



Making a positive difference
for energy consumers

Holders of gas and/or electricity supply licences, consumers and their representatives and other interested parties

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Guidance on tracker tariffs - Standard Licence Conditions 22C and 23

1.1. This letter¹ provides domestic electricity and gas suppliers (“suppliers”) with clarification regarding the requirements of Standard Licence Condition 22C and 23 (“SLC 22C and SLC 23”) where they relate to the requirements around tracker tariffs.²

Background and purpose

1.2. We have recently seen several suppliers announce and introduce tracker tariffs in the GB energy market. We welcome greater tariff innovation and competition, provided our new principles on informed choice are met.³

1.3 We have engaged with several suppliers on the licence requirements around tracker tariffs and price increase notifications. We note that awareness and interpretation of the licence requirements around tracker tariffs and the associated consumer protections is variable. More specifically, some suppliers have asked us what could constitute an ‘index’ for the purposes of meeting the tracker tariff exemption.

1.4. This document sets out the high-level licence framework regarding tracker tariffs and provides specific guidance as to what can constitute an index.

Ofgem’s Guidance

1.5. It is our view that the provisions in EU law (as implemented in the supply licence) mean that any form of price increase, which is at the discretion of the supplier, is caught by the relevant consumer protection requirements set out in EU law. It is our view that domestic energy consumers have, in accordance with EU law, the right to be notified in advance of such a price increase coming into effect and the right to switch supplier (or tariff) without being subject to any form of penalty and without being affected by the increase. In addition, consumers on Fixed Term Tariffs are protected from price increases altogether due to protections introduced by Ofgem.

¹ This guidance is being published pursuant to section 35(1) of the Gas Act 1986 and section 48(1) of the Electricity Act 1989.

² In this letter many of the words and expressions which begin with capital letters are intended to be interpreted in accordance with Standard Condition 1 of the gas and electricity supply licences.

³ Ofgem, Decision to publish a statutory consultation on enabling consumer to make informed choices - proposed changes to rules around tariff comparability and marketing , 30 January 2017, <https://www.ofgem.gov.uk/publications-and-updates/decision-publish-statutory-consultation-enabling-consumer-make-informed-choices-proposed-changes-rules-around-tariff-comparability-and-marketing>

1.6. As specified in SLC 23.8 and SLC 22C.11, we consider that the only viable exceptions to these rights derived from EU law are:

(i) where the supplier and customer have agreed in advance precise changes to prices and the timing of such changes (also known as a Staggered Charging Tariff); and

(ii) where both the supplier and customer agree that price changes will, in effect, be entirely determined by a 3rd party based on clear and transparent criteria which is not subject to the discretion or control of the supplier (also known as a tracker tariff).

1.7. As a part of these two exceptions, the supplier needs to offer the tariffs in the form of a Fixed Term Supply Contract, comply with SLC 23.1 and clearly set out the method by which prices will change in clear and intelligible language.

1.8. We consider a clear example of a tracker tariff would be where prices are determined by a published index determined by a public body and which the supplier does not control, e.g. the Retail Prices Index (RPI) or Consumer Prices Index (CPI). However, we also consider that a published index determined by an independent private body, on the basis of objective criteria the supplier and customer have agreed, would be permissible provided the criteria was applied independently of the supplier and customer (e.g. the supplier does not unilaterally decide or otherwise influence how the criteria is applied once it is agreed).

1.9. An example could be where tariff price changes are fully linked a wholesale gas or electricity price index following a prescribed calculation, which the suppliers cannot influence. Another example could be where tariff price changes are fully linked to variations in a basket of tariffs calculated by an external party following a set methodology, which is outside of the control of the supplier.

Next steps

1.10. We expect suppliers who want to offer a tracker tariff to follow the existing provisions in the supply licence. We will continue to monitor new tracker tariffs coming onto the market.