Domestic gas and electricity suppliers, energy consumers and their representatives, and other interested parties

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Modification of the electricity and gas supply licences to allow suppliers to roll customers onto further fixed-term tariffs at the end of their existing fixed-term deals

Energy is an essential service, so it is imperative that consumers receive a continuous supply. As a result, there needs to be some default tariff for customers to roll onto so that their supply is not disrupted when they reach the end of a contract and haven't made an active choice. There is a risk that a customer will pay too much if they roll onto the default tariff, whether this is a standard variable or fixed term. Part of the solution to this is to minimise the number of customers that are on default tariffs by providing them with what they need to make an informed choice, and by prompting them to engage. We also need appropriate protections for customers when they don't make an active choice, which is why we have proposed today to introduce a temporary safeguard tariff for customers in receipt of Warm Home Discount. This will protect them from high-priced default tariffs.

With this in mind, we want to make sure that, at the end of their fixed-term contracts, customers are free to switch away if they choose and are not locked in with termination fees to further fixed-term tariffs that may be poor value or inappropriate for them. They should also receive regular prompts to engage, to ensure they are aware of better deals that might be available.

We have decided to modify the electricity and gas supply licences to allow suppliers, at the end of a fixed-term contract, to move a customer that has not actively chosen to move to another fixed-term contract, as long as that further contract:

- does not have any penalties for terminating early
- is the same price or cheaper than the variable tariff that the consumer would otherwise have been rolled onto
- is similar in nature to the customer's current tariff, taking into account their characteristics and preferences (eg tariff type, online account management, meter type and payment method).

We have carefully considered the responses to our August 2017 statutory consultation,[1] and decided to proceed with the modifications proposed in the statutory notices, other than three minor changes to the licence drafting in order to better express our policy intent, and one small typographical correction.

[1] Ofgem, Default tariffs for domestic customers at the end of fixed-term contracts, August 2017

These changes will provide room for suppliers to differentiate themselves and put their customers on better deals at the end of their fixed-term contracts. Simultaneously, they will maintain strong protections for fixed-term tariff customers so that they are not locked into poor value or inappropriate tariffs with termination fees.

Through today's licence modifications we ultimately aim to deliver better outcomes and better value deals for customers. In so doing, we expect that the changes will reduce the number of customers on standard variable tariffs.

This decision does not require suppliers to change their default contracts for customers at the end of fixed-term tariffs. But we strongly encourage them to take advantage of the extra flexibility our decision provides and to make changes where it is in their customers' interests to do so. Suppliers need to do more to get all their customers, particularly those on poor value standard variable tariffs, a better deal.

As today's changes are voluntary in nature, we do not generally envisage that it would be appropriate to take enforcement action in relation to the existing fixed-term tariff rollover rules directly affected[2] by this change during the 56-day implementation period. Suppliers are therefore free to make contractual changes as soon as practicable should they choose, before the licence modifications formally take effect.

The notification and decision documents are published alongside this letter.

Overview of consultation responses and way forward

In our August 2017 statutory consultation, we proposed to allow suppliers, at the end of a fixed-term contract, to move a customer that has not made an active choice onto another fixed-term contract, subject to a number of conditions.

We invited stakeholders to submit their views on our consultation proposals and to express any concerns they had with our recommendation.

We received 27 responses – from suppliers, consumer groups and charities, third party intermediaries, industry groups and consumers. We have published non-confidential responses on our website.[3]

Almost all stakeholders supported us taking action to allow suppliers to roll customers onto further fixed-term at the end of their existing fixed-term contracts. They felt that providing this flexibility would allow suppliers to differentiate themselves from one another and provide a better deal for customers.

Stakeholders generally supported the customer protections we proposed to provide in relation to fixed-term default contracts. Most agreed that:

- termination fees should not be allowed on default tariffs
- the standard variable tariff price should act as a backstop, and that the comparison should be a one-off rather than ongoing or retrospective check
- the default tariff should be similar to the customer's existing tariff.

Some stakeholders suggested changes to our proposals, or requested we clarify certain elements. We summarise the feedback we received on specific points below, followed by our proposed way forward.

