



Making a positive difference
for energy consumers

To: Domestic electricity and gas suppliers, DECC, Citizens Advice, Citizens Advice Scotland, the Health and Safety Executive and other interested parties

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Statutory Consultations on the removal of certain RMR Simpler Tariff Choices rules

We are consulting on changes to the standard conditions of the electricity and gas supply licences¹ to remove a number of rules regarding Simpler Tariff Choices that were introduced following the 2010-2013 Retail Market Review.

The statutory notices published alongside this letter set out the changes we propose to make to the standard conditions. We are seeking views on these changes on or before 16 September 2016.

This open letter outlines the background to the statutory notices, explains the proposed changes and sets out the consultation process. These Statutory Consultations are part of a wider initial package to implement some of the Competition and Markets Authority's (CMA) recommendations. The wider package includes two policy consultations: one covering changes to the Clearer Information tools and the introduction of new principles on tariff comparability;² the other covering potential changes to the Confidence Code³. We are also publishing our CMA implementation strategy at the same time.⁴

Background

The Retail Market Review (RMR) was launched in 2010 to address barriers to effective consumer engagement. The aim was to help consumers secure a better deal, and in so doing, increase the competitive pressure on energy suppliers to deliver good customer service at efficient cost. The RMR introduced a set of new rules designed to make retail energy markets simpler, clearer and fairer for consumers. It stripped away tariff complexity ('Simpler Tariff Choices'), sought to provide consumers with better and more relevant information ('Clearer Information') and put in place a legally-binding obligation on suppliers to treat customers fairly ('Fairer Treatment').

¹ Ofgem, Licence conditions, <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

² Ofgem, Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing, 3 August 2016, <https://www.ofgem.gov.uk/publications-and-updates/helping-consumers-make-informed-choices-proposed-changes-rules-around-tariff-comparability-and-marketing>

³ Confidence Code review 2016 consultation, 3 August 2016, <https://www.ofgem.gov.uk/publications-and-updates/confidence-code-review-2016-consultation>

⁴ Ofgem, Remedy Implementation Strategy, 3 August 2016, <https://www.ofgem.gov.uk/publications-and-updates/remedy-implementation-strategy>

Following the RMR, we worked together with the Office of Fair Trading and the CMA to examine competition in the retail energy market. This led to the publication of a State of the Market Assessment in 2014,⁵ which concluded that competition wasn't working well for consumers and identified a range of concerns.

We then decided that an investigation by the CMA would be the best way to make sure that competition works effectively for consumers in the future, by bearing down on prices while driving improvements in customer service and innovation. We officially referred the relevant markets to the CMA in June 2014.⁶

CMA investigation, findings and recommendations

Following a two year in-depth review, the CMA has identified a number of Adverse Effects on Competition (AECs) in the relevant energy markets in Great Britain and has made recommendations on how to remedy them. These remedies cover four areas:

- creating a framework for effective competition,
- helping customers to engage,
- protecting customers who are unable to exploit the benefits of competition,
- future-proofing our remedies by building a robust regulatory framework.

The CMA specifically identified aspects of the Simpler Tariff Choices rules introduced by us in 2013 as an issue that was potentially limiting competition. It found that the rules were negatively affecting suppliers' ability and incentives to compete on the range of tariffs and discounts offered to domestic customers. It also found that the rules (in particular the four-tariff cap) limit the scope for competition between price comparison websites to exert downward pressure on energy prices. To address this AEC, the CMA has recommended that the majority of the Simpler Tariff Choices rules should be removed. It considers that doing so will strengthen competition and increase innovation. The CMA also recommended that we amend part of SLC 22B.7 (which is part of the licence condition that covers the Simpler Tariff Choices rules) to facilitate increased competition for non-smart prepayment tariffs.

Our response

We are conscious of the trade-off between simplicity and innovation and when we implemented the restrictive Simpler Tariff Choices rules, we envisaged that they would be part of a transitional market 'reset' and would likely be removed over time.⁷

We have considered the CMA's report and fully support its recommendation to remove the Simpler Tariff Choices rules. This is in line with our objectives to promote effective competition and support innovation. This is why, following the CMA's provisional decision on remedies and ahead of a statutory consultation, we published an open letter in April 2016 deprioritising enforcement of the Simpler Tariff Choices rules.⁸ We have already seen some suppliers introduce additional or exclusive tariffs in response to our open letter. We propose to go further than the CMA's recommendation and remove 22B.7 in its entirety. The effectiveness of 22B.7 is greatly reduced if we remove the Simpler Tariff Choices rules and we therefore see this as a consequential amendment. The removal of 22B.7 will also help facilitate increased competition for non-smart prepayment tariffs, by giving suppliers the opportunity to use fewer gas tariff codes, which are limited in number due to technical restrictions.

