

Derogations for SLC 22B

Subject Guidance for Derogations from SLC 22B: Requirement to make all tariffs available to new and existing customers

Publication date: Friday 11 March 2022

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Team:

From 14 April 2022, SLC 22B requires domestic suppliers to make all their tariffs available to new and existing customers. This measure was introduced as a short-term intervention to address risks to consumers from ongoing wholesale market volatility.

Ofgem has issued a market-wide derogation from SLC 22B for fixed tariffs that are targeted at existing customers only (i.e. not open to new customers). For all other types of derogation requests, this guidance explains the process for making a derogation request application. Before submitting a formal derogation application, we encourage suppliers to contact us at retailpolicyinterventions@ofgem.gov.uk to seek advice on the process and the required information.

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1. Introduction

SLC 22B is a new licence requirement for suppliers to offer all their tariffs to existing as well as new customers. This temporary measure will help to stabilise the market in the short term by acting as a break on unsustainable price competition when cheaper tariffs return and customer switching picks up again. It will also limit price discrimination by suppliers and help to improve consumer trust and confidence in the retail market after the challenges of this winter, improving access to cheaper tariffs for consumers who may be less willing or able to switch supplier, particularly those in vulnerable situations.

2. Nature of derogations

A derogation is a direction from GEMA relieving a licensee from its obligation to comply with a licence condition in specific circumstances and to a specified extent¹.

For the purposes of SLC 22B, a derogation granted is a direction from the Gas and Electricity Markets Authority relieving a licensed supplier from its obligations to offer all its tariffs to new and existing customers, in specific circumstances for a specified tariff and for a specified period of time. In the absence of a derogation, suppliers (and, where applicable, their representatives) are required to comply with the requirement to offer all tariffs to new and existing customers as per the supply licence conditions from 14 April 2022.

When can a derogation be requested

We consider that a licensed supplier may submit a request for derogation where it is able to demonstrate that compliance with SLC 22B would have substantial unintended or unanticipated negative consequences for consumers.

Fixed retention tariffs

We have issued a separate market-wide derogation from SLC 22B for fixed tariffs that are only available to existing customers (i.e. tariffs which are not open to new customers). Therefore, suppliers do not need to request a derogation from SLC 22B using this application form for the purpose of their fixed retention tariffs.

¹ For the purposes of this letter, a "Direction" is a legal binding decision of GEMA which has the effect of exempting a licensed supplier from having to comply with one or more licence condition requirements and which may be subject to specified conditions (e.g. compliance with alternative requirements).

Who can apply for a derogation?

All domestic licensed suppliers to whom which SLC 22B applies can apply for a derogation from these requirements. For example, if a white label provider identifies a need for a derogation from this rule, the relevant licence holder would be the one to apply for the derogation. If the derogation is granted, it will apply to the licensed party who will be responsible for ensuring compliance by any associated third party to any conditions set out in the directions.

We suggest early engagement with Ofgem as this will help increase the efficiency of the derogation process and allows us to discuss with interested suppliers the need for a derogation.

3. Assessing the derogation request

Each derogation request will be considered on a case-by-case basis and we will only grant a derogation after careful consideration of the evidence provided by the supplier or third parties, including the wider implications for the short-term stability of the retail energy market. Our decisions are guided by our principal objective and statutory duties.²

If we consider that public consultation is required or that a licence modification would be a more appropriate route than a derogation (for example, to ensure consistency across licensees), this will be communicated to suppliers. Due to the commercial sensitivity of the derogation applications and the limited time before which SLC 22B comes into force, we would only consider a consultation in exceptional circumstances. We would confirm our intention to consult with the supplier before doing so³.

Information needed from the supplier

Ofgem has published a template which outlines the information that suppliers will need to submit to us to allow us to determine the outcome. The applicant should complete all the

² Ofgem's principal objective is to protect the interests of existing and future consumers. Our statutory duties are mainly established in UK law, in the Gas Act 1986 and Electricity Act 1989. Provisions also appear in other legislation, including the Competition Act 1998, Utilities Act 2000 and Energy Act 2013. [Our strategy and priorities | Ofgem](#)

³ See "Guidance on Ofgem's approach to consultation", 20 December 2011, at <https://www.ofgem.gov.uk/ofgem-publications/37043/guidance-ofgems-approach-consultation.pdf>.

relevant sections of the template in detail. Incomplete submissions or insufficient detail provided in the application may delay our assessment of the case.

When submitting the application, we request that the applicant provides clear and complete information about the following:

Explanation of the tariff for which you are seeking a derogation.

- Tariff name and description
- Explanation of which types of customers the tariff is intended to serve
- Duration of tariff
- Number of customers the tariff currently serves (i.e. tariff uptake). We request that suppliers provide us with historical data where this is available

Benefits of the tariff

The supplier will need to clearly provide full justification of why the tariff should be exempt from SLC 22B, taking into account the policy intent. This should include explicit reasons why the tariff in question would provide overall consumer benefit and this should include the impacts on consumer bills.

The supplier should include reference to Ofgem's current strategic vision, priorities and objectives in making their case⁴.

Impacts of not granting a derogation

The supplier should clearly explain:

- The ability to continue operating using their business model or the impact of changing their model on their financial viability if the derogation is not granted
- why compliance with SLC 22B would result in outcomes that are inconsistent with the intended outcomes of the policy measure

Other relevant information

The supplier should provide:

- the terms and conditions of the tariff
-

- any other relevant information, consumer research, and other analysis or evidence that may be useful in supporting their case

Post assessment

Following assessment, if we decide to grant a derogation, we will publish a decision and direction on our website. This will indicate the terms of the derogation and whether there are any conditions/alternative requirements on the supplier to comply with. The derogation will also normally have provisions for circumstances in which it could be revoked. For example, if the supplier submitted inaccurate information or if the supplier (and where applicable, any representative) does not comply with any requirements or conditions of the derogation.

We envisage that derogations will be granted for the duration of licence condition SLC 22B, i.e. up until the end of September 2022, or longer if this is extended for up to 6 months where necessary. As stated in our Decision Document, we will review the impact of SLC 22B on consumers and competition to help inform future consideration of whether to implement this measure on an enduring basis.

4. Timelines

The derogation template is available to download from our website. Ofgem will assess these on a case-by-case basis against the policy intent and the anticipated consumer benefit. For suppliers wishing to continue existing tariffs after 14 April, we request that suppliers submit their derogation requests to retailpolicyinterventions@ofgem.gov.uk by no later than 18 March 2022. We will respond to derogation requests to confirm the outcome by no later than 7 April 2022, ahead of 14 April go-live date. For those received after 18th March, we will respond to these as soon as possible.

5. Derogation process

- 1) Supplier identifies need for derogation
- 2) Supplier engages with us to discuss intention of applying for derogation via retailpolicyinterventions@ofgem.gov.uk
- 3) For suppliers wishing to continue existing tariffs after 14 April, suppliers submit their derogation requests to retailpolicyinterventions@ofgem.gov.uk by **no later than 18 March 2022**.
- 4) Ofgem checks whether we have sufficient information to consider the case. If Ofgem has enough information, we begin assessing the derogation request. If not, we go back with an information request.

- 5) Derogations team assesses the request based on policy intent and consumer outcomes.
- 6) We complete assessment and confirm the outcome by **no later than 7 April 2022**. For those derogation requests received after 18th March, we will respond to these as soon as possible.
- 7) We publish decision and direction (if derogation is granted) or send a letter to the applicant (if derogation is rejected).