[2] By directly affected we refer only to the particular conditions and the particular amendments to those conditions which are shown in track changes in the accompanying modification notices.
[3] Ofgem, Default tariffs for domestic customers at the end of fixed-term contracts, August 2017

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Optional or mandatory

Statutory consultation proposal

In our August statutory consultation, we said that the changes we proposed to make to the default tariff rules would not be mandatory. We said that we were not proposing to force suppliers to roll customers onto further fixed-term tariffs, and that they could continue to use the standard variable tariff as their default contract should they choose.

Stakeholder feedback

Three stakeholders recommended that we go further than we had proposed and make it mandatory for suppliers to roll customers onto fixed-term tariffs. In one case, a stakeholder recommended we ban standard variable tariffs entirely. A further three expressed scepticism that suppliers would use the flexibility of our proposed change to deliver a better deal for consumers, and suggested that further incentives or pressure would be needed to ensure this.

However, a majority of stakeholders supported the change being optional. One stakeholder suggested that an outright ban on standard variable tariffs would merely hide the problem from view. They noted that although a high proportion of customers were on standard variable tariffs, and these often did not represent good value for customers, the media and political attention focused on this particular type of tariff kept their prices lower than would otherwise be the case.

Some stakeholders felt that to scrap standard variable tariffs entirely may mean that it is less easy to monitor the proportion of customers on poor value deals, as disengaged customers may be on many different types of tariff rather than just one. One supplier suggested that to address the lack of transparency that may result if standard variable tariffs were banned, suppliers could be required to publish rolling average default tariff prices.

One supplier suggested that we extend the scope of our work to cover deemed contracts (which are required to be evergreen), though they noted that such a change may require legislation change so it may be difficult to achieve.

Way forward and rationale

We acknowledge that there may be benefits in going further and making this change mandatory rather than optional, or abolishing standard variable tariffs entirely. This could be particularly beneficial if end of fixed term notices and other renewal reminders acted to prompt engagement among those consumers not currently engaged.

However, we would require further investigation, evidence and analysis to be confident that making our proposals mandatory or banning standard variable tariffs would benefit consumers. To help us answer this question, we are working with a number of suppliers to run trials to test whether ending the standard variable tariff has a significantly greater impact on customers than measures that simply focus on (i) providing default tariff customers with regular prompts or (ii) improving the information that customers receive at the end of fixed-term tariffs.

We will consider our approach to standard variable tariffs following the completion of these trials. We know that some customers prefer evergreen deals as they don’t want to have to engage every year or so. This is one of the reasons why we want to trial different measures before considering the option of banning standard variable tariffs. We also want to ensure that end of fixed term notices effectively prompt engagement. We are carefully considering how we maximise the effectiveness of these notices as part of our customer communications work.

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For now, we consider that the change should be optional, and suppliers should be able to decide whether to use a fixed-term tariff or the standard variable tariff as the rollover contract for customers. In the meantime, we have put the spotlight on default tariffs generally with our publication of the number of customers on standard variable tariffs. This has increased the pressure on suppliers to act to ensure their customers on default tariffs are not getting a poor deal.

Today's decision paves the way for suppliers not just to change their rollover tariffs, but to start moving customers off standard variable tariffs entirely and ensure customers on default tariffs get a better deal. We encourage suppliers to take advantage of the extra flexibility our decision provides and to make changes to deliver good outcomes for customers. We note that certain suppliers have announced their intention to roll their customers onto better value deals and to reduce the number of customers on standard variable tariffs. While these initiatives are a step in the right direction, they must lead to customers genuinely benefitting from a significantly better deal, and not just a rebranded poor value tariff.

Monitoring default deals when customers are on not one, but potentially a large number of different fixed-term tariffs could be challenging. We will adapt our monitoring as necessary, and consider what information we might usefully publish to provide transparency around default tariffs.

Termination fees

Statutory consultation proposal

In our August statutory consultation, we proposed that fixed-term rollover tariffs would not be allowed to have any penalties for early termination. We said that we would not consider it sufficient if suppliers simply 'waived' termination fees, as this could confuse a customer comparing and switching tariffs, as the customer may not be sure whether the termination fees apply to them or not. We do not want customers to be disincentivised from switching and locked into default contracts with termination fees.

