

Energy Suppliers,
Third Party Intermediaries,
Consumer Representatives and
Other Interested Parties

7 April 2022

Market-wide derogation from SLC 22B for Fixed Retention Tariffs

This publication sets out the decision of the Gas and Electricity Markets Authority (the "Authority") to grant all licenced domestic suppliers, "the Licensees", a derogation from Standard Licence Condition 22B (Requirements to make all tariffs available to new and Existing Customers) for certain domestic, fixed term tariffs which are only available to Existing Customers with the aim of retaining the loyalty of those customers; in this document, known as "Fixed Retention Tariffs". The purpose of this derogation is to allow domestic suppliers to continue offering – or offer new – Fixed Retention Tariffs to their Existing Customers only.

Background and policy context

The unprecedented and unexpected rise in gas and electricity prices since last Autumn has put energy markets under severe strain. In December last year we consulted on a range of potential short-term interventions¹ to enable domestic suppliers to better manage risks created by current wholesale market volatility, which could lead to higher costs for consumers in the event of further significant supplier exits from the market.

On 16 February we published our Decision on short term interventions² to introduce SLC 22B, which will require domestic suppliers to make all their tariffs available to new and Existing Customers. This licence condition takes effect from 14 April 2022.

SLC 22B has been introduced as a temporary mechanism – in combination with the Market Stabilisation Charge – to help stabilise the domestic retail energy market and minimise consumer detriment. The policy intent is to temporarily reduce the likelihood of unsustainable price competition between existing suppliers in the event of wholesale prices falling quickly and significantly. By doing so, this measure will help to mitigate the prospect of large supplier losses and therefore higher costs and risks to consumers. It is also intended that this would limit price discrimination by suppliers that disadvantage loyal customers and help to improve consumer trust and confidence in the retail market. This would improve access to cheaper tariffs for consumers who may be less willing or able to switch supplier, particularly those in vulnerable situations.

¹ [Statutory consultation on potential short-term interventions to address risks to consumers from market volatility | Ofgem](#)

² [Decision on short-term interventions to address risks to consumers from market volatility \(ofgem.gov.uk\)](#)

SLC 22B provides for Ofgem to exempt from this policy measure any tariffs which do not affect the risks we are concerned about and can otherwise be seen as being beneficial to customers.

Our ongoing engagement with suppliers revealed that many were intending to submit requests for a derogation from SLC 22B for the purpose of being able to continue offering fixed tariffs to Existing Customers. Further to this, we published a consultation³ on 11 March 2022 to seek views on issuing a market-wide derogation from SLC 22B (Requirement to offer all tariffs to new and Existing Customers) to all licensed domestic electricity and gas suppliers, for the purpose of allowing them to continue offering – or offer new – Fixed Retention Tariffs to their Existing Customers only. In the consultation, we stated that we do not consider that these tariffs affect the risks we are concerned about in relation to market stability, and consider they can have wider benefits to consumers. Furthermore, we considered that this approach would allow for a more efficient and transparent process for all concerned.

Consultation on market-wide derogation and summary of responses

We received two formal responses to our consultation on the introduction of a market-wide derogation, both from suppliers. Both suppliers were broadly supportive of Ofgem's intention for a market-wide derogation to cover tariffs offered to Existing Customers only. Both suppliers sought confirmation on their understanding of the level of coverage of the intended market-wide derogation and the scenarios it would cover.

One supplier questioned why Ofgem is proposing that the derogation is limited to Fixed Retention Tariffs only and does not include evergreen tariffs. They consider that Ofgem should widen this derogation to cover all types of retention tariffs (i.e., both fixed and evergreen tariffs), stating that this would allow suppliers the ability to remain agile in the current market, ensuring tariff offerings both reflect market conditions and allow for innovation in the products made available to Existing Customers.

One supplier requested to have sight of draft text ahead of Ofgem issuing the final derogation direction. Their view is that, this would allow some level of industry review to mitigate the risk of potential unintended consequences and allow for more robust licence implementation. Furthermore, they requested that the market-wide derogation coverage extends to tariffs which are innovative tariffs that are trialled initially with Existing Customers only.

