



## BRIEFING PAPER

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# The Domestic Gas and Electricity (Tariff Cap) Act 2018

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## Summary

Following the privatisation of the energy market, prices for electricity and gas fell. From 2000 prices began to increase in real terms and although costs were more stable from 2008, in 2016 and 2017 many energy suppliers announced price increases. Ofgem, the energy regulator, estimate that many consumers do not switch suppliers to get better deals. As a result, in 2016 the Competition and Markets Authority estimated that customers were being overcharged £1.4 billion for their energy.

By the 2017 General Election, a form of energy price cap was in both the Labour and Conservative manifestos. Ofgem implemented a price cap for prepayment customers in April 2017, and extended this in February 2018 to make a safeguard tariff cap for customers on the Warm Homes Discount scheme, but said that a market-wide price cap required legislation.

During her speech to the Conservative party conference on 4 October, the Prime Minister Theresa May announced that the Government would publish a Draft Bill to put a price cap on energy bills. The *Draft Domestic Gas and Electricity (Tariff Cap) Bill* was published on 12 October 2017.

The Business, Energy and Industrial Strategy Committee undertook pre-legislative scrutiny of the Draft Bill and published their report on 13 February 2018. The Committee criticised Ofgem and the energy suppliers for failing customers. The Committee agreed with the short term, absolute tariff cap proposed in the draft Bill and suggested amendments, for example to close loopholes for Green tariffs and ensure the cap is reviewed every six months.

The *Domestic Gas and Electricity (Tariff Cap) Bill* had its First Reading on 26 February 2018. The Bill proposed a temporary, absolute cap on the price of standard variable and default tariffs that will be lifted by the end of 2020, although the Bill provides for it to continue until 2023 if conditions for effective market competition are not met.

Comment on the Bill is broadly split into three groups. Some MPs, small suppliers and consumer groups are in favour of an absolute cap, to protect consumers from overcharging. Some MPs and an energy supplier are in favour of a relative price cap, to prevent the alleged practice of offering cheap deals but then rolling customers onto expensive tariffs. Some MPs and large energy companies are opposed to the cap, saying it may harm competition.

The Bill passed the House of Commons stages without amendments. During the scrutiny by the House of Lords, the Bill was amended. The Commons replaced the Lords amendment with a Government amendment with cross party support. On 19 July 2018, the Bill received Royal Assent and became the *Domestic Gas and Electricity (Tariff Cap) Act 2018*.

Ofgem have said they will need five months to implement a cap and the Government want the cap in place for the winter of 2018/19.

# 1. Background

## 1.1 The UK energy market

The supply and generation of British electricity and gas was privatised through the [Electricity Act 1989](#) and the [Gas Act 1986](#).<sup>1</sup> The energy market then entered a period of “liberalisation” with new suppliers emerging and competition between those suppliers.

The ‘big six’ energy companies are the largest suppliers of electricity and gas and comprise Centrica plc (British Gas), EDF Energy, E.ON, N-power, Scottish Power and SSE. The ‘big six’ dominate the market supplying about 81% of all British domestic electricity<sup>2</sup> and 80% of all domestic gas<sup>3</sup> at the end of Quarter 3 2017, though this has declined since 2012 when they supplied over 95% of the domestic energy market.<sup>4</sup> There are also a growing number of small suppliers with a total of 60 in addition to the ‘big six’ in September 2017.<sup>5</sup>

## 1.2 Changing energy bills

Between 2000 and 2008 energy bills rose steadily in real terms. After a dip in prices, since 2010 bills for electricity and gas have diverged and fluctuated more with gas bills rising rapidly and now falling, and electricity bills rising more steadily.<sup>6</sup> From the end of 2016, energy bills have risen with all the ‘big six’ announcing increases. Press reports are also predicting further price rises in 2018.<sup>7</sup>

The reasons for the increases are complex. Energy bills comprise a variety of costs, the data below is from August 2017 (chart data up to 2016). This information is based on data energy companies have submitted to Ofgem on how their costs fall into different categories, although there are some differences in how they are recorded between suppliers.

- **Wholesale costs:** 37.9%. Ofgem data shows the largest proportion of a bill, wholesale costs, decreased between 2015 and 2016, but as suppliers buy energy in advance, future wholesale market costs could be a factor behind rises.
- **Network costs:** 26.0%. Previously network costs were known jointly with environmental and social costs as direct costs. Network costs refer to the cost of using the electricity transmission and distribution grids. Ofgem data does show that

Further information and statistics on energy bills is available from the Library Briefing paper on [Energy prices](#).

<sup>1</sup> For more details on the privatisation of British industries, see the House of Commons Library briefing paper on [Privatisation](#)

<sup>2</sup> Ofgem, [Electricity supply market shares by company: Domestic \(GB\)](#), (accessed 15 February 2018)

<sup>3</sup> Ofgem, [Gas supply market shares by company: Domestic \(GB\)](#), (accessed 15 February 2018)

<sup>4</sup> Ofgem, [State of the Market Assessment 2014](#), Figure 3 and 4

<sup>5</sup> Ofgem, [Number of active domestic suppliers by fuel type \(GB\)](#), (accessed 15 February 2018)

<sup>6</sup> House of Commons Library, [Energy prices 04153](#), 9 February 2018

<sup>7</sup> Adam Vaughan, [Get ready for more energy price rises, warn industry analysts](#), *The Guardian*, 27 February 2018