Stakeholder feedback

Three suppliers felt that they should be allowed to apply termination fees to fixed-term rollover tariffs, at least in some form. Two suggested that they should be able to waive the termination fees, and another argued that they should be able to apply termination fees after the customer had been on the rollover tariff beyond a certain amount of time, eg 60 days. A further supplier suggested that we should consider allowing suppliers to adopt an opt-out approach to tariff rollovers, whereby if a customer takes no action they could be rolled onto a tariff with termination fees.

One other supplier noted that termination fees in general protected suppliers from hedging risks. They agreed, however, that for customers on rollover tariffs it was right that these customers should not be locked in to a tariff they may not have proactively chosen. One other respondent suggested termination fees should be banned for all tariffs.

Way forward and rationale

We continue to believe that customers rolling off fixed-term tariffs should not be locked into further contracts that they may not have proactively chosen. Termination fees act to lock customers into tariffs by imposing a penalty on any customer wanting to switch away, and reducing their incentive to switch, as the savings they could make would be reduced by the amount of the termination fee. We therefore intend to proceed with our proposal as set out in our August consultation.

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Similarity to the customer's existing tariff

Statutory consultation proposal

We proposed that any fixed-term rollover contract should be similar in nature to the customer's current tariff, taking into account their characteristics and preferences (eg tariff type and duration, online account management, meter type and payment method). We wanted to make sure that where customers were rolling off one tariff, that the rollover tariff was not significantly more complex or much longer than their previous contract. For example, we suggested that if a customer is rolling off a flat tariff with a one-year fixed period, we would generally not expect that customer to be rolled onto a long-term 'tracker' tariff.[4]

Stakeholder feedback

Several respondents suggested that we amend the requirement about the duration of the rollover tariff. One felt that rollover tariffs should be limited to a year or less. One suggested that the 'similarity' requirement should only apply to the duration for tariffs of over 15 months, while another suggested that the rule should be that customers are not rolled onto a tariff that is longer than their previous tariff. A consumer group suggested that suppliers should take extra care when rolling customers onto long-term fixes – they felt there should be a 'high bar' for rolling customers onto such tariffs as the risk of price divergence with the standard variable tariff could be greater.

A significant minority of respondents felt that the wording in our consultation document – 'similar in nature' – better described the outcome we should be aiming to deliver to consumers than the draft licence wording – 'as similar as possible'. They felt that a requirement for the rollover tariff to be as similar as possible to the customer's previous tariff appeared unnecessarily restrictive. They felt it could mean that a customer on a complex tariff, for example, would end up being rolled onto the standard variable tariff as the supplier had no similar tariff, thus missing out on being rolled onto a cheaper, simple fixed-term deal.

Way forward and rationale

We agree with stakeholders that 'similar in nature' better articulates the policy outcome we aim to deliver for consumers, and we have reflected this in our updated licence drafting.

We want to ensure that where a customer is being rolled from one fixed-term tariff to another they are not put onto a significantly more complex, or much longer, tariff than they were previously. We see less potential for harm where a customer is being rolled from a complex tariff to a relatively straightforward fixed-term deal, or from a long-term fixed tariff to a tariff of shorter length. Should a supplier wish to roll the customer onto a less complex or shorter tariff than their existing deal we would be more comfortable with them doing so.

We consider that contractual terms that provided for fundamental changes to the nature of the original contract are unlikely to be compatible with unfair terms legislation. There is more potential for harm where a customer is rolled from a relatively short or relatively simple tariff onto a tariff that is longer or more complex. There is a greater chance that standard variable tariff prices will change during the duration of a long-term fixed tariff.

This could mean the customer ends up paying more on the rollover tariff than they would have done on the standard variable tariff. Customers would continue to receive the cheapest tariff message on a regular basis, so they would be informed of better deals offered by their supplier. However, we want to minimise the risk that a customer ends up

[4] We use 'tracker' tariff here to refer to a tariff whose price is benchmarked against an independent index.

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worse off. So we would not expect suppliers to roll customers off short-term fixes onto longer-term ones and, in general, would also expect suppliers to be cautious with the length of fixed contracts as rollover tariffs. Similarly, we would not expect suppliers to roll customers off simple fixed-term tariffs onto significantly more complex tariff types, for example complicated time-of-use tariffs.