Ofgem position

Taking account of the bilateral communication with suppliers that have approached us, we have decided to proceed with a **market-wide derogation to grant all licenced domestic suppliers, "the Licensees", a derogation from Standard Licence Condition 22B (Requirements to make all tariffs available to new and Existing Customers)** for certain domestic, fixed term tariffs which are only available to Existing Customers with the aim of retaining the loyalty of those customers; in this document, known as "Fixed Retention Tariffs.

Standard Variable Tariffs

Ofgem have decided to limit the application of this derogation to fixed tariffs only to meet our policy objective. We have not included standard variable tariffs in this market-wide derogation given conflict with other standard licence conditions including the requirements around Live Evergreen Tariffs, which mean that we consider that standard variable tariffs can not be offered as acquisition only tariffs regardless of SLC 22B.

The relevant Directions are attached to this decision. They shall be effective from 14 April 2022 and shall remain in force in accordance with the terms of the Directions for the duration

³ [Derogations from SLC 22B – requirement to make all tariffs available to new and Existing Customers | Ofgem](#)

of the operation SLC 22B (which will cease to have effect at 23:59 on 30 September 2022, or such later date, no later than 31 March 2023, as specified by the Authority publishing a statement in Writing) or until such time when they are revoked or varied by the Authority. This publication constitutes the Notice, under section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986, of the reasons for the Authority's decision to issue the attached Directions. Capitalised terms used in this letter, which are not defined herein, have the meaning given to them in the Standard Licence Conditions of gas and electricity supply licences.

Other types of derogation requests

For all other types of derogation requests, i.e., those that do not relate to Fixed Retention Tariffs and fall outside the scope of the market wide derogation, suppliers are required to apply to Ofgem for an individual derogation. To do so, suppliers should complete a derogation application template and explain the reasons for wanting to continue offering their specific tariff. Suppliers can obtain a copy of the derogation template, along with the procedure/guidance note, on our website. Ofgem will assess these on a case-by-case basis against the policy intent and the anticipated consumer benefit.

The Authority's Decision

Having regard to our principal objective and statutory duties, we consider that granting a market-wide derogation from SLC 22B for Fixed Retention Tariffs will meet the policy objective of preventing suppliers targeting tariffs at new customers only by making tariffs available to all customers while allowing certain beneficial loyalty tariffs to continue. Therefore, the Authority grants a derogation to all domestic supply Licensees from SLC 22B for Fixed Retention Tariffs with effect from the date of, and subject to the terms of, the attached Directions.

If you have any questions about this market-wide derogation, please contact retailpolicyinterventions@ofgem.gov.uk.

Yours sincerely,



Maureen Paul

Deputy Director, Retail Market Policy

OFFICIAL-InternalOnly

Attachment 1 – Electricity Supply Licence

The Company Secretary,

Direction issued to all holders of an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 who are authorised to supply domestic premises, each a Licensee and all together the “Licensees”, by the Gas and Electricity Markets Authority (the “Authority”)