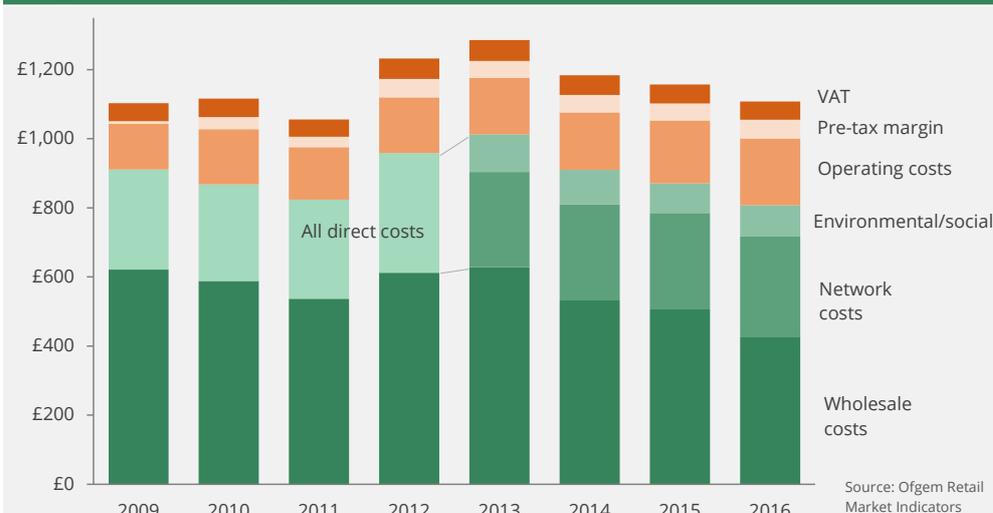
## 6 The Domestic Gas and Electricity (Tariff Cap) Act 2018

network costs are increasing though these costs are managed by price controls.

- **Operating costs:** 17.2%. These include staffing and office costs, sales and marketing, etc. Some suppliers include meter costs, such as aspects of the smart meter roll, out in this category.
- **Environmental and Social Obligations:** 8.11%. When British Gas announced their price increase in 2017, they attributed it partly to higher environmental and social costs.<sup>8</sup> However Ofgem figures show that these costs were higher in 2013 and 2014 than in 2016. Some of these costs are to help vulnerable customers, such as the Warm Home Discount, and others relate to green energy subsidies and the installation of efficiency measures. The Committee on Climate Change have argued that energy efficiency gains in the home, (both from measures such as insulation and from more efficient household products) have led to average gas and electricity use reducing by 23% and 17% respectively since 2008. Reducing consumption saves the average household money. The Committee on Climate Change believe the average household saving from this consumption fall to be £290 per year.<sup>9</sup>
- **Pre-tax profits:** 4.8%. Supplier pre-tax profits are often mentioned in the press as a factor of bill increases; they normally account for just under 5% of an average bill.
- **VAT:** 4.8%.
- **Other direct costs:** 1.2%. The costs put in this category vary between suppliers and are a small but increasing segment of bills. They can refer to costs of market participation, such as brokers, Elexon (a balancing and settlement organisation), and Xozerve (a gas database) participation, and some suppliers count the smart meter roll out in this category too.

### COMPONENT OF AN ENERGY BILL: CHANGES OVER TIME

Average annual dual fuel bill, Big 6 suppliers, cash prices, Great Britain



<sup>8</sup> British Gas, [Why we've had to raise electricity prices, but are protecting our most vulnerable customers from the increase](#), 1 August 2017

<sup>9</sup> Committee on Climate Change, [Energy Prices and Bills – impacts of meeting carbon budgets](#), March 2017 (page 7)

## 1.3 The CMA review of the energy market

In a fully functioning energy market, customers would switch between suppliers to get the best value tariff for their energy, and switching would force companies to offer competitive prices to all consumers. However, there have been concerns that many consumers don't switch suppliers regularly or at all meaning the market is not working competitively.

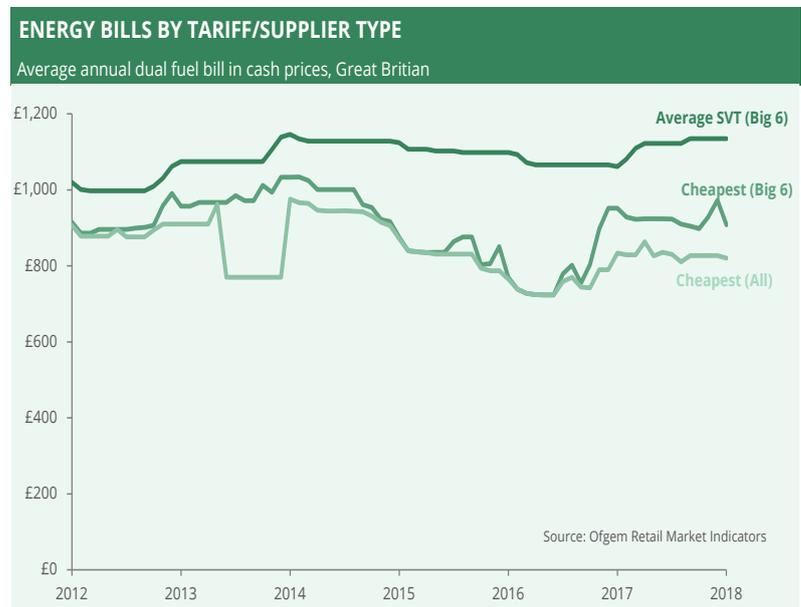
### Box 1: Standard Variable Tariffs (SVT)

Standard Variable Tariffs are the default tariff offered by companies if consumers have not actively made a choice of tariff. It is also the rate consumers usually default to after fixed rate (FR) contracts end. As a result, they are often the tariffs applied to those less likely to switch or less engaged in the market. According to Ofgem, as of September 2017, 57% of customers with the 10 largest energy firms were on un-capped standard variable tariffs<sup>10</sup> (this does not include the approximately 4 million households under the pre-payment meter cap, details of which are in Section 1.4 below.) Although switching has been increasing since 2014 (see below) many of these customers will have never switched supplier. As SVTs are usually the most expensive tariffs offered by a supplier, there is concern about these 'sticky' SVT customers being overcharged by suppliers.

In 2014, following a series of other reviews and with growing political pressure, the energy regulator Ofgem referred the Energy Market to the Competition and Markets Authority (CMA).<sup>11</sup> More information is available in the Library briefing paper on [The Current Energy Market Reforms in Great Britain](#)

The CMA published its final report<sup>12</sup> in June 2016. The report highlighted a lack of switching: the CMA said that in 2016, 70%<sup>13</sup> of customers were on Standard Variable Tariffs<sup>14</sup> (SVTs – see Box 1 and chart adjacent<sup>15</sup>).

