



# Domestic Gas and Electricity (Tariff Cap) Act 2018

## 2018 CHAPTER 21

An Act to make provision for the imposition of a cap on rates charged to domestic customers for the supply of gas and electricity; and for connected purposes. [19th July 2018]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *The cap*

#### **1 Cap on standard variable and default rates**

- (1) As soon as practicable after this Act is passed, the Gas and Electricity Markets Authority (“the Authority”) must modify the standard supply licence conditions so that they include conditions (“tariff cap conditions”) that impose a cap on all standard variable and default rates that may be charged by the holders of supply licences for the supply of gas or electricity under domestic supply contracts.

But this is subject to section 3 (exemptions from the cap).

- (2) The Authority—
- (a) may modify the tariff cap conditions from time to time, but
  - (b) must secure that such conditions continue to be included in the standard supply licence conditions until they cease to have effect by virtue of section 8.
- (3) The “standard supply licence conditions” are the standard conditions incorporated in supply licences by virtue of section 8 of the Gas Act 1986 or section 8A of the Electricity Act 1989.
- (4) In relation to a domestic supply contract—

- (a) “standard variable rate” means a rate or amount charged for, or in relation to, the supply of gas or electricity under the contract that is not fixed for a period specified in the contract, and
  - (b) “default rate” means a rate or amount charged for, or in relation to, the supply of gas or electricity under the contract that applies if the customer under the contract fails to choose an alternative rate.
- (5) Modifications made by the Authority under this section may include consequential, incidental, supplemental and transitional modifications of the standard supply licence conditions.
- (6) The Authority must exercise its functions under this section with a view to protecting existing and future domestic customers who pay standard variable and default rates, and in so doing it must have regard to the following matters—
- (a) the need to create incentives for holders of supply licences to improve their efficiency;
  - (b) the need to set the cap at a level that enables holders of supply licences to compete effectively for domestic supply contracts;
  - (c) the need to maintain incentives for domestic customers to switch to different domestic supply contracts;
  - (d) the need to ensure that holders of supply licences who operate efficiently are able to finance activities authorised by the licence.
- (7) Nothing in this section is to be read as requiring the cap imposed on a standard variable or default rate to apply in relation to any charge that—
- (a) forms part of that rate, but
  - (b) is not paid on a regular basis by the majority of customers who pay that rate.

## **2 Tariff cap conditions**

- (1) Tariff cap conditions—
- (a) have effect in relation to supply licences, whenever granted, and domestic supply contracts, whenever entered into;
  - (b) must set out how the cap is to be calculated, and may make provision about assumptions required to be made in making the calculation;
  - (c) may make provision specifying how a standard variable or default rate is to be identified;
  - (d) may make provision requiring information to be provided by holders of supply licences to the Authority for the purposes of exercising functions relating to tariff cap conditions;
  - (e) may confer functions on the Authority;
  - (f) may make different provision for different areas or different cases;
  - (g) may do any of the things authorised for supply licences by section 7B(5)(a), (6) or (7) of the Gas Act 1986 or section 7(3), (4), (5) or (6A) of the Electricity Act 1989.
- (2) But tariff cap conditions may not—
- (a) exempt holders of supply licences from their application, or
  - (b) make different provision for different holders of supply licences.

- (3) Before making the first modifications under section 1 the Authority must, and before making any subsequent modifications under that section the Authority may, consult such persons as it considers appropriate on the methodology to be used for the purposes of the cap.
- (4) Consultation undertaken before this Act is passed is as effective for the purposes of subsection (3) as consultation undertaken after it is passed.