⁵ Ofgem, OFT and CMA, State of the market assessment, 27 March 2014, https://www.ofgem.gov.uk/sites/default/files/docs/2014/03/assessment_document_published_1.pdf

⁶ Ofgem refers the energy market for a full competition investigation, 26 June 2014, <https://www.ofgem.gov.uk/press-releases/ofgem-refers-energy-market-full-competition-investigation>

⁷ Ofgem's response to the CMA notice of remedies, 5 August 2015, https://assets.publishing.service.gov.uk/media/561e1fbaed915d39bc000013/Ofgem_revised_with_additional_material.pdf

⁸ Ofgem open letter, CMA provisional remedies: removal of certain RMR 'simpler choices' rules, 14 April 2016, https://www.ofgem.gov.uk/system/files/docs/2016/04/supplier_letter-removal_of_simpler_rmr_rules_14.04_0.pdf

We recognise that the Simpler Tariff Choices rules interact with the Clearer Information tools (Personal Projection, Tariff Comparison Rate, Cheapest Tariff Message and Tariff Information Label) and are consulting on consequential changes to these tools in a separate consultation published today.⁹

In addition, the CMA has recommended we replace relevant Simpler Tariff Choices rules with a principle to promote the comparability of tariffs within a supplier’s portfolio.¹⁰ This is in line with our broader shift towards relying more on principles rather than detailed, prescriptive rules about how companies should run their businesses.¹¹ Accordingly, we are also consulting on new principles aimed at ensuring that consumers are able to make informed choices.¹² In the interim period, before any new principles come into effect, we expect suppliers to ensure consumers can understand any new tariffs and assess their value for money compared to other tariffs offered by the supplier.

Licence drafting

We have included the proposed changes to the licence conditions in the appendices to the statutory notices published alongside this letter. This section provides an overview of the proposed changes (including consequential changes) that are necessary to implement the CMA’s recommendation to remove the Simpler Tariff Choices rules.

Implementing the CMA’s recommendation

We welcome the CMA’s recommendation to remove certain Simpler Tariff Choices rules as it’s a feature that gives rise to an adverse effect on competition. We propose to implement the CMA’s recommendation in full. By removing the relevant licence conditions we aim to promote competition and innovation between retail energy suppliers by allowing them to offer a wider range of tariffs and facilitate competition between price comparison websites.

These changes to the licence conditions are set out in the table below. References in the first column are to the standard conditions of both gas and electricity supply licences.

Rules being removed	Effect
Restrictions on tariff structure (SLC 22A.3 (a) and (b))	We propose to remove the requirement that all tariffs must have a single standing charge (which may be zero) and either a single unit rate or time-of-use rates (which cannot vary according to the level of consumption). This will allow suppliers more flexibility to innovate and offer new products or tariffs that are beneficial to certain segments of the customer population, particularly in relation to energy usage.

⁹ Ofgem, Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing

¹⁰ The CMA’s proposed principle would require suppliers ‘to have regard in the design of tariffs, to the ease with which customers can compare value for money with other tariffs they offer’, CMA, Energy Market Investigation, Final report, 24 June 2016, p. 870
https://assets.publishing.service.gov.uk/media/576d3f15e5274a0da9000092/energy_market_final_report.pdf

¹¹ Ofgem, The future of retail market regulation, 2 June 2016,
https://www.ofgem.gov.uk/system/files/docs/2016/06/the_future_of_retail_market_regulation_-_update_on_the_way_forward.pdf

¹² We are today consulting on a set of new principles to enable consumers to compare tariffs. Please see Ofgem, Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing, for more information.