For the avoidance of doubt, we do not expect the rollover tariff to be identical to the customer's existing tariff, including in terms of its duration. The onus is on suppliers to select a tariff that is similar in nature to the customer's current deal and which best reflects their characteristics and preferences. It is up to suppliers whether this is a tariff from their existing portfolio or one created specifically for customers rolling off fixed-term tariffs. In addition to supply licence conditions, suppliers will need to ensure that their approach is fully compatible with consumer protection law.

Price versus the standard variable tariff

Statutory consultation proposal

We proposed that, if a supplier were to use a fixed-term tariff as the rollover contract, this new tariff should be the same price or cheaper for the customer than the standard variable tariff would be. We proposed that the comparison between the standard variable and fixed-term rollover tariff would be a one-off, rather than ongoing or retrospective in nature, and that it should take place at a point in time close to when the rollover is likely to happen, for example when the supplier is sending the end of fixed term notice. Our aim was to make sure that customers would be no worse off than if they were put on a standard variable tariff, while leaving room for suppliers to put their customers onto better deals should they choose.

Stakeholder feedback

A number of stakeholders suggested variations to our proposed requirement. One supplier and one consumer group said that we should require suppliers to always roll customers onto their cheapest available tariff. A consumer group also suggested that suppliers be required to ensure that the rollover tariff is always cheaper than the standard variable tariff, not just at the point of comparison.

Another suggested that suppliers should notify the customer if the standard variable tariff became cheaper than the rollover tariff. Two stakeholders suggested that the rollover tariff should be cheaper than the standard variable tariff, not just the same price or cheaper (ie they wanted to limit the possibility for the prices to be the same).

A third party intermediary suggested that requiring the rollover tariff to be cheaper could leave room for suppliers to game the rules by making the rollover tariff only marginally less expensive than the standard variable tariff. They suggested that we should require the rollover tariff be 'significantly' cheaper, for example no more than 95% of the cost of the standard variable tariff.

Most stakeholders supported our proposal. One suggested that to require the rollover tariff to be the cheapest tariff would undermine incentives for consumers to engage and increase the hedging risks faced by suppliers.

Another respondent suggested that the rollover tariff should not need to be cheaper than the standard variable tariff at all. They argued that, where input costs are expected to rise, fixed-term tariffs would normally be priced above the standard variable tariff. To require that rollover tariffs be cheaper where this is the case would, in effect, mean suppliers are required to apply a further discount on top of what may be a preferable tariff choice.

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A different respondent argued that any requirement for the rollover tariff to be cheaper than the standard variable or any other tariff would mean that many tariffs with non-price benefits may not be rollover options. They suggested that suppliers should have flexibility to decide what they think matters most for their customers.

There were other detailed comments from stakeholders. One suggested we specify when the comparison between the rollover tariff and the standard variable tariff should be done. Another suggested that suppliers should provide information on the rollover tariff to third party intermediaries so they could pass this information onto customers. And a supplier suggested that suppliers should be required to amend direct debit amounts in the billing cycle following the tariff rollover to avoid misleading customers into thinking they are paying less than they are.

Two stakeholders also requested clarification of whether the standard variable and rollover tariff should be compared using annual cost rather than individually using the unit rate and standing charge.

Way forward and rationale

We want to ensure that suppliers can deliver better outcomes for customers and that, as a backstop, customers are no worse off than if they were rolled onto a standard variable tariff. However, to go further and require any fixed-term rollover tariff to be the cheapest or significantly cheaper than the standard variable tariff could distort the incentives for customers to engage and switch. It may also mean that no suppliers make use of this flexibility and instead continue to use the standard variable tariff, meaning customers are no better off than at present.

We agree that requiring suppliers to ensure that the rollover tariff is always cheaper than the standard variable tariff could have certain benefits. However, the additional administration involved may mean that suppliers are less inclined to use tariffs other than the standard variable as the rollover tariff. Furthermore, even if standard variable prices were to decrease during the term of the customer's fixed-term rollover contract, the customer would continue to get regular prompts to inform them that there are cheaper options available through the cheapest tariff message on bills and other communications. And they would be free to switch away without incurring any early termination fees.

We agree that the sending of the end of fixed term notice may be an appropriate point at which to perform the comparison of the standard variable and rollover tariff. However, we have not specified this as we are currently reviewing the rules relating to this notice as part of our customer communications project, so they may change. In the meantime, we expect suppliers to think about their own customers and determine when would be an appropriate point to compare the standard variable and rollover tariff.

