents asked Ofgem to monitor the market to ensure that any new tariff flexibility does not lead to consumer detriment or confusion. We are currently reviewing our monitoring approach to ensure that it is well adapted to the changes we are making in our regulatory approach following the CMA remedies to rely more on principles. We are also running a challenge panel in November and December where we will be looking at how suppliers are enabling consumers to make informed choices. This is in line with the CMA's

⁸ CMA, Energy Market Investigation – final report, 24 June 2016, p. 781, <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

⁹ Ofgem, Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing

¹⁰ Ofgem, Guidance for derogation requests from domestic Retail Market Review (RMR) licence conditions, 22 June 2015, https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/guidance_for_derogation_requests_from_domestic_retail_market_review_licence_conditions_version_2_0.pdf

¹¹ Guidance for derogation requests from domestic Retail Market Review (RMR) licence conditions

proposed principle on tariff comparability, which we are consulting on separately.¹² In the meantime, we will continue to monitor the market. If you are concerned about behaviour in the market by a particular supplier, please do get in touch to discuss your concerns.

A couple of respondents raised concerns that the removal of the relevant Simpler Tariff Choices rules could have a negative effect on consumer engagement. Consumer engagement and empowerment is one of the key issues which the CMA has sought to address through its package of remedies. We are taking a range of measures to increase consumer engagement in the market, such as the database remedy and our work on developing, testing (for example through Randomised Control Trials) and implementing more effective prompts to engage. Specifically with regard to exclusive tariffs, we recognise that removing the rule that all tariffs need to be available to new and existing customers may risk the unintended consequence of harm to inactive customers by removing a constraint which active customers impose on suppliers’ pricing. However, the CMA has been clear that this risk would be offset by the increase in competition that suppliers would face for the retention of their existing customers.

Detailed comments on the drafting of licence conditions

Three respondents provided specific drafting suggestions related to the standard conditions of gas supply licence, electricity supply licence or both. Below, we set out the proposed changes by respondents, along with our response. One respondent asked for the title pages in the consolidated conditions to be amended accordingly and for the definitions to be placed in alphabetical order, which we will do.

Changes relevant to both gas and electricity supply licence

| SLC | Suggested amendment by respondent | Respondents rationale | Our view |
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| SLC 1 (Definition of Energy Discount) | Amend to: “means a Discount which is a monetary amount of a precise financial value and which is applied directly to a Unit Rate (<u>or, where a Tariff has more than one Unit Rate, Unit Rates</u>) or a Standing Charge (<u>or, where a Tariff has more than one Standing Charge, Standing Charges</u>). | To include the possibility of applying discounts to one or more standing charge or unit rates. | We agree with this suggestion as we are removing the restrictions on discounts in SLC 22B. However, we will change the language to “(or, if applicable, Standing Charges) / (or, if applicable, Unit Rates)” |
| SLC 1 (Definition of Opt-out Reward Points Discount) | Add a comma between “of” and “or”: “...that are, offered as part of, or in any way linked to a Tariff...” | Language and punctuation | We agree with this typographical correction. We also are inserting an additional comma between “linked |

¹² Ofgem, Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing

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| | | | to" and "a Tariff". |
| SLC 1 (Definition of Relevant Bundles) | Amend to: "Relevant Bundles" | This definition is only used in the singular form | We agree with this typographical correction. |
| SLC 1 (Definition of Standing Charge) | Amend to: "means a monetary amount (<u>or amounts</u>) (which may be zero) that is continuously chargeable to a Customer on a daily basis and which is chargeable in addition to charges arising on the basis of a Unit Rate(s); | When removing the requirement to have a standing charge, it is no longer necessary for the definition of 'Standing Charge' to specify that the monetary amount may be zero. The respondent also suggested to remove requirements for Standing Charges to be continuously chargeable on a daily basis, to allow for tariff structures that may employ a more innovative use of Standing Charges, for example a tariff that has no Standing Charge at weekends. | We agree with the first suggestion to remove the clarification that a standing charge may be zero as tariffs will no longer be required to have a standing charge. We propose to amend the second part of the definition to take out continuously, but to keep "on a daily basis and which is chargeable" in order to keep the time basis element of the standing charge. This will still allow standing charges to only apply on certain days. |
| SLC 1 (Definition of Tied Bundle) | Add a comma between "of" and "or": "...is offered as part of, or which is in any..." | Language and punctuation | We agree with this typographic correction. |
| SLC 1 (Definition of Time of Use Rates) | Remove sub-paragraph (b) "(b) the Charges for the Supply of Electricity do not include any other Unit Rate or Unit Rates;" | Two respondents have proposed the removal of sub-paragraph (b) as we already proposed to remove similar provisions in SLC 22A.3 | We agree with this suggestion as this is in line with proposed changes in 22A.3. |
| SLC 22A.2(a)(i), SLC 22A.2(a)(ii) and SLC 22A.2(b)(i). | Amend to: "In respect of supplying electricity/gas to a Domestic Customer under a Deemed Contract or Domestic Supply Contract, the licensee must ensure that all Charges for Supply Activities are | The references to "one or more" should be changed to "zero or more" to ensure that suppliers are able to offer a standing charge only | We agree with this suggestion as it more accurately captures the proposed flexibility on |