Restriction on tariff numbers (SLC 22B.2 (a) and (b))	We propose to remove the four-tariff rule, which prohibits suppliers from offering more than four core tariffs per fuel per metering arrangement in any region. This will allow suppliers to offer tariffs designed to attract specific groups of customers (eg tariffs aimed at low consumption users, tariffs aimed at certain social groups and tariffs with particular characteristics such as green tariffs and tracker tariffs).
Rules on discounts (SLCs 22B.3-6 and SLCs 22B.24-28)	We propose to remove the restrictions prohibiting suppliers from offering discounts that fall outside of the three permitted types of cash discount (dual fuel, online account management and dividend payments). This will allow suppliers to offer other types of discounts which might incentivise customers to switch (eg cashback) and reward them for behaviour that reduces suppliers' costs (eg prompt payment discounts). It will also let suppliers be flexible about how they offer such discounts to domestic customers (eg suppliers will be allowed to offer one-off discounts and discounts applying to new or existing customers only).
Rules on bundled products (SLCs 22B.9-16 and SLCs 22B.24-28)	We propose to remove the rules concerning the offering of bundled products, which include rules on how products may be bundled with tariffs and the form they take. This will allow suppliers to offer packages of tariffs with other services and allow greater flexibility in how they offer such products to customers.
Rules on reward point discounts (SLCs 22B.17-23 and SLCs 22B.24-28)	We propose to remove the rules concerning the offering of reward point discounts for similar reasons to the rules on bundled products. This will allow suppliers to decide on how reward points are offered with tariffs and the form they take.
Prohibition against tariffs exclusive to new/existing customers (SLCs 22B.30-31)	We propose to remove the requirement that suppliers must ensure that all its tariffs are available to new and existing customers subject to some exceptions. This will allow suppliers to innovate and better compete for new customers.

Consequential amendments required following the implementation of the CMA recommendations

In addition to the changes listed above, we also propose to make a series of consequential amendments to the relevant standard conditions (for both gas and electricity supply, unless otherwise stated) below.

These proposed consequential changes are mainly about removing references to licence conditions that we propose to remove. Some are required to facilitate other proposed changes (eg to allow multiple unit rates and standing charges) and others are logical amendments following the proposed removal of most of SLC 22B. We also propose to remove definitions which will no longer be used.

SLC	Change	Effect and rationale
SLC 1 (Definition of Core Tariff)	Remove	We propose to remove this definition. It is no longer necessary as we propose to remove many of the restrictive rules on tariffs.
SLC 1 (Definition of	Amend	We propose to remove '(where permitted by standard condition 22B)' as this relates to provisions which we

Discount Amounts)		propose to remove.
SLC 1 (Definition of Dual Fuel Discount)	Amend	We propose to remove ' <i>which complies with standard licence condition 22B</i> ' as this relates to provisions which we propose to remove.
SLC 1 (Definition of Features)	Remove	We propose to remove this definition as it is only used in provisions that we propose to remove.
SLC 1 (Definition of Non-Contingent discount)	Amend	We propose to amend this definition to take account of the removal of another definition: 'Core Tariff'.
SLC 1 (Definition of Online Account Management discount)	Amend	We propose to remove ' <i>which complies with standard licence condition 22B and</i> ' as this relates to provisions which we propose to remove.
SLC 1 (Definition of Opt-in Bundle)	Amend	We propose to amend these definitions to take account of the removal of another definition: 'Core Tariff'.
SLC 1 (Definition of Opt-out Bundle)	Amend	
SLC 1 (Definition of Opt-in Reward Points Discount)	Amend	
SLC 1 (Definition of Opt-Out Reward Points Discount)	Amend	
SLC 1 (Definition of Tariff Name)	Amend	
SLC 1 (Definition of Tied Bundle)	Amend	
SLC 1 (Definition of Relevant Bundles)	Amend	
SLC 1 (Definition of Tariff Name)	Amend	We propose to amend these definitions to take account of the removal of another definition: 'Core Tariff'.
SLC 1 (Definition of Tied Bundle)	Amend	
SLC 1 (Definition of Tied Reward Points)	Remove	We propose to remove this definition as it's only used in provisions that we propose to remove.