In relation to setting direct debits and providing information to third party intermediaries, we consider the existing rules should mitigate against any potential negative knock-on effects of changes to the fixed-term rollover rules.[5]

Finally, we clarify our intent that the comparison between standard variable and rollover tariff should be performed on the basis of annual cost rather than any separate comparison of unit rates and standing charges. This is an easier way to see whether a customer will be better off on the standard variable tariff or the alternative rollover tariff. We have made a minor adjustment to the licence drafting to clarify this expectation.

[5] Standard condition 27.15 of the supply licence requires that, unless a contract expressly says otherwise (eg specifying 'fixed' direct debit payments), direct debit amounts are based on the best and most current information available (or which reasonably ought to be available) to the licensee. And condition 22.8 requires that a supplier must provide a copy of any domestic supply contract that they offer to any person that requests it.

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In general we consider that our proposal to require that the rollover tariff is the same price as or cheaper than the standard variable tariff the customer would otherwise have been rolled onto strikes the right balance between continuing to provide strong protections for customers at the end of fixed-term tariffs, and allowing suppliers the flexibility to differentiate themselves.

Implementation timelines

Statutory consultation proposal

In our statutory consultation we suggested that, assuming we proceeded with our proposed changes, suppliers would be able to start making changes to the terms and conditions of fixed-term tariffs to reflect a new rollover contract from the end of 2017. This would mean that customers would likely start to be rolled onto tariffs other than the standard variable from early 2019, as contracts entered into after this policy change was enacted came to an end.

Stakeholder feedback

Four stakeholders noted that, if no changes were made to currently-live contracts, it would be a significant amount of time before customers saw the benefits of our changes. This would be because only tariffs launched after this decision would have terms and conditions specifying that the default tariff would be something other than the standard variable tariff. Several suggested that they would be able to deliver changes sooner by making changes to customers' *existing* contracts, subject to appropriate notification.

Way forward and rationale

We believe it is important for the benefits of these changes to flow through to consumers as quickly as possible. This will accelerate the reduction in the number of customers on often poor value standard variable tariffs.

We agree with stakeholders that suppliers may be able to make changes to existing contract terms, thus delivering benefits to consumers in the near term. As long as any changes to existing contracts properly comply with consumer protection law and relevant licence conditions (in particular, customers are individually given advance notice of changes to existing contract terms and have the ability to switch away without penalty and otherwise being affected by the change) then, following such contractual changes, we see no reason why stakeholders cannot apply new default tariff arrangements to existing contracts.

To enable contractual changes to be delivered as soon as possible, we do not generally envisage that it would be appropriate to take enforcement action in relation to the existing fixed-term rollover rules which are directly affected by this licence modification decision[6] during the minimum 56-day implementation period. Suppliers are therefore free to make contractual changes as soon as practicable should they choose, before the licence modifications formally take effect. We encourage them to act quickly to do so where this would be in their customers' interests and would not result in a breach of existing contract terms or consumer protection law and other relevant regulatory rules.

[6] By directly affected we refer only to the particular conditions and the particular amendments to those conditions which are shown in track changes in the accompanying modification notices.

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Other general stakeholder comments and requests for clarification

Impact on engagement

A number of respondents suggested that the change may make customers' less willing to engage, as they may assume that they are being rolled onto a good deal and disengage. Other stakeholders emphasised that while this change is positive for those on fixed-term tariffs, more needs to be done to help those currently on standard variable tariffs. Some suggested that one way of achieving this would be to brand default tariffs, including the standard variable, as 'out of contract' tariffs and to rename the annual statement the 'renewal notice'.

One of our key focuses is on ensuring that customers receive prompts to encourage them to engage, and the information they need to support them in making the right choice of tariff for them. We share stakeholder concerns that customers may assume that they are being rolled onto a good deal and disengage. However, we note that this is already a risk for some customers when they are rolled onto a standard variable tariff.

Customers will continue to receive regular prompts to engage through cheapest tariff messaging on bills and the end of fixed term notices. And at the point of contract renewal customers will be alerted to cheaper tariffs, as the end of fixed term notice itself includes the cheapest tariff message. We are also running a wider programme of work requiring suppliers to trial different customer prompts to establish what best encourages them to engage.