### **3 Exemptions from the cap**

- (1) Tariff cap conditions do not apply in relation to domestic customers who—
  - (a) benefit from the cap on rates or amounts charged for, or in relation to, the supply of gas or electricity provided for by the Energy Market Investigation (Prepayment Charge Restriction) Order 2016, made by the Competition and Markets Authority, or
  - (b) benefit from a cap on such rates or amounts that is a replacement for the cap provided for by that Order.
- (2) Tariff cap conditions may provide for the conditions not to apply in relation to—
  - (a) domestic customers who benefit from a cap imposed by the Authority on rates or amounts charged for, or in relation to, the supply of gas or electricity to customers who appear to the Authority to be vulnerable by reason of their financial or other circumstances;
  - (b) standard variable rates which apply only if chosen by domestic customers if, or to the extent that, the rates in question appear to the Authority to support the production of gas, or the generation of electricity, from renewable sources.
- (3) The Authority must consult such persons as it considers appropriate about whether and, if so, how to exercise the power conferred by subsection (2)(b).
- (4) The Authority may carry out the consultation either before, or in the course of, taking the steps described in section 4 in relation to proposed modifications which consist of or include provision to be made in the exercise of the power conferred by subsection (2)(b).
- (5) The Authority must secure that the consultation is carried out at a time that will enable it, if it decides to exercise the power conferred by subsection (2)(b), to do so—
  - (a) when making the first modifications under section 1, or
  - (b) if that is not practicable, as soon as practicable after it has made the first modifications under that section.
- (6) Consultation undertaken before this Act is passed is as effective for the purposes of subsection (3) as consultation undertaken after it is passed.

#### *Procedure*

### **4 Notice of proposed modifications**

- (1) Before making any modifications under section 1, the Authority must take the following steps.
- (2) The Authority must give notice—

- (a) stating that it proposes to make the modifications,
  - (b) setting out the proposed modifications and their effect, and
  - (c) specifying the period within which representations with respect to the proposed modifications may be made.
- (3) That period must be a period of not less than 28 days beginning with the day on which the notice is published.
- (4) The notice must be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the proposed modifications, and a copy of the notice must be sent to—
- (a) each holder of a supply licence,
  - (b) the Secretary of State,
  - (c) Citizens Advice, and
  - (d) Citizens Advice Scotland.
- (5) The Authority must consider any representations which are made before the end of the period specified in the notice.
- (6) Steps taken before this Act is passed are as effective for the purposes of this section as steps taken after it is passed.

## **5 Publication and effect of modifications**

- (1) This section applies if, after taking the steps described in section 4, the Authority decides to make the modifications.
- (2) The Authority must—
- (a) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by them,
  - (b) state the effect of the modifications,
  - (c) state how it has taken account of any representations made in the period specified in the notice mentioned in section 4, and
  - (d) state the reason for any differences between the modifications and those set out in the notice.
- (3) Each modification has effect from the day specified by the Authority in relation to it.
- (4) That day must be after the end of the period of 56 days beginning with the day on which the modification is published.

### *Review and termination*

## **6 Review of level at which cap is set**

- (1) The Authority must, at least once every 6 months while tariff cap conditions have effect, review the level at which the cap is set.
- (2) As soon as practicable after carrying out such a review the Authority must publish a statement stating whether, in consequence of the review, the Authority proposes to change the level at which the cap is set.

## **7 Review of competition for domestic supply contracts**

- (1) The Authority must carry out a review into whether conditions are in place for effective competition for domestic supply contracts.
- (2) Such a review must, among other things, consider the extent to which progress has been made in installing smart meters for use by domestic customers.
- (3) Such a review must be carried out—
  - (a) in the year 2020,
  - (b) if the tariff cap conditions are extended to have effect for the year 2021, in that year, and
  - (c) if the tariff cap conditions are further extended to have effect for the year 2022, in that year.
- (4) As soon as practicable after carrying out the review, and in any event on or before 31 August in the year in question, the Authority must—
  - (a) produce a report on the outcome, which must include a recommendation as to whether or not the Authority considers that the tariff cap conditions should be extended to have effect for the following year, and
  - (b) publish the report and send a copy to the Secretary of State.
- (5) After considering the report the Secretary of State must publish a statement setting out whether the Secretary of State considers that conditions are in place for effective competition for domestic supply contracts.
- (6) The statement must be published on or before 31 October in the year in question.

## **8 Extension and termination of tariff cap conditions**

- (1) The tariff cap conditions cease to have effect at the end of the year 2020 unless the statement published by the Secretary of State in that year under section 7 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts, in which case the tariff cap conditions have effect for the year 2021.
- (2) If the tariff cap conditions are extended by virtue of subsection (1), they cease to have effect at the end of the year 2021 unless the statement published by the Secretary of State in that year under section 7 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts, in which case the tariff cap conditions have effect for the year 2022.
- (3) If the tariff cap conditions are extended by virtue of subsection (2), they cease to have effect at the end of the year 2022 unless the statement published by the Secretary of State in that year under section 7 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts, in which case the tariff cap conditions—
  - (a) have effect for the year 2023, and
  - (b) cease to have effect at the end of that year.
- (4) On the tariff cap conditions ceasing to have effect as provided by this section, the functions of the Authority under section 1 cease to be exercisable.