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| | <p>incorporated within:</p> <p>(a) where the Domestic Supply Contract or Deemed Contract is for a Non-Time of Use Tariff:</p> <p>(i) a single zero or more Standing Charge(s); and/or</p> <p>(ii) a single zero or more Unit Rate(s); and</p> <p>(b) where the Domestic Supply Contract or Deemed Contract is for a Time of Use Tariff:</p> <p>(i) a single zero or more Standing Charge(s); and/or</p> <p>(ii) Time of Use Rates.”</p> | <p>product, a unit rate only product or any other type of tariff structure.</p> | <p>tariff structure.</p> |
| SLC 22A.3(c) | <p>To not amend SLC22A.3(c) to include additional wording - “the licensee must ensure that”.</p> | <p>The amendment is not required to implement, or consequential to, the removal of the ‘Simpler Tariff Rules’. We note that no rationale has been provided by Ofgem, in its letter accompanying the statutory notice, stating the need for the additional wording, or why the requirement is not subject to a reasonableness test as adopted in other parts of the licence e.g. the Standards of Conduct.</p> | <p>We disagree with this suggestion. The wording ‘the licensee must ensure that’ was already present in 22A.3. The change we proposed was to remove two paragraphs from 22A.3 (a and b).</p> |
| SLC 22CB.3(a) | <p>Remove SLC22CB.3(a)</p> | <p>If SLC 22CB remains valid, given the amendments to SLC22A and the relaxation on tariff structures, we would question the need for the exclusion provided for in SLC22CB.3(a).</p> | <p>We disagree with this suggestion. Removing 22CB.3 (a) would require these Transitional Fixed Term contracts to comply with 22A. As we are consulting on the need for 22CB as a whole and do not have insight into the number of these contracts which</p> |

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| | | | have yet to expire, we propose to keep this exception for now. |
| SLC 23A.2(c) | Insert the word "and" after the end of paragraph 23A.2(c) | Language and punctuation | We agree with this suggestion. |
| SLC 23A.2(d) | Insert full stop at the end of paragraph (d) | Language and punctuation | We agree with this suggestion. |

Changes relevant to electricity supply licence only

| SLC | Suggested amendment | Respondents rationale | Our view |
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| SLC 1 (Definition of Time of Use Tariff) | To not remove the prefix "(b)" from this definition. | Language and punctuation | The prefix "(b)" to this definition exists erroneously in the electricity supply licence (but not the gas licence) we therefore propose to only remove it in the electricity licence. |
| SLC 1 (Definition of White Label Tariff, parts (a) and (b)) | Replace "an" with "a" as follows: "offered by virtue of a Gas Supply Licence..." and "...person that does not hold a Gas Supply..." | Language and punctuation | This comment applies to the gas supply licence, the language in the electricity licence is correct. |
| SLC 22E.5(a) | Amend paragraph (a) to: "Replacing information relating to Unit Rates and a Standing Charges with information about the Charges for the Supply of Electricity which apply to the Unmetered Supply Arrangement" | Language and punctuation | We agree with this typographical correction. We will similarly delete the word "a" between "Unit Rates and" and "Standing Charges". |
| SLC 22F.9(a) | Remove paragraph (a) | 22F.6(a) is redundant as all tariffs will be able to have multiple standing charges. | We agree with this typographical correction. |

Changes relevant to gas supply licence only

| SLC | Suggested amendment | Rationale | Our view |
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| SLC 1 (Definition of Holding Company) | Add the definition of Holding Company (from the Electricity Supply Licence) to Gas Supply Licence as it is missing. | Omission | This definition is missing erroneously from the gas supply licence and will be included. |
| SLC 1 (Definition of White Label Tariff, parts (a) and (b)) | Replace "an" with "a" as follows: "offered by virtue of an Gas Supply Licence..." and "...person that does not hold an Gas Supply..." | Language and punctuation | We agree with this suggestion. |

Our decision

Having carefully considered the responses to our statutory consultation, we have decided to proceed with the modifications that are set out in this letter and our decision notice published alongside this letter.

Next steps

The changes will take effect on 28 November 2016.

Yours faithfully,

Neil Barnes

Associate Partner, Consumers and Competition
Duly authorised on behalf of the Gas and Electricity Markets Authority