Monitoring the impact of the change

Several stakeholders suggested we carefully monitor the impact that this change has on consumer engagement, price differentials and supplier tariff offerings. A number of respondents suggested specific pieces of information that we should gather. Two suppliers requested clarification of the impact, if any, that this change would have on the market monitoring statistics that they currently provide to us.

We agree that we should carefully monitor the impact that this change has on the market. We intend to monitor supplier uptake of the flexibility provided by this change, including the price differential, if any, between standard variable and rollover tariffs. We will also consider whether this policy change will affect the statistics that suppliers regularly give us as part of our ongoing market monitoring.

Requirement to have a standard variable tariff

Several suppliers asked us to clarify of whether the proposed licence drafting presupposed that standard variable tariffs would continue indefinitely, or whether it would allow for a situation where a supplier has no standard variable tariff.

We consider that this change to the rules on automatic rollovers would enable suppliers to stop offering standard variable tariffs. Suppliers will need to satisfy themselves that they are compliant with their licence requirements, including those relating to deemed contracts and dead tariffs, but the changes we are making with this decision will mean there is no absolute requirement for a supplier to have a standard variable tariff. If a supplier does not have a standard variable tariff then the clause requiring the price comparison between rollover tariff and standard variable tariff would become inactive. If suppliers wish to remove their standard variable tariffs it is for them to decide how they would go about this, taking into account existing contract terms, consumer protection law and other relevant regulatory rules.

We strongly encourage suppliers to think carefully about how they can best deliver good outcomes for customers when deciding what rollover tariffs they offer in future.

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Other issues

One stakeholder questioned whether other protections for fixed-term customers, specifically their right to reject a variation in terms up until 20 days after a change in tariff has taken place, would apply to those on fixed-term rollover tariffs as well as those on standard variable tariffs. We confirm that we intend that this protection apply to fixed-term rollover customers.

Another stakeholder questioned whether they would need to specify the exact rollover tariff they intend to use at the point at which a customer is signing up to the original fixed-term tariff. We acknowledge that it may be difficult for suppliers to specify the exact tariff a customer will be rolled onto, in some cases a year or more ahead of time. We expect that it will be possible for suppliers to include terms in contracts that do not specify the exact rollover tariff, while still complying with all relevant consumer protection and contract law. However, we cannot provide a firm view, as there are likely to be context-specific considerations. It is up to suppliers to ensure that the terms and conditions of their contracts comply with all relevant licence and other obligations.

Licence drafting

Alongside our August statutory consultation we set out our proposed licence drafting to reflect the policy changes. Stakeholders suggested a number of potential changes to enhance it and clarify certain points:

- Definition of "Relevant Fixed Term Default Tariff" in SLC 1 and SLC 31D.22A in both the gas and electricity notices: Five respondents suggested that we should replace "as similar as possible" with "similar in nature" as they felt this better reflected the policy intent of our change.

- The definition of "Relevant Fixed Term Default Tariff" in SLC 1 and SLC 31D.22A does not make clear on what basis the cost of the standard variable and alternative rollover tariff should be compared: Two respondents were unclear whether suppliers should compare the tariffs using annual costs rather than individual comparisons of, say, unit rates and standing charges. Our expectation is that the tariffs would be compared using annual costs.

- Definition of "Relevant Fixed Term Default Tariff" in SLC 31D.22A in the electricity notice: One supplier noted a typo in the proposed drafting.

We agree with the above suggestions and have updated the licence drafting to reflect these in the notices accompanying this letter.

We also received a number of stakeholder comments that we have not reflected in the licence drafting, as we feel the proposed drafting adequately reflects our policy intent. These comments were:

- One stakeholder suggested that a minor alteration to the licence drafting to specify that the fixed-term default tariff should be a fixed-term supply contract "used by", rather than "available from" a licensee.

- Another stakeholder suggested that the drafting should specify that the fixed-term default tariff "must not", rather than "may not", provide for a termination fee. They also suggested we clarify that the definition of "Relevant Cheapest Evergreen Tariff" referred to in SLC 31D.22A(c) refers to the white label-specific definition of the Relevant Cheapest Evergreen Tariff from SLC 31D.22, rather than the overall definition in SLC 1.

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- Another respondent suggested that the list of factors suppliers should consider when determining whether a fixed-term default contract is "similar" to the customer's existing contract should be an exhaustive list rather than an open (ie "including…") list.

Related initiatives

Disengaged customer database

The Competition and Markets Authority (CMA), following its energy market investigation, recommended we consider creating a database of the details of those that have not switched for three years or more so that they can be prompted to do so. In our August statutory consultation, we said that both we and the CMA envisaged that this remedy would apply to those that have not actively engaged, as opposed to those on standard variable tariffs.

Three suppliers responded to our consultation arguing that customers that have been rolled onto fixed-term default tariffs be excluded from the database. And one supplier suggested that it may be operationally difficult for them to distinguish between those that actively choose fixed-term tariffs and those that roll onto them by default. One consumer group and one third party intermediary said that those on fixed-term default contracts be included in the database.

We continue to believe that those customers that have not actively switched for three years or more, whether they are on standard variable or fixed-term default tariffs, should be included in the disengaged customer database. In any event, we consider the definition of those customers that should be included in or excluded from the database to be outside the scope of our work on default tariffs for customers at the end of fixed-term tariffs.

Personal Projection

Several stakeholders noted that our policy decision on fixed-term rollover tariffs interacts with the calculation of customers' Personal Projection. This is the estimate of annual cost that suppliers and Confidence Code-accredited price comparison sites are required to provided to customers. If suppliers use tariffs other than the standard variable tariff as the default for consumers rolling off fixed-term tariffs, then this may affect the assumptions used in calculating the Personal Projection.

In July, we published a working paper with our latest thinking on the Personal Projection. We received feedback from stakeholders on the options we presented in that paper. We are currently considering this and will shortly consult further on a new methodology with a view to making a decision around the end of the year.

If there is a period during which the formula for calculating the Personal Projection is incompatible with the supplier's choice of default tariff, we would expect suppliers and comparison sites to adapt their approach to complying with the estimated annual cost rules in a way that ensures consumers are not misled.

This may mean adopting a different approach to the current prescriptive methodology. For instance, instead of assuming the customer will roll onto the standard variable tariff at the end of their existing fixed term, the supplier or comparison site may assume that the customer will roll onto a fixed-term default tariff where this is known. If the default tariff is not known the supplier or comparison site may create an annual cost out of the customer's current rates.

We encourage suppliers and accredited sites to carefully consider how they can best provide customers with the information they need to help them make an informed choice when determining what, if any, short-term changes are needed to the current methodology.

Customer communications and cheapest tariff message

In our August statutory consultation we noted that changing the fixed-term rollover rules may have a bearing on the tariff information provided to customers in the end of fixed term notice. We suggested that while we intended to make small changes regarding the content of the notice, to reflect the fact that the default tariff may now be something other than the standard variable tariff, we would consider wider changes as part of our customer communications project.

Several stakeholders suggested that the changes to the rollover rules add to the case for simplifying the rules relating to customer communications, so that customers are not overwhelmed with information. They also suggested that some short-term flexibility may be required specifically in relation to the end of fixed term notice, as its content may need to change if they change their rollover tariff. Three stakeholders suggested that we should also consider making changes to the cheapest tariff message in the near term.

As set out in our statutory consultation, the customer communications project is a priority for us over the next year. While we are making some small amendments to the end of fixed term notice rules now, we expect most wider enduring changes will be made as part of our broader customer communications work. However, we will consider whether it would be in customers' interests to relax some of the prescriptive rules relating to the end of the fixed term notice in the short term.

Our decision

We intend to proceed with the following changes to allow suppliers, at the end of a fixed-term contract, to move a customer that has not made an active choice onto another fixed-term contract, as long as that further contract:

- does not have any penalties for early termination
- is the same price or cheaper than the variable tariff that the consumer would otherwise have been rolled onto
- is similar in nature to the customer's current tariff, taking into account their characteristics and preferences (including tariff type, online account management, meter type and payment method).

We do not generally envisage that it would be appropriate to take enforcement action in relation to the current requirements relating to fixed-term rollover contracts which are directly affected[7] by this licence modification during the 56-day implementation period. Suppliers are therefore free to make contractual changes, where possible and subject to appropriate notification, as soon as practicable should they choose, before the licence modifications formally take effect.

Yours faithfully,

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

[7] By directly affected we refer only to the particular conditions and the particular amendments to those conditions which are shown in track changes in the accompanying modification notices.

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