*Protection for customers after termination***9 Protection for domestic customers after termination of tariff cap conditions**

- (1) Before the tariff cap conditions have ceased to have effect as provided by section 8, and afterwards at such intervals as the Authority considers appropriate, the Authority must carry out a review into—
  - (a) the pricing practices of holders of supply licences for the supply of gas and electricity under domestic supply contracts, and
  - (b) whether there are categories of domestic customers paying, or who may in the future pay, standard variable and default rates for whom protection against excessive charges should be provided.
- (2) Such a review must, among other things, consider—
  - (a) whether there are domestic customers who the Authority considers will suffer an excessive tariff differential where on the termination of fixed rates the customers move to standard variable or default rates, and
  - (b) whether customers who appear to the Authority to be vulnerable by reason of their financial or other circumstances are in need of protection.
- (3) If the review concludes that protection should be provided, the Authority must take such steps as it considers appropriate by the exercise of its functions under the Gas Act 1986 and the Electricity Act 1989.

*Consequential modification of conditions***10 Consequential modification of standard supply licence conditions**

- (1) The Authority may make such modifications of any standard supply licence conditions as it considers necessary or expedient in consequence of the tariff cap conditions ceasing to have effect as provided by section 8.
- (2) The Authority must—
  - (a) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by them, and
  - (b) state the effect of the modifications.
- (3) Each modification has effect from the day specified by the Authority in relation to it.

*Final provisions***11 Amendments of the Utilities Act 2000**

- (1) The Utilities Act 2000 is amended as follows.
- (2) In section 33(1) (standard conditions of electricity licences), omit the “or” after paragraph (f) and after paragraph (g) insert “, or
  - (h) under section 1 or 10 of the Domestic Gas and Electricity (Tariff Cap) Act 2018.”

- (3) In section 81(2) (standard conditions of gas licences), for “or under section 139 of the Energy Act 2013” substitute “, under section 139 of the Energy Act 2013 or under section 1 or 10 of the Domestic Gas and Electricity (Tariff Cap) Act 2018”.
- (4) In section 105 (general restrictions on disclosure of information)—
- (a) in subsection (1)(a), after “Energy Act 2008” insert “or the Domestic Gas and Electricity (Tariff Cap) Act 2018”, and
  - (b) in subsection (6), at the end insert—
    - “(z) the Domestic Gas and Electricity (Tariff Cap) Act 2018.”

## 12 Interpretation

In this Act—

“the Authority” has the meaning given by section 1(1);

“deemed supply contract” means a contract deemed to exist pursuant to any of the following provisions—

- (a) paragraph 8 of Schedule 2B to the Gas Act 1986;
- (b) paragraph 3 of Schedule 6 to the Electricity Act 1989;
- (c) paragraph 19 of Schedule 5 to the Gas Act 1995;
- (d) paragraph 23 of Schedule 7 to the Utilities Act 2000;

“default rate” has the meaning given by section 1(4);

“domestic customer” means a customer under a domestic supply contract;

“domestic supply contract” means a contract (including a deemed supply contract) for the supply of gas or electricity at domestic premises wholly or mainly for domestic purposes;

“modify” includes amend, add to or remove, and references to modifications are to be construed accordingly;

“standard supply licence conditions” has the meaning given by section 1(3);

“standard variable rate” has the meaning given by section 1(4);

“supply”—

- (a) in relation to gas, is to be read in accordance with section 48(2) of the Gas Act 1986;
- (b) in relation to electricity, is to be read in accordance with section 4(4) of the Electricity Act 1989;

“supply licence” means a licence under section 7A(1) of the Gas Act 1986 or section 6(1)(d) of the Electricity Act 1989;

“tariff cap conditions” has the meaning given by section 1(1).

## 13 Extent and commencement

- (1) This Act extends to England and Wales and Scotland.
- (2) This Act comes into force on the day on which it is passed.

## 14 Short title

This Act may be cited as the Domestic Gas and Electricity (Tariff Cap) Act 2018.