Discount)		
SLC 1 (Definition of Time of Use Rates)	Amend	We propose to remove ' <i>and no Unit Rates vary by the level of consumption</i> ' from both definitions as this allows suppliers more freedom to offer time of use rates that are based on the level of consumption, as recommended by the CMA.
SLC 1 (Definition of Time of Use Tariff)	Amend	
SLC 1 (Definitions of White Label Tariff and White Label Tariff Provider)	Add	We propose to move the definitions of White Label Tariff and White Label Tariff Provider to SLC1, as we propose to use them in SLC 22A and SLC 31D.
SLCs 22A.2(a)(i), 22A.2(a)(ii), and 22A.2.(b)(i)	Amend	We propose to amend the wording from ' <i>a single</i> ' to ' <i>one or more</i> ', to allow for multiple unit rates and standing charges, as we are removing the requirement to have one single unit rate and standing charge.
SLC 22A.3 (c) (i) and (ii)	Amend	We propose to amend the wording allow for multiple standing charges and unit rates.
SLC 22A - 3C	Add	We propose to move the Tariff Name requirements from SLC 22B and SLC 31D to SLC 22A as this will allow us to completely remove 22B and improve the accessibility of the licence.
SLC 22B.2 (c)	Amend and move	We propose to amend this definition to take account of the removal of another definition: ' <i>Core Tariff</i> '. We also propose to move this requirement to SLC 22A.
SLC 22B.2A and 22B.2C	Remove	We propose to remove these conditions because they provide definitions or exemptions for SLC 22B.2(b) which we propose to remove.
SLC 22B.7	Remove	The CMA recommended we modify SLC 22B.7 to allow suppliers to set prices to prepayment customers without applying regional cost variations which are applied to other payments within the same core tariff. We propose to remove 22B.7 entirely given that paragraph (a) is already covered in SLC 27, and given the proposed changes to the rest of 22B (in particular, the removal of the tariff cap), the remaining provisions in 22B.7 are no longer needed.
SLC 22B.8	Remove	We propose to remove this condition as it provides an explanation of the scope of the rules on bundled products, which we propose to remove.
SLC 22B.29	Remove	We propose to remove this condition as it allows an exception for particular discounts. This exception will no longer be required as we propose to remove the prohibition against certain discounts.
SLC 22B.32	Remove	We propose to remove this condition relating to the responsibility of Representatives not to offer Prohibited Items (discounts, bundled products, reward point discounts), as we recommend removing this limitation.
SLC 22B.33 - 35	Remove	We propose to remove these conditions as they require suppliers ensure that their terms and conditions comply with SLC 22B. As we propose to remove SLC22B there will be no need for this requirement.
SLC 22B 36 -	Remove	We propose to remove these conditions as there will be

37		no licence conditions left in 22B to provide guidance on or derogate from.
SLC 22B.38	Remove	We propose to remove this condition as it provides definitions for licence conditions in 22B, which we propose to remove.
Schedule to SLC 22B	Remove	We propose to remove this schedule as we propose to remove all conditions in 22B and the definition of Core Tariff. SLC 22A will still set out which charges will not need to be included in the unit rate(s) and standing charge(s).
SLC 22CB.3(b)	Amend	We propose to remove the exception to comply with SLC 22B as we propose to remove 22B.
SLC 22D.3 (a)	Amend	We propose to remove ' <i>and standard condition 22B (excluding sub-paragraph 22B.2(b))</i> ' as this directly refers to a licence condition we propose to remove.
SLC 22D.4 (b), (c) and (d)	Amend	
SLC 22D.5, (a) and (b)	Amend	
SLC 22E.3 (b)	Remove	We propose to remove this paragraph as it provides an exception to comply with SLC 22B, which we propose to remove.
SLC 22F.3(a) (this SLC only exists in the Electricity Supply Licence)	Remove	We propose to remove this paragraph as it provides an exemption from complying with the four-tariff rule, which we propose to remove.
SLC 22F.4 (this SLC only exists in the Electricity Supply Licence)	Remove	We propose to remove this paragraph as it provides an alternative interpretation for bespoke heating systems of the requirement that tariffs need to have one unit rate and one standing charge. This alternative interpretation is no longer necessary as we propose to remove the prescription around unit rates and standing charges.
SLC 22F.5 (this SLC only exists in the Electricity Supply Licence)	Remove	We propose to remove this paragraph as it provides an alternative interpretation for bespoke heating systems of the requirement that suppliers may only supply Domestic Premises based on one metering arrangement. This alternative interpretation is no longer necessary as we propose to remove this restriction.
SLC 23A.2 (b) and (d) (Gas Supply Licence only)	Amend	We propose to amend these provisions as they erroneously refer to electricity instead of gas.
SLC 23A.2 (e) and (f)	Remove	We propose to remove these paragraphs which stop suppliers from avoiding the four-tariff rule through mutual variation of a tariff. This additional protection is no longer required, as we propose to remove the four-tariff rule.
SLC 24.3	Amend	We propose to remove ' <i>Subject to standard condition 22B (which takes precedence),</i> ' as we propose to remove SLC 22B.
SLC 25A	Remove	We propose to remove this condition as it ceased to have effect on 31 July 2012.
SLC 31C.5(d)(iii) and 31C.5(d)(vi)	Amend	We propose to remove ' <i>and where the Discount is permitted by standard condition 22B</i> ' as this refers to a licence condition that we propose to remove.
SLC 31D 31D.1A (b) and	Remove	We propose to remove these rules relating to White Labels as they mirror the licence conditions in SLC 22B