As a result of not switching, the CMA estimated in 2016 that UK consumers are unnecessarily over-paying up to £1.4 billion a year.<sup>16</sup> The CMA suggested a series of remedies but did not recommend a full price cap. The initial findings, published a year



<sup>10</sup> Ofgem, [Standard variable tariffs: Latest trends at September 2017](#), 20 December 2017

<sup>11</sup> Ofgem, [Ofgem refers the energy market for a full competition investigation](#), 26 June 2014

<sup>12</sup> CMA, [Energy market investigation – Summary of final report](#), 24 June 2016

<sup>13</sup> This 70% figure is higher than the 57% in Box 1 above because it was before the cap on prepayment meters, which protected 4 million households.

<sup>14</sup> CMA, [Energy market investigation – Summary of final report](#), 24 June 2016

<sup>15</sup> Chart Source: Ofgem

<sup>16</sup> CMA, [Energy market investigation – Summary of final report](#), 24 June 2016 (p. 22)

earlier in 2015, had recommended a form of price cap for disengaged customers<sup>17</sup> which was changed to a cap on only pre-payment meters in the final report. This led to press reports of the CMA “bowing to pressure” from energy firms<sup>18</sup> and one member of the panel, Martin Cave, openly disagreeing with the final report.<sup>19</sup>

There are indications that switching is increasing. Having fallen between 2008 and 2012, Ofgem said switching began to increase in 2014. In 2016, the annual switching rates were 15.8% for electricity and 15.9% for gas and in 2017, the number of people actually switching increased by 30% for electricity and 24% for gas compared with 2016.<sup>20</sup>

## 1.4 Implementing a price cap

By the 2017 General Election a price cap was in both the Labour and Conservative manifestos.

Following the formation of a Conservative government, The Queen’s Speech 2017 said:<sup>21</sup>

My government will ensure fairer markets for consumers, this will include bringing forward measures to help tackle unfair practices in the energy market to help reduce energy bills.

The explanatory notes for the Queen’s Speech included more detail:<sup>22</sup>

- We have committed to extending the price protection currently in place for some vulnerable energy consumers to more of those on the poorest value tariffs. We are considering the best way to do this – whether through action by the regulator or legislation.
- Progress has been made in recent years to improve competition in the energy retail market, but it is clear that more needs to be done. That is why we are legislating to allow the Government to continue to support the effective and efficient completion of the smart meter rollout, putting customers in control of their energy use. We will also support initiatives to improve switching and transparency in the market.

### Tariff cap for pre-payment meter customers

The CMA review of the Energy Market recommended a temporary cap for the four million households on pre-payment meters who are less able to benefit from competition as there are fewer tariffs available. This cap entered into force in April 2017<sup>23</sup> and is projected to end in 2020 when the smart meter roll-out is due to be completed. The price is recalculated on 1 April and 1 October every year and the methodology

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<sup>17</sup> CMA, *Energy market investigation – Notice of possible remedies*, 7 July 2015

<sup>18</sup> Terry Macalister, *UK watchdog accused of bowing to pressure from ‘big six’ energy suppliers*, *The Guardian*, 10 March 2016

<sup>19</sup> CMA, *Energy market investigation – final report, Statement of dissent of Professor Martin Cave*, p 1415, 24 June 2016

<sup>20</sup> Ofgem, *Switches up by nearly 30% as millions go ‘energy shopping’*, 27 February 2017

<sup>21</sup> Gov.uk, *Queen’s Speech 2017*, 21 June 2017

<sup>22</sup> Gov.uk, *The Queen’s Speech And Associated Background Briefing*, 21 June 2017

<sup>23</sup> Ofgem, *Ofgem sets prepayment price cap to protect over four million households least able to benefit from competition*, 7 February 2017

used to determine the cap was set by the CMA based on indices of trends and indexes of various costs.<sup>24</sup>

## Safeguard tariff cap for vulnerable consumers

In the 2017 General Election, the Conservative Party Manifesto included a commitment to:

Introduce a safeguard tariff cap that will extend the price protection currently in place for some vulnerable customers to more customers

On 21 June 2017, Greg Clark the Secretary of State for Business, Energy and Industrial Strategy (BEIS) wrote to Ofgem to encourage them to implement a “*safe-guard tariff*”.<sup>25</sup>

On 3 July 2017, Ofgem responded saying it would:

work with consumer groups to take measures, [...] including extending the current safeguard tariff in place for consumers on a pre-payment meter”.<sup>26</sup>

Ofgem’s proposals extended price caps to “vulnerable consumers” which were defined as consumers who receive the Warm Homes Discount. The Warm Homes Discount is a £140 discount from the energy bill of customers who meet certain criteria. The extension, known as the Safeguard Tariff Cap, came into force on 2 February 2018.<sup>27</sup> This extension means the pre-payment meter and safeguard caps now cover a total of around 5 million households.<sup>28</sup>

## Regulation or Legislation?

On the 3 July 2017, following Ofgem’s letter, Dr. Alan Whitehead MP asked an urgent question on the Government’s intention for an energy price cap. During the debate, some MPs expressed concern that the “safe-guard tariff” would not protect enough consumers. John Penrose MP said:

Some 17 million families are being ripped off by expensive standard variable tariff deals. Ofgem’s proposals will deal with at most 3 million of them, leaving 14 million still being preyed on by the big six energy firms.<sup>29</sup>

Greg Clark said he would “wait and see” what Ofgem did but was prepared to legislate if necessary:

Following a two-year inquiry, the Competition and Markets Authority found that energy customers on standard variable tariffs were paying on average £1.4 billion a year more than would be the case in a competitive market. That is completely unacceptable, so my party’s manifesto committed to introduce a safeguard tariff to extend the price protection currently in place for some vulnerable customers—those on pre-payment meters—to more customers on the poorest-value tariffs. The energy regulator,

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<sup>24</sup> Gov.uk, [Domestic prepayment meter energy price cap: illustrative model](#), 24 June 2016

<sup>25</sup> Gov.uk, [Energy retail market: letter to Ofgem](#), 21 June 2017

<sup>26</sup> Ofgem, [Ofgem reply to letter from Secretary of State](#), 3 July 2017

<sup>27</sup> Ofgem, [Safeguard tariff \(or ‘price cap’\)](#), (accessed 14 February 2018)

<sup>28</sup> Natalie Thomas and Jim Pickard, [Ofgem proposes ‘safeguard’ price cap for vulnerable customers](#), 3 July 2017

<sup>29</sup> HC Deb 3 July 2017 [c892](#)

Ofgem, has the powers necessary to impose such a price cap without delay, and I wrote to its chief executive on 21 June to ask it to use its powers to do so. Today, the regulator has replied and announced that it will work with consumer groups to take measures, including extending the current safeguard tariff for those on pre-payment meters to a wider group of consumers, and move urgently to implement these changes.

