

To all stakeholders

Email: Retailpriceregulation@ofgem.gov.uk

Date: 3 February 2023

Price Cap – Removal of the cap end date from licence conditions

1. Executive Summary

- 1.1 The default tariff cap ('cap') was introduced on 1 January 2019 to protect existing and future default tariff customers, ensuring that less engaged customers pay a fair price for their energy. The cap is set out in legislation through the Domestic Gas and Electricity (Tariff Cap) Act 2018.
- 1.2 When originally legislated for, the Tariff Cap Act set out that the cap would cease to have effect at the end of 2020, unless the Secretary of State for Business, Energy, and Industrial Strategy (BEIS) published a statement that the conditions for effective competition are not yet in place. In which case, the cap would extend to the end of the following year. Legislation set out that this approach was to be followed until December 2023, when the cap would ultimately cease to have effect.
- 1.3 Recently, the government has taken additional action to support customers through a period of high and volatile energy prices through the introduction of the Energy Price Guarantee (EPG). The EPG limits the amount an energy supplier can charge per unit of energy used and moves the cap to act as a reference price for calculating the level of support offered by the government.
- 1.4 The EPG was legislated for as part of the Energy Prices Act 2022 ('2022 Act'). As part of the 2022 Act, the cap end date was removed, to ensure the cap is maintained throughout the duration of the EPG and to provide a more flexible

mechanism for ending the cap. Termination of the cap is now determined by the BEIS Secretary of State.

- 1.5 Changes from the 2022 Act need to be reflected in gas and electricity supplier standard licence conditions (SLCs) and cap models. In this consultation we are proposing a number of modifications to SLC28AD to reflect the removal of the December 2023 end date.
- 1.6 This consultation also outlines our initial view on the proposed modifications to cap models. In Spring 2023 we will publish more details on these proposals, along with updated cap models.
- 1.7 If you wish to respond to this consultation, please send comments and representations to retailpriceregulation@ofgem.gov.uk before close of business on Friday 3 March 2023.

2. Introduction

Background

- 2.1. The default tariff cap ('cap') was introduced on 1 January 2019 to protect current and future default tariff customers and to ensure that less engaged customers pay a fair price for their energy. At the time the cap was introduced, it was estimated that it would save roughly £1 billion per year for energy customers on default tariffs.¹ At present, the cap protects around 26 million customers.²
- 2.2. More recently, the government has recognised that high and volatile energy prices have put customers under a significant amount of pressure, and it has taken additional action to support customers through the introduction of the Energy Price Guarantee (EPG).
- 2.3. The EPG was legislated for as part of the Energy Prices Act 2022 ('2022 Act'),³ as part of a package of measures to help customers struggling to pay their energy bills. The 2022 Act also updated the Domestic Gas and Electricity (Tariff Cap) Act

¹ Ofgem (2018), Price cap press release <https://www.ofgem.gov.uk/publications/energy-price-cap-will-give-11-million-fairer-deal-1-january>

² Ofgem (2022), Latest energy price cap announced by Ofgem <https://www.ofgem.gov.uk/publications/latest-energy-price-cap-announced-ofgem>

³ Energy Prices Act 2022 <https://www.legislation.gov.uk/ukpga/2022/44/contents/enacted>

2018⁴ to reflect the cap's new role in underpinning and setting the reference price for the EPG.

- 2.4. When originally legislated for, the Tariff Cap Act set out that the cap would cease to have effect at the end of 2020, unless the Secretary of State for Business, Energy and Industrial Strategy (BEIS) published a statement that the conditions for effective competition are not yet in place. In which case, the cap would extend to the end of the following year.
- 2.5. The same approach was applied for all following years of the cap, up until the end of 2023, when the cap would ultimately cease to have effect. In addition, every year, Ofgem were responsible for reviewing whether the conditions for effective competition had been met, as well as advising the BEIS Secretary of State on whether the cap should be extended.
- 2.6. The 2022 Act removes the December 2023 end date for the cap to ensure it does not lapse prematurely and that it remains in place throughout the lifetime of the EPG. In addition, more flexible arrangements for ending the cap have been introduced to ensure regulation can keep pace with changing conditions in the energy market. The BEIS Secretary of State may, at any time, give notice that the cap ceases to have effect. The cap therefore now extends by default, differing from the original legislation which extended the cap on agreement by the BEIS Secretary of State.
- 2.7. The cap is included within Condition 28AD of gas and electricity standard licence conditions (SLCs) and calculated in models annexed to the SLCs and cap methodology. The SLCs and price cap models currently have a December 2023 end date included within them; changes need to be made to accurately reflect the new legislation and to prevent the SLCs and models from timing out.
- 2.8. We are proposing modifications to gas and electricity SLCs and cap models to accurately reflect the new legislation, to prevent them from ending prematurely, and to avoid any confusion from potential differences between legislation and SLCs and models.