(bb), 31D.1B - 31D.3, 31D.5 - 31D.19		that we propose to remove.
SLC 31D.1A (c) and (cc)	Amend and move	We propose to amend the wording from 'Core Tariff' to 'Tariff' to allow for the removal of the Core Tariff definition. We also propose to move this requirement to 22A.
SLC 31D.25	Move	We propose to move the definitions of White Label Tariff and White Label Tariff Provider to SLC1, as we propose to use them in SLC 22A and SLC 31D.
SLC31E.5B (a)	Remove	We propose to remove this section as it refers to a requirement in 22B which we propose to remove.

Removal of obsolete licence conditions

We are taking this opportunity to further simplify the rulebook by removing a licence condition which is no longer in force, but still present in the licence. We propose to remove SLC 25A on the 'Prohibition of undue discrimination in supply' as this condition ceased to have effect on 31 July 2012.

Amendments to existing guidance documents

We expect that guidance will play a more limited role in the future as we move towards greater reliance on principles in the way we regulate. This will encourage more innovation and promote competition. We have committed to withdrawing guidance that is no longer relevant¹³ and we are in the process of conducting a thorough review of existing guidance as part of our review of the rulebook. As part of this consultation, we've identified one specific guidance document which relates solely to the rules we propose to remove: *Retail Market Review: application of rules in the TPI sector*.¹⁴ As this guidance document provides clarification to third party intermediaries on the rules regarding cash discounts and bundled products, we propose to archive it. Other guidance documents, such as the derogations guidance¹⁵, will need to be amended.

Impact assessment

We have considered the impact assessment conducted by the CMA regarding the removal of the RMR 'Simpler Tariff Choices' rules.¹⁶ Due to the extensive consultation process undertaken by the CMA and its substantial analysis of the energy market and the impact of its proposed remedies, we do not deem it necessary to conduct a separate impact assessment.

Responses to this consultation

We would like to hear the views of anyone interested in the issues in this document. Please respond with your views on this consultation and the effect of the draft licence modifications by **16 September 2016** to: dennis.berg@ofgem.gov.uk

We prefer to receive responses by email, but you can also post them to:

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¹³ Ofgem, The future of retail market regulation, 2 June 2016, https://www.ofgem.gov.uk/system/files/docs/2016/06/the_future_of_retail_market_regulation_-_update_on_the_way_forward.pdf

¹⁴ Ofgem, Retail Market Review: application of rules in the TPI sector, 19 December 2013, <https://authors.ofgem.gov.uk/publications-and-updates/retail-market-review-application-rules-tpi-sector>

¹⁵ Ofgem, Guidance for derogation requests from domestic Retail Market Review (RMR) licence conditions, 30 November 2015, <https://www.ofgem.gov.uk/publications-and-updates/guidance-derogation-requests-domestic-retail-market-review-rmr-licence-conditions>

¹⁶ CMA, Energy Market Investigation, Final report, 24 June 2016, https://assets.publishing.service.gov.uk/media/576d3f15e5274a0da9000092/energy_market_final_report.pdf

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If you want your response to remain confidential, clearly mark the document(s) to that effect and include the reasons. Put any confidential material in the appendices.

Direct any questions about this letter to Dennis Berg at dennis.berg@ofgem.gov.uk or 020 7901 7000.

We will consider the responses we receive to the statutory consultation. If we decide to proceed with the changes, we will then aim to publish our decision to modify the licence in the autumn.

Yours faithfully,



Neil Barnes
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Consumers & Competition