I welcome this initial proposal—it is a step in the right direction—but I will wait to see the actual proposals turned into action to cut bills, as the test of whether the regulator’s changes go far enough is whether they move sufficiently to eradicate the detriment to consumers that the CMA identified. I remain prepared to legislate if they do not, and I hope that such legislation would command wide support across the House.<sup>30</sup>

Ofgem have repeatedly said that a market-wide cap required legislation as it was a change in policy and would otherwise be open to legal disputes. Ofgem’s Chief Executive Dermot Nolan told the BEIS Committee in February 2017 (before the election):

In theory, we have the powers to amend any sort of licence condition we see fit. Given the statutory framework we have operated in, we have never sought to put a price cap or a backstop tariff in, partially because we assumed—correctly, in my view—two issues. One is that it would almost certainly be appealed to the CMA and, secondly, it would constitute a major policy change to the framework that is set up.<sup>31</sup>

Mr Nolan argued that as Ofgem had referred the energy market to the CMA, they would be implementing the CMA’s suggested remedies, which specifically excluded a market-wide price cap. He continued that a full price cap...

...is something Government and Parliament should do. If they did, we as the regulator would implement it to the best of our ability.<sup>32</sup>

However, the Government believed that setting a tariff cap was in Ofgem’s power. In response to a parliamentary question from Rebecca Long Bailey on whether legislation was required for a price cap in September 2017, Margot James MP, the then Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy said (8440):

My Rt Hon Friend the Secretary of State has written to the Chief Executive of Ofgem asking him to advise on what action the regulator intends to take to safeguard consumers on the poorest value tariffs and to consider the future of standard variable tariffs. The Secretary of State will assess whether further action is necessary once he receives Ofgem’s proposals.

Ofgem already have extensive powers which would allow them to establish a price cap on household energy prices, but new legislation would be required in order to oblige Ofgem to put

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<sup>30</sup> HC Deb 3 July 2017 [c891](#)

<sup>31</sup> HC BEIS Committee, [Oral Evidence: CMA’s investigation of the UK Energy Market, HC 982](#), 22 February 2017, Q153

<sup>32</sup> HC BEIS Committee, [Oral Evidence: CMA’s investigation of the UK Energy Market, HC 982](#), 22 February 2017, Q156

such a cap in place. The Secretary of State remains prepared to legislate if necessary.<sup>33</sup>

The question of appeals against the cap was raised by suppliers during the Business, Energy and Industrial Strategy pre-legislative scrutiny of the Draft Bill. The Committee concluded that the “suppliers do not need appeal rights to the Competition and Market Authority for this Bill” as suppliers could content the cap through judicial review.<sup>34</sup>

## Full Tariff Cap

During her speech to the Conservative party conference on 4 October 2017, the Prime Minister Theresa May announced:

Next week, the Government will publish a Draft Bill to put a price cap on energy bills [...] meeting our manifesto promise and bringing an end to rip-off energy prices once and for all.<sup>35</sup>

The draft Bill was published on 12 October 2017.<sup>36</sup> It proposed a temporary, absolute cap on default domestic electricity and gas tariffs.

## Views on Price Cap intervention

There were two main types of price cap the Government could have implemented: absolute and relative. The former imposes a cap on the maximum amount any supplier can charge for electricity and gas, and is the type of tariff used for prepayment meters and vulnerable customers. The latter imposes a cap on the difference between a supplier’s cheapest and most expensive tariffs.

There are broadly three views on market intervention in the form of an absolute price cap:

- **Supporters of an absolute price cap:** Some MPs, small suppliers and consumer groups have supported the implementation of a price cap to protect customers from overcharging.<sup>37</sup>
- **Supporters of a relative price cap:** Some suppliers and MPs have instead expressed support for a relative price cap. Proponents say that such a cap would “restore the link between the prices which companies advertise in the marketplace and those which they charge the majority of their customers”.<sup>38</sup>
- **Opponents of a price cap:** Some MPs and the ‘big six’ energy suppliers have opposed a price cap. Opponents say a price cap could hurt competition<sup>39</sup> and that consumers who do not engage with the market should expect to pay more for their energy.<sup>40</sup>

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<sup>33</sup> PQ 8440 [[On energy prices](#)], 4 September 2017

<sup>34</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018, para 57

<sup>35</sup> BBC, [In full, Theresa May's Conservative conference speech 2017](#), 4 October 2017

<sup>36</sup> Gov.uk, [Draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 12 October 2017

<sup>37</sup> Citizens Advice, [Citizens Advice hails the energy price cap legislation as an important step towards an energy market that works better for consumers](#), 12 October 2017

<sup>38</sup> BEIS Committee, Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill, Fourth Report of Session 2017-19, 13 February 2018, para 43

<sup>39</sup> Adam Vaughan, [E.ON chief: Theresa May's energy price cap will hurt competition](#), *The Guardian*, 20 October 2017

<sup>40</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018, para 38

## 2. Pre-legislative scrutiny of the draft Bill

Following the publication of the Draft Bill in October 2017, the Government invited the Business, Energy and Industrial Strategy Committee to conduct pre-legislative scrutiny of the Bill.

As part of the inquiry, the Committee took written evidence and held evidence sessions with competition experts, consumer bodies, energy companies, Ofgem, and the Department. The Secretary of State, Greg Clark asked the Committee to publish their final report by the end of January but the Cabinet reshuffle delayed the Committee's evidence from the Minister Claire Perry. The [final report](#) was published on 13 February 2018.

Overall the Committee supported the Government in their aims to cap prices in the short term by concluding:

40. Energy is “special”: consumers should not be expected to constantly defend themselves from excessive prices. We conclude that government intervention is justified when markets fail to deliver fair outcomes for consumers and have a disproportionate impact on consumers who are the least able to protect themselves from overcharging.<sup>41</sup>

However, the Committee did recommend a number of changes to the Bill, to limit loopholes and the potential for legal challenges, and to ensure that the market is working effectively when the cap is lifted.