⁴ Domestic Gas and Electricity (Tariff Cap) Act 2018
<https://www.legislation.gov.uk/ukpga/2018/21/contents/enacted/data.htm>

Consultation Process

- 2.9. We intend to have two stages of consultation. The first, this consultation, published in February 2023 and the second in Spring 2023.
- 2.10. This first consultation provides stakeholders with context to the changes and seeks initial views on the proposed updates to the SLCs. The second consultation will summarise stakeholder comments to the SLC proposals and, in addition, be used as an opportunity to consult on cap model proposals.
- 2.11. A final decision will subsequently be published by Winter 2023, in time for the SLCs to be updated before the end of 2023, and in time for models to be updated before a full winter period.

Stage 1	Stage 2	Stage 3	Stage 4	Stage 5	Stage 6	Stage 7
First consultation opens.	First consultation closes.	Review of consultation responses.	Second consultation opens, including model extension proposals and summary of first consultation responses.	Second consultation closes.	Review of consultation responses.	Final decision and modification notice published.
03/02/23	03/03/23	Spring 2023	Spring 2023	Spring 2023	Summer 2023	Winter 2023

3. Proposed Modifications

- 3.1 We are proposing modifications to reflect the updates made in Schedule 3 of the 2022 Act. These modifications relate to the removal of the December 2023 end date only.
- 3.2 Modifications relating to the cap methodology will be considered as part of other workstreams, outlined in our 'Price Cap - Programme of Work' publication.⁵
- 3.3 This consultation is only considering implementation of legislative changes made within the 2022 Act. It is not seeking to make any new policy decisions. For this reason, given there are no new significant impacts, we have considered that it is

⁵ Ofgem (2022) Programme of Work <https://www.ofgem.gov.uk/publications/price-cap-programme-work>

not appropriate to publish an Impact Assessment alongside the final decision. Alongside this workstream, we continue to monitor the impacts the cap has on customers and the market. We will consider assessments of impacts for other workstreams outlined in the 'Price Cap - Programme of Work' publication. These will be discussed alongside the relevant consultations and decisions.

- 3.4 It is our intention to modify the SLCs and cap models to reflect that the termination of the cap is now determined by the BEIS Secretary of State, and in order to avoid the SLCs and models expiring at the end of 2023.

Supplier Licence Conditions

- 3.5 We propose modifications to Condition 28AD of the gas and electricity supplier SLCs to remove the December 2023 cap end date and remove reference to the Secretary of State's annual statement on competition.
- 3.6 The BEIS Secretary of State can, at any time, choose to end the cap. This consultation does not seek views on a specific cap end date, or the mechanism for ending it, given this is the responsibility of the BEIS Secretary of State.
- 3.7 We are seeking to update the SLCs to provide as much clarity as possible for suppliers, while also ensuring we do not pre-empt any decisions made by the Secretary of State.
- 3.8 Proposed modifications replace reference to the December 2023 cap end date with new wording to reflect that the Secretary of State will specify the date on which the price cap ceases. In addition, we propose removing the definition of the 'final charge restriction period' given a final period is no longer referenced within the SLCs.
- 3.9 Proposed modifications remove reference to the Secretary of State's statement on competition in 2020, 2021 and 2022, reflecting the new flexibility introduced by the 2022 Act.
- 3.10 Detail on the suggested modifications to SLC 28AD in gas and electricity supply licence conditions are set out in Annexes 1 and 2. We are seeking views on these modification proposals and have outlined our questions below.
- 3.11 Consultation questions:

- Do you have any views or comments on the SLC modification proposals in Annexes 1 and 2?
- Have you identified any other areas of SLCs that need to be updated to reflect the legislative changes made in the 2022 Act?
- Do you expect there to be any knock-on impacts of the removal of the cap end date?

Price Cap Models

3.12 The price cap is accompanied by a number of models which set out detail on the methodology⁶ used to calculate different elements of the cap. These models are annexed to the standard conditions of electricity and gas supply licences.

3.13 At present, models cease their calculations at the end of 2023, when the price cap was originally set to expire. We will be seeking views on how we reflect the removal of the cap expiration date in the price cap models and will publish updated models in Spring 2023, to align with the timing of cap updates.

3.14 This second consultation will propose changes to models set out in Annexes 2, 3, 4, 5 and 8 to SLC 28AD. We will also consider proposing changes to any supplementary price cap related models as required. These proposals will not suggest changes to the cap methodology or calculations used within models but will focus on how best to extend models beyond 2023.