1. The Authority issues this direction pursuant to Standard Licence Condition (“SLC”) 22B of the electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 to all Licensees.
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in the Licence.
3. In this Direction,
 - a) **“Fixed Retention Tariffs”** means domestic, tariffs of fixed term duration, which are only available to Existing Customers with the aim of retaining the loyalty of those customers.
 - b) **“Existing Customers”** are Domestic Customers that already have a Contract or Deemed Contract with the Licensee.
4. Paragraph 3 of SLC 22B provides that the Authority may issue directions relieving the Licensee of its obligations to comply with specified parts of SLC 22B to such extent and subject to such conditions as the Authority may direct.
5. The considerations and reasons for the Authority’s decision are set out in the accompanying letter to the Licensee, dated 7 April 2022.
6. Subject to the conditions in this Direction specified in paragraph 7 below, the Authority directs that in relation to the market wide derogation from SLC 22B for Fixed Retention Tariffs, the Licensee is relieved, for the duration of the operation of SLC 22B, of the obligation to comply with SLC 22B of its Licence such that it may offer Fixed Retention Tariffs.
7. A Licensee may only rely on this derogation if it complies with the following conditions:
 - a) the Licensee is required to report any change of circumstances relevant to this Direction to the Authority without delay;
 - b) the Licensee notifies the Authority in writing that it is relying on this Direction either in advance, or within 5 days, of doing so;
8. This Direction shall be effective from 14 April 2022 and shall remain in force for the duration of SLC 22B (which will cease to have effect at 23:59 on 30 September 2022, or such later date, no later than 31 March 2023, as specified by the Authority publishing a statement in Writing) unless this Direction is revoked earlier or varied in writing by the Authority.

Dated: 7 April 2022

OFFICIAL-InternalOnly

The Office of Gas and Electricity Markets

10 South Colonnade, Canary Wharf, London, E14 4PU Tel 020 7901 7000

www.ofgem.gov.uk



Maureen Paul

Deputy Director, Retail Market Policy

OFFICIAL-InternalOnly

The Office of Gas and Electricity Markets

10 South Colonnade, Canary Wharf, London, E14 4PU **Tel** 020 7901 7000

www.ofgem.gov.uk

Attachment 2 – Gas Supply Licence

The Company Secretary,

Direction issued to all holders of a gas supply licence granted or treated as granted under section 7A (1) of the Gas Act 1986 who are authorised to supply domestic premises, each a Licensee and all together the “Licensees”, by the Gas and Electricity Markets Authority (the “Authority”)

1. The Authority issues this direction pursuant to Standard Licence Condition (“SLC”) 22B of the gas supply licence granted under section 7A(1) of the Gas Act 1986 to the Licensee.
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in the Licence.
3. In this Direction,
 - a) **“Fixed Retention Tariffs”** means domestic, tariffs of fixed term duration, which are only available to Existing Customers with the aim of retaining the loyalty of those customers.
 - b) **“Existing Customers”** are Domestic Customers that already have a Contract or Deemed Contract with the Licensee.
4. Paragraph 3 of SLC 22B provides that the Authority may issue directions relieving the Licensee of its obligations to comply with specified parts of SLC 22B to such extent and subject to such conditions as the Authority may direct.
5. The considerations and reasons for the Authority’s decision are set out in the accompanying letter to the Licensee, dated 7 April 2022.
6. Subject to the conditions in this Direction specified in paragraph 7 below, the Authority directs that in relation to the market wide derogation from SLC 22B for Fixed Retention Tariffs, the Licensee is relieved, for the duration of the operation of SLC 22B, of the obligation to comply with SLC 22B of its Licence such that it may offer Fixed Retention Tariffs.
7. A Licensee may only rely on this derogation if it complies with the following conditions:
 - a) the Licensee is required to report any change of circumstances relevant to this Direction to the Authority without delay;
 - b) the Licensee notifies the Authority in writing that it is relying on this Direction either in advance, or within 5 days, of doing so;
8. This Direction shall be effective from 14 April 2022 and shall remain in force for the duration of SLC 22B (which will cease to have effect at 23:59 on 30 September 2022, or such later date, no later than 31 March 2023, as specified by the Authority publishing a statement in Writing) unless this Direction is revoked earlier or varied in writing by the Authority.

Dated: 7 April 2022

OFFICIAL-InternalOnly

The Office of Gas and Electricity Markets

10 South Colonnade, Canary Wharf, London, E14 4PU Tel 020 7901 7000

www.ofgem.gov.uk



Maureen Paul

Deputy Director, Retail Market Policy

OFFICIAL-InternalOnly

The Office of Gas and Electricity Markets

10 South Colonnade, Canary Wharf, London, E14 4PU **Tel** 020 7901 7000

www.ofgem.gov.uk