On 28 February 2018, the [Government response](#) to the BEIS Committee report was published. The Government accepted the Committee's recommendations on 6 month reviews, green tariffs, and conditions for lifting the cap.

### 2.1 Reflections on the Market

The Committee argued that the energy market was penalising loyal customers with high bills:

Ofgem's latest assessment of the market made it clear that the domestic energy market does not currently deliver fair or effective competition for all: The market is two-tiered, rewarding customers that are able and willing to shop for the best deals at the expense of those, especially vulnerable customers, who are less engaged. 58 per cent of non-prepayment energy customers—or 12 million households—remain on a “poor-value” variable tariff, paying up to £300 more than they would on a cheaper tariff.<sup>42</sup>

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<sup>41</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018

<sup>42</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018

### Box 2: Big Six suppliers' response to price cap announcement

In late 2017, three of the Big Six suppliers (E.ON, SSE and Centrica) announced steps to reduce their number of SVT customers in future though these will not impact existing SVT customers, as outlined by the Committee in their report:

E.ON was first in announcing that in 2018 they would stop rolling automatically onto an SVT customers who have a smart meter and whose fixed-term deal comes to an end. This announcement will not affect the two million non-prepayment customers who are already on an SVT, as was established at our oral evidence session.

SSE announced in November 2017 that from April 2018 they would no longer automatically roll over customers whose fixed-term deals come to an end onto an SVT. These customers will instead be rolled onto another fixed-term deal that is either equivalent or cheaper. This announcement will not affect the 2.4 million SSE customers who are already on SVTs and default tariffs.

Centrica, the supplier with the largest amount of SVT customers, announced its seven steps to reduce this number. These steps are a mixture of obligations they already have as a regulated supplier (such as making energy bills simpler and easy to understand; engaging customers to switch to a better tariff at least once a year); things other suppliers are already offering to their customers (such as introducing fixed-term tariffs that have no exit fees or contacting their customers at least once a month); and crucially, an announcement that they would stop offering SVTs to new customers on fixed-term deals and would instead roll them onto another emergency fixed-term tariff with no exit fee. This offer will be limited to new customers and will therefore not address the 4.5 million Centrica customers already on an SVT.<sup>43</sup>

It has also been reported in the press that Scottish Power<sup>44</sup> and Npower<sup>45</sup> intend to reduce the number of customers on standard variable tariffs.

The Committee criticised suppliers, saying previous announcements were “insufficient” and “feeble”, concluding:

35. We assessed the suppliers' announcements about the steps they intended to take to reduce the number of customers on poor-value tariffs and concluded that they were insufficient to address the scale of the problem. We also noted the lack of any announcements on the part of the other three Big Six suppliers (ScottishPower, EDF Energy, npower) who still have large numbers of customers on poor-value tariffs. We believe the feebleness of these announcements shows a clear lack of will on the part of the Big Six to take the necessary steps towards redressing existing customer detriment.

36. We conclude that the Big Six have brought this policy intervention upon themselves by raising their prices in 2017 and by failing to take effective action against the overcharging of their customers on default and standard variable tariffs.<sup>46</sup>

They also criticised Ofgem, saying it had failed customers and recommended a more proactive approach in future. They also said they

<sup>43</sup> BEIS Committee, *Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill*, Fourth Report of Session 2017-19, 13 February 2018, para 34

<sup>44</sup> Natalie Thomas, *Scottish Power to act on controversial default energy tariffs*, Financial Times, 8 October 2017

<sup>45</sup> Steve Brigden, *Npower trial could see end to its standard variable tariff*, Money Saving Expert, 12 January 2018

<sup>46</sup> BEIS Committee, *Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill*, Fourth Report of Session 2017-19, 13 February 2018

were “unconvinced” by the argument that primary legislation was required for a price cap.<sup>47</sup>

## 2.2 Absolute vs Relative caps

The Committee heard evidence in support of both absolute and relative price caps. Energy supplier Octopus Energy and MP John Penrose, were in favour of a relative cap, with Mr Penrose saying it:

restores the link between the prices which companies advertise in the marketplace and those which they charge the majority of their customers [ ... ]; allows more price competition [ ... ]; doesn't limit the number & type of tariffs [ ... ]; encourages innovation & fresh thinking and will reward efficient business models—those that maintain high SVTs will rapidly lose market share.<sup>48</sup>

However other stakeholders, such as Ofgem, the Government and Citizens Advice, argued that it would not prevent overcharging and may simply result in price increases for the best value tariffs.<sup>49</sup>

The Committee concluded that an absolute cap was the best option for the Government's goal of immediately preventing overcharging.<sup>50</sup>

The Committee later mention evidence that switching may decrease if a cap is implemented. In December 2017, Ofgem's written evidence to the Committee said that switching rates had reduced following the implementation of the pre-payment meter price cap.<sup>51</sup> However, in his oral evidence in January 2018, Dermot Nolan told the Committee, “*the picture we have is much more nuanced now*” saying that although there had been convergence and switching rates had fallen, “*there is still a reasonable amount of switching going on*”.<sup>52</sup> This is of concern as if a cap were to reduce market engagement and switching, the market may become less competitive making it difficult to lift the cap. The Committee referred to the example of Northern Ireland, which has a tariff cap but switching rates the same as in Great Britain, as evidence of the possibility that “regulation and competition can co-exist”.<sup>53</sup>

## 2.3 Recommended changes

### Criteria for the Cap

Subsection 1(6) of the Draft Bill set out the criteria Ofgem is required to have regard to when setting the cap:

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<sup>47</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018, para 19-20.

