

Decision: Process for modifying the Default Tariff Cap

What we consulted on

1. On 23 January 2020, we consulted on our proposal to modify Standard Licence Condition (SLC) 28AD in the gas and electricity standard supply licences.¹ We proposed a modification so that when we calculate the Benchmark Maximum Charges (“Cap Level”) for an upcoming Charge Restriction Period (“Cap Period”) of the Default Tariff Cap (“the Cap”), we would use the licence conditions that will have effect in that upcoming Cap period, notwithstanding that those conditions may not have effect at the time of the announcement of the updated Cap Level, provided that the modifications will be in effect on or before the first day of the upcoming Cap Period.
2. The current drafting of SLC 28AD.18 of the gas standard supply licence and 28AD.19 of the electricity standard supply licence implies that we have to calculate and announce the Cap Level using the methodology that is in effect at the time of the announcement rather than the methodology that has effect on the first day of the relevant Cap Period.
3. Section 5(4) of the Domestic Gas and Electricity (Tariff Cap) Act 2018 (“the Act”) states that, following consultation on proposals to modify the Cap, there must be a minimum period of 56 days between (a) the publication of a decision to modify the Cap conditions and (b) the date from which such modifications have effect.²
4. These requirements of the Act and SLC 28AD.18 of the gas and SLC 28AD.19 of the electricity SLCs could in practice result in an approximate 110 day period between the announcement of a decision to modify SLCs and the decision taking effect and therefore us being able to use the modified SLCs while determining the updated Cap

¹ Ofgem (2020) Statutory Consultation on the process for modifying the Default Tariff Cap (<https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-process-modifying-default-tariff-cap>)

² Domestic Gas and Electricity (Tariff Cap) Act 2018 (<https://www.legislation.gov.uk/ukpga/2018/21/contents/enacted>)

Level. This makes it harder for us to respond to changes in circumstances and data availability during policy development and increases the amount of time it takes us to amend the Cap methodology.

Our decision

5. We have decided to proceed with our proposal to modify SLC 28AD.18 of the gas and SLC 28AD.19 of the electricity SLCs in order to allow us to use the modified SLCs (resulting from changes in methodology to the Cap) while determining and announcing the updated Cap Level. Notwithstanding that those conditions may not have effect at the time of the announcement of the updated Cap Level, provided that the modifications will be in effect on or before the first day of the upcoming Cap Period.

Rationale

6. We believe that the approximate period of 110 days between announcing a decision to modify the SLCs and the upcoming Cap Period is unnecessary and can limit our ability to implement changes to the Cap in a timely manner.
7. Being able to announce decisions 56 days before the Cap Period begins rather than 56 days before the Cap announcement will enable more time for our policy design and more time for stakeholders to engage with our proposals. This will enable us to take into account changes of circumstances, and newer data and will reduce instances of delays to implementing changes.
8. Our decision still provides suppliers with a minimum period of 56 days to implement any modifications to the Cap as required by the Act.
9. We received seven responses to our consultation, which we have summarised in Annex 1, alongside our views on the main concerns raised.
10. This decision means that our timetable for the upcoming consultations and decisions will be as published on 31 January 2020.³

Yours faithfully,

Anna Rossington

Deputy Director, Retail Price Regulation

³ Ofgem (2020) Reviewing smart metering costs in the default tariff cap: Update and response to the October 2019 consultation (<https://www.ofgem.gov.uk/publications-and-updates/reviewing-smart-metering-costs-default-tariff-cap-update-and-response-october-2019-consultation>)

Annex 1: Stakeholder responses

11. We received seven responses to our consultation; six from suppliers and one from a trade association. Four stakeholders supported our proposals, while one supplier only supported it as a 'backstop' option for Cap Period five.
12. We identified two key concerns from the suppliers' responses and address these below.

Implementation of modifications

13. Stakeholders expressed concerns that our proposal will reduce the implementation time for suppliers and that we would not allow sufficient time for suppliers to implement any modifications that required significant systems changes.
14. One supplier stated "However, believe the minimal window between final modification decision and announcement of a forthcoming Cap level should be used as a backstop only and that Ofgem should plan towards giving suppliers the maximum notification window, while not unduly delaying the implementation of its final decisions"

Our response

15. We acknowledge that any large system changes may require a longer implementation time. We consider the period of 56 days between the publication of a licence modification and it taking effect to be the statutory minimum amount of time we need to allow suppliers to implement any modifications. We would consider each modification on a case-by-case basis to decide whether a longer implementation period was required.
16. Any proposals for modifying SLCs are subject to a consultation process. Through this process, suppliers are open to raise any concerns regarding implementation for our consideration, including the amount of time they require. We consider any concerns as part of our decision-making process.

Timing of our process

17. Two suppliers argued that we should have carried out our consultation and data gathering processes earlier for our upcoming proposals to modify the Cap methodology, in order to meet the statutory deadlines without having to introduce this licence modification.⁴

⁴ Our upcoming proposals to modify the Cap include reviewing smart metering costs in the default tariff cap, re-assessing the wholesale allowance in the first default tariff cap period and protecting energy consumers with prepayment meters.

18. Stakeholders also encouraged us to use the additional time available to us following the proposed change productively and to ensure that subsequent consultation processes are open and informative.

Our response

19. We plan our policy development to ensure we have a robust consultation and decision-making process that is transparent, well informed and fair for our stakeholders.

20. There is a risk in making decisions early in the process. If we have to take decisions too far in advance of the Cap Period, we risk not being able to use any new data that becomes available in advance of the Cap Update but after we announce our decision. For example, making a decision early could result in us being unable to incorporate the latest data into our analysis for setting allowances in the Cap or us being unable to provide a draft Request for Information (RFI) before sending out the final version of that request.

21. We will use any additional time available to us in a way that is beneficial for both our decision making process and the consultation process for our stakeholders.