4. Next Steps

4.1 If you wish to respond to this consultation, please send comments and representations to retailpriceregulation@ofgem.gov.uk before **close of business on Friday 3 March 2023**.

4.2 We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

4.3 You can ask us to keep your response, or parts of your response, confidential. Please clearly mark the parts you wish to be kept confidential, and we'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you

⁶ Ofgem (2018) Default tariff cap <https://www.ofgem.gov.uk/publications/default-tariff-cap-decision-overview>

give us explicit permission to disclose. If you want us to keep your response – in whole or in part - confidential, please clearly mark this on your response and explain why.

- 4.4 A second consultation on the extension of cap models will be published in Spring 2023, and a final decision published by Winter 2023.

Yours faithfully,

Dan Norton
Deputy Director, Price Protection

Annex 1 – Proposed modifications to the standard licence conditions of electricity supply licences

Deletions are denoted with a strike-through and new text is denoted with a double underlining.

Condition 28AD of the electricity supply licence

Proposed modification: Amend existing paragraph

28AD.22 This condition will come into force on 1 January 2019 and will cease to have effect on a date specified by the Secretary of State, ~~subject to this condition automatically ceasing to have effect pursuant to paragraph 28AD.23, will cease to have effect at 23:59 on 31 December 2023.~~

Proposed modification: Delete existing paragraph

28AD.23 This condition will automatically cease to have effect ~~23:59 on 31 December of:~~

- ~~(a) — the year 2020, unless in that calendar year the Secretary of State publishes a statement to the effect set out at section 8(1) of the Act;~~
- ~~(b) — the year 2021, unless in that calendar year the Secretary of State publishes a statement to the effect set out at section 8(2) of the Act; or~~
- ~~(c) — the year 2022, unless in that calendar year the Secretary of State publishes a statement to the effect set out at section 8(3) of the Act~~

Proposed modification: Amend existing paragraph

28AD.40

'28AD Charge Restriction Period' means a period, between 1 January 2019 and ~~31 December 2023~~ the end date specified by the Secretary of State, either:

- the First Charge Restriction Period;
- the Mid Charge Restriction Periods;

- a Subsequent Charge Restriction Period beginning on 1 January of each year and ending on 31 March of the same calendar year; or
- a Subsequent Charge Restriction Period beginning on 1 April of each year and ending on 30 June of the same calendar year; or
- a Subsequent Charge Restriction Period beginning on 1 July of each year and ending on 30 September of the same calendar year; or
- a Subsequent Charge Restriction Period beginning on 1 October of each year and ending on 31 December of the same calendar year.

Proposed modification: Delete existing paragraph

28AD.40

~~'Final Charge Restriction Period' means the period beginning on 1 October 2023 and ending on 31 December 2023;~~

Annex 2 – Proposed modifications to the standard licence conditions of gas supply licences

Deletions are denoted with a strike-through and new text is denoted with a double underlining.

Condition 28AD of the gas supply licence

Proposed modification: Amend existing paragraph

28AD.21 This condition will come into force on 1 January 2019 and will cease to have effect on a date specified by the Secretary of State, ~~subject to this condition automatically ceasing to have effect pursuant to paragraph 28AD.22, will cease to have effect at 23:59 on 31 December 2023.~~

Proposed modification: Delete existing paragraph

~~28AD.22 This condition will automatically cease to have effect 23:59 on 31 December of:~~

- ~~(a) the year 2020, unless in that calendar year the Secretary of State publishes a statement to the effect set out at section 8(1) of the Act;~~
- ~~(b) the year 2021, unless in that calendar year the Secretary of State publishes a statement to the effect set out at section 8(2) of the Act; or~~
- ~~(c) the year 2022, unless in that calendar year the Secretary of State publishes a statement to the effect set out at section 8(3) of the Act~~

Proposed modification: Amend existing paragraph

28AD.40

'28AD Charge Restriction Period' means a period, between 1 January 2019 and ~~31 December 2023~~ the end date specified by the Secretary of State, either:

- the First Charge Restriction Period;
- the Mid Charge Restriction Periods;
- a Subsequent Charge Restriction Period beginning on 1 January of each year and ending on 31 March of the same calendar year; or

- a Subsequent Charge Restriction Period beginning on 1 April of each year and ending on 30 June of the same calendar year; or
- a Subsequent Charge Restriction Period beginning on 1 July of each year and ending on 30 September of the same calendar year; or
- a Subsequent Charge Restriction Period beginning on 1 October of each year and ending on 31 December of the same calendar year.

Proposed modification: Delete existing paragraph

28AD.40

~~'Final Charge Restriction Period' means the period beginning on 1 October 2023 and ending on 31 December 2023;~~