<sup>48</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018, para 43

<sup>49</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018, para 45

<sup>50</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018, para 49

<sup>51</sup> BEIS Committee, [Written evidence from Ofgem](#), Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill, 5 December 2017

<sup>52</sup> BEIS Committee, Oral evidence: Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill, HC 517, [Q367](#)

<sup>53</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018, para 51

- (a) the need to protect existing and future domestic customers who pay standard variable and default rates;
- (b) the need to create incentives for holders of supply licences to improve their efficiency;
- (c) the need to set the cap at a level that enables effective competition for domestic supply contracts;
- (d) the need to maintain incentives for domestic customers to switch to different domestic supply contracts;
- (e) the need to ensure that holders of supply licences who operate efficiently are able to finance activities authorised by the licence<sup>54</sup>

The Committee heard in evidence that these criteria were, “ambitious”, “hard to achieve simultaneously” or “are incompatible”. In response, the Committee concluded:

65. We were unconvinced by the argument that the five goals in subsection 1(6) are incompatible. We acknowledge that they are challenging and may not all be achievable at once but we believe that the current wording of the Bill, with slight amendment, allows Ofgem to prioritise and weigh them carefully when setting the cap.

66. To deter legal challenges that would delay unnecessarily the implementation of the cap, we recommend that the Government clarify in the Bill that Ofgem will not be required to set a cap that will meet all five subsections simultaneously, though it may eventually do so. This would be consistent with the main aim of the Bill of reducing overcharging, not increasing switching.<sup>55</sup>

They also recommended that the Bill be amended to require Ofgem to review the level of the cap every six months.<sup>56</sup> This is the case for the existing prepayment meter cap and its extension, the safeguard tariff cap.

The Bill laid at First Reading had a different list of goals, with 1(6)a, “the need to protect existing and future domestic customers who pay standard variable and default rates” becoming a criteria that Ofgem must do rather than “must have regard to”. In their response to the Committee’s report, the Government said they had...

...amended this section so that is clear that the purpose for which the powers are exercised is to protect existing and future domestic customers who are on SVT and default tariffs. The other matters are considerations that Ofgem must have regard to when exercising the powers. This gives a clearer direction to Ofgem when exercising the powers.<sup>57</sup>

The Government also accepted the Committee’s suggestion for Ofgem to review the Cap every 6 months.<sup>58</sup>

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<sup>54</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), Fourth Report of Session 2017-19, 13 February 2018, Box 1

<sup>55</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 13 February 2018, para 65-66

<sup>56</sup> BEIS Committee, [Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 13 February 2018, para 64

<sup>57</sup> BEIS Committee, Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill, [Government Response](#), 28 February 2018

<sup>58</sup> BEIS Committee, Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill, [Government Response](#), 28 February 2018

## The Green Tariff Loophole

The Draft Bill included exemptions from the tariff cap under Clause 3 for customers on prepayment meters and on green electricity tariffs.

Although the Committee agreed that green electricity tariffs should be exempt from the cap, they urged the Government to:

- strengthen the definition, standards and checks for such tariffs,
- amend the bill to make clear that tariffs without substantial environmental benefits or not actively chosen by customers will be in breach of the legislation
- work with Ofgem to accredit Green Gas tariffs and include green dual fuel and green gas tariffs within the price cap exemption.

Without these checks, the Committee expressed their concern that this could offer a loophole through which suppliers could continue to offer de facto SVT tariffs.<sup>59</sup>

The Bill laid at First Reading expanded the exemptions to include the safeguard tariff, and tariffs chosen by customers that support renewable gas and electricity (green tariffs). The Clause requires Ofgem to consult on these green tariffs before exempting them. The Clause also strengthened the language relating to green tariffs to allow Ofgem to determine if tariffs truly support renewable gas and electricity.

The Government's response to the Committee report explains the changes:

20. The Government agrees with the Committee and is keen to ensure that the exemption is robust to any potential gaming, whilst also ensuring that consumers can continue to choose to support renewable generation by purchasing a green energy tariff. We take the view that an exemption should be able to cover green gas tariffs.

21. We have considered this further and concluded that the most robust way of providing for the exemption, while minimising the risk of gaming, is a duty for Ofgem to consult on the matter of exempting green tariffs which have been chosen by customers. This includes the definition of a green tariff for the purpose of the price cap. The Bill also provides a power for Ofgem, once these matters have been consulted on, to implement a separate condition exempting the tariffs that Ofgem consider fit within their definition. We have also clarified that we would also like to include green gas tariffs in the exemption. The updated Bill will enable Ofgem to consult on, and identify how, green gas might be included in an exemption.<sup>60</sup>

## Sunset clause

The Draft Bill had a sunset clause set at 2023 but could be lifted earlier if the Secretary of State decided "conditions are in place for effective competition".

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<sup>59</sup> BEIS Committee, *Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill*, 13 February 2018, para 70-71

<sup>60</sup> BEIS Committee, *Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill*, *Government Response*, 28 February 2018

The Committee agreed that the cap should be temporary and said the Secretary of State should base the decision on lifting it in future on:

...the minimum requirements that overcharging and the differential are substantially reduced, fairness is improved, and vulnerable customers are protected.<sup>61</sup>

The Bill laid at First Reading did not change the sunset Clause. However, in their response to the Committee's report, the Government said that there would be a statement on the conditions for effective competition:

22. The Secretary of State's decision to lift the cap, which will be published in a statement, will be based on whether the conditions are in place for effective competition. This will be informed by Ofgem's report. Having the conditions in place should mean that there is greater fairness for customers, and the detriment identified by the Competition and Market's Authority has been substantially reduced.<sup>62</sup>

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<sup>61</sup> BEIS Committee, *Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill*, Fourth Report of Session 2017-19, 13 February 2018, para 81

<sup>62</sup> BEIS Committee, Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill, *Government Response*, 28 February 2018

### 3. The Domestic Gas and Electricity (Tariff Cap) Bill

The Secretary of State for Business, Energy and Industrial Strategy, Greg Clark, laid the Bill before the House of Commons on 26 February 2018, and made the following Written Statement:

We will today introduce the Domestic Gas & Electricity (Tariff Cap) Bill to this House.

We are taking this action because the energy market is not working for all customers. The Competition and Markets Authority 2016 investigation into the energy market highlighted that domestic customers of the Big 6 energy companies pay on average £1.4 billion a year more than they would in a truly competitive market.

We believe that competition is the best way to drive value and service for customers. Where this is not happening, the government has a duty to act by ensuring regulation is effective and companies have the right incentives to provide value.

The energy market is not working for all consumers.

There is in effect a two-tier market in operation whereby active customers save money by switching suppliers, but those who can't or don't switch remain on poor value tariffs. It is of particular concern that customers who don't switch typically tend to be more vulnerable than those who are getting the best deals. The difference between the cheapest available tariff and the average Standard Variable Tariff of a Big 6 supplier is around £300.

Earlier this month, one million more vulnerable consumers who receive the Warm Home Discount were protected from higher bills with the extension of Ofgem's safeguard tariff cap. There are now 5 million households protected by this cap which was introduced in 2017.

The Domestic Gas and Electricity (Tariff Cap) Bill will, subject to Parliamentary approval, put in place a requirement on the independent regulator, Ofgem, to cap domestic energy tariffs until at least 2020. Currently, some consumers are paying up to £300 more than they need to – this cap will help bring this overcharging under control. It will require Ofgem to set an absolute cap on standard variable and default tariffs, protecting the 11 million households in England, Wales and Scotland who currently buy their energy on this basis and who are not protected by existing price caps.

The Bill is part of a package of measures being introduced by the government to increase competition in the retail energy market and lower prices for consumers. These include support for more and faster switching, initiatives to improve engagement and the rollout of smart meters. We believe all of these measures will help create the conditions for more effective competition.

In setting the cap, Ofgem must protect existing and future domestic customers, but must do so in a way that creates incentives for suppliers to improve efficiency, sets the cap at a level that enables suppliers to compete effectively for supply contracts, maintains incentives for customers to switch and

ensures that efficient suppliers are able to finance their businesses. The government intends Ofgem to be able to set the temporary price cap by the end of this year so that it is in place by next winter.

The cap will apply until the end of 2020 when Ofgem will recommend to government whether it should be extended on an annual basis up to 2023.

The introduction of the Domestic Gas and Electricity (Tariff Cap) Bill comes after the Business, Energy and Industrial Strategy Select Committee scrutinised the draft Bill as part of the government's work to ensure the Bill would be effective and would meet its objectives. This pre-legislative scrutiny took written and oral evidence from a wide range of stakeholders. The Committee made a number of recommendations about the Bill, which the government has accepted in full, including the Committee's recommendation that Ofgem reviews the level at which the cap is set at least every 6 months, and the recommendation to add in safeguards so that where consumers make an active choice to opt for green standard variable tariffs or default tariffs, Ofgem is able to protect these customers but not stifle investment in green energy. Ofgem will also be required to consult on a potential exemption for green tariffs.

This Bill will give the regulator the powers to protect those consumers who are overpaying for energy, while ensuring that other initiatives such as switching, smart meter roll out and consumer education continue to contribute to a more competitive market.<sup>63</sup>

The *Domestic Gas and Electricity (Tariff Cap) Bill* has 12 clauses and aims to implement an absolute cap on the total amount that energy suppliers can charge for standard variable or default energy tariffs.

### 3.1 The Cap (Clauses 1 – 3)

**Clause 1** requires the energy regulator Ofgem to modify the licence conditions of electricity and gas suppliers to include a price cap.

Clause 1 (1) says Ofgem must act "as soon as reasonably possible" to modify license conditions to impose a cap on all standard variable and default tariffs for domestic contracts, subject to the exemptions under Clause 3.

Clause 1(2) states that conditions can be modified but must be included in the licenses until they cease to have effect by virtue of Clause 8 (the sunset clause).

Clause 1(3) sets out the relevant legislation to supply licences (the Gas Act 1986 and Electricity Act 1989).

Clause 1(4) defines standard variable and default tariffs:

"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

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<sup>63</sup> [HCWS484](#) [Energy Policy] 26 February 2018

“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.

Clause 1(6) states that Ofgem must set the cap “with a view to protecting existing and future domestic customers who pay standard variable and default rates”. Clause 1(6) also outlines the criteria Ofgem must “have regard to” when setting the cap.

- (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.

These criteria that Ofgem ‘must have regard to’ intend to ensure that a competitive market can continue, with suppliers able to meet their costs and maintain incentives for switching. The criteria differ to those in the draft bill, which had raised concern about being incompatible and open to legal dispute (see Section 2.3). In their response to the Committee’s report, the Government said they had...

...amended this section so that is clear that the purpose for which the powers are exercised is to protect existing and future domestic customers who are on SVT and default tariffs. The other matters are considerations that Ofgem must have regard to when exercising the powers. This gives a clearer direction to Ofgem when exercising the powers.<sup>64</sup>

**Clause 2** sets out requirements for the tariff cap conditions that would be set by Ofgem under the Bill and inserted into the Supply Licences.

Clause 2(1) states these are that they:

- (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;

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<sup>64</sup> BEIS Committee, Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill, [Government Response](#), 28 February 2018

(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.

Clause 2(2) states the conditions cannot exempt holders of supply licenses from the application or make different provision for different holder or supply licenses.

The Bill does not set out the level of the cap. Previous caps have been calculated using methodology set by the CMA based on indices of trends and indexes of various costs.<sup>65</sup> The Clause requires Ofgem to consult on the methodology before making the first modifications to implement the cap.

**Clause 3** lists the exemptions to the tariff cap. The Clause says the cap does not apply to:

- Customers whose bill is already capped under the prepayment meter cap

The Clause also says that the cap conditions may provide for them not to apply to:

- Vulnerable customers who are on the extension of the prepayment meter cap, known as the safeguard tariff
- Customers who have chosen to be on tariffs that support renewable gas or electricity, i.e. green tariffs.

Green gas tariffs were not included in the draft Bill and the BEIS committee raised concerns that these tariffs could be a loophole for the cap unless they had clearer definitions, standards and checks. Clause 3 also requires Ofgem to consult on excluding green tariffs from the cap before the cap is implemented.

## 3.2 Procedure (Clauses 4 and 5)

**Clause 4** sets out the procedure Ofgem must follow before modifying licence conditions to implement a price cap. Ofgem must publish the proposed modifications and send them to stakeholders, allow representations on the modifications for at least 28 days, and consider any representations they receive. The specified stakeholders are: each holder of a supply licence, the Secretary of State, Citizens Advice and Citizens Advice Scotland.

**Clause 5** is related to Ofgem's responsibilities if they decide to proceed with modifications. The Clause requires that they must publish modifications to license conditions implementing a cap in a manner "appropriate for the purpose of bringing them to the attention of the persons likely to be affected by them". Ofgem must also state how they considered representations made in the notice period set out in Clause 4, and explain any differences between the final and originally proposed modifications. The Clause also states that a modification can only come into effect at least 56 days after it was published.

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<sup>65</sup> Gov.uk, [Domestic prepayment meter energy price cap: illustrative model](#), 24 June 2016

These procedures collectively, and without allowing for time between for redrafting, mean it would take at least three months to make a change to licence conditions. It is likely to take longer in practice to allow conditions to be drafted and consultations considered.

### 3.3 Review and termination (Clauses 6, 7 & 8)

Clauses 6, 7 and 8 set out the process for lifting the cap following a review from Ofgem.

**Clause 6** requires Ofgem to review the level of the cap every 6 months. This Clause did not appear in the draft Bill and was a recommendation in the Business, Energy and Industrial Strategy Committee's pre-legislative scrutiny.

**Clause 7** requires Ofgem to carry out and publish a review assessing whether conditions for effective competition in the domestic gas and electricity markets are in place. 7(2) requires that smart meters are specifically considered in the review. The review is to be carried out in 2020 and the two consecutive years if the cap has not been lifted. The review must be given to the Secretary of State by 31 August of that year. The Secretary of State must publish a statement before 31 October of that year, stating whether they consider the conditions for effective competition to be in place.

**Clause 8** is the sunset clause of the Bill. It states that the cap will end in 2020 unless the statement published by the Secretary of State extends it for another year in the case of insufficient conditions for effective competition, as provided for in clause 7. This process can be repeated in 2021 and 2022 but the price cap, as currently set out in the Bill, will cease to have effect at the end of 2023 regardless of the conditions for competition. The "conditions for effective competition" are not defined.

When asked by the Business, Energy and Industrial Strategy Committee what indicators the Secretary of State would use to determine effective competition, the Minister Claire Perry said:

For some aspects of competition—the number of entrants in the market, the increased level of switching—there is evidence that consumers are taking advantage of increased competition. We will be expecting Ofgem to tell us when it thinks the market has achieved a more competitive outlook. I think it will be based on an economic assessment of the evidence.

The detriment, of which we have a quantum in our heads we have seen a number of £1.4 billion to £2 billion in recent years—we would expect a significant reduction in. I do not want to see that set in absolute terms because we still want the industry to be able to invest. While we would expect operational efficiencies to improve, I do not think we would set an absolute number, but we would expect that to come down.

We would expect to see the differential between the standard variable tariffs, if they still exist, and the cheapest tariffs in the market reduce, particularly for the big six, where there is evidence that that differential is smaller and that both rates are pegged at a higher level. We would expect to see, as in all markets, the most vulnerable consumers continue to enjoy protection. There is a series of conditions. As the CMA report made clear, in testing for

a failure of competition in the market, we could not rely on one particular variable, but we would be relying on Ofgem.<sup>66</sup>

In their response to the Committee's report, the Government said that there would be a statement on the conditions for effective competition and that these conditions would include greater fairness for customers and substantially reducing the detriment identified by the CMA.<sup>67</sup>

### 3.4 Consequential modification of conditions (Clause 9)

**Clause 9** relates to Ofgem's powers when the cap is lifted. The Clause gives Ofgem the powers to modify licence conditions if necessary, but they must publish the modifications and set a date for when they will come into effect.

### 3.5 Final provisions (Clauses 10 – 13)

**Clause 10** makes consequential amendments to the Utilities Act 2000. The [Utilities Act 2000](#) lists the legislation under which the Secretary of State can make amendments to electricity and gas licenses. The amendments add the Tariff Cap Bill to these lists.

**Clause 11** relates to interpretation of terms in the Bill. **Clause 12** relates to Extent and Commencement. The Bill will apply to Great Britain but not Northern Ireland which has a different energy system. The Act will come into force as soon as it is passed. **Clause 13** is the Short Title.

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<sup>66</sup> BEIS Committee, [Oral Evidence: Pre-legislative scrutiny of the draft Domestic Gas and Electricity \(Tariff Cap\) Bill, HC517](#), 13 February 2018, Q424

<sup>67</sup> BEIS Committee, Pre-legislative scrutiny of the draft Domestic Gas and Electricity (Tariff Cap) Bill, [Government Response](#), 28 February 2018

## 4. Comment on the Bill

### 4.1 Support for the Bill

In addition to the Business, Energy and Industrial Strategy Committee, smaller suppliers also expressed support for the Bill. Ed Kamm, First Utility's chief commercial officer told the BBC:

We support Theresa May's commitment to tackle the broken energy market and the exploitation by the Big Six, which disproportionately affects vulnerable customers [...]

The majority of consumers pay far too much for energy and many have been doing so for decades. Time has finally been called on the Big Six's behaviour.<sup>68</sup>

Citizens Advice also welcomed the Prime Minister's announcement, saying it "could provide a solution to runaway energy costs".<sup>69</sup>

Following publication of the Bill, the shadow Business Secretary Rebecca Long-Bailey reportedly told *The Guardian* the Bill was welcome but criticised the Government for not acting sooner:

The government promised action on energy bills a year ago yet energy costs are still spiraling and four million households live in fuel poverty.

A price cap is simply a temporary sticking plaster and the government must realise that they need to do much more to fix our broken energy market.<sup>70</sup>

### 4.2 Opposition to the Bill

In October 2017, in response to Theresa May's conference speech announcing the draft Bill, the share prices of some energy utilities fell; Centrica (the owner of British Gas) closed down 6%, a 14 year low, and SSE also closed down 3%.<sup>71</sup> Energy UK, the industry trade body, said in response to the draft Bill that the cap could interfere with competition and instead advocated energy efficiency measures:

The energy market is changing at a rapid pace - there are now over 50 suppliers to choose from and the Energy Switch Guarantee, launched by the industry, means it is simple, speedy and safe to switch, with many customers able to save much more than £100 in minutes by checking their tariff.

Over 3 million consumers have switched already this year and the number of standard tariffs have fallen by almost a million in the last six months. It is important that we do not risk halting this growth of competition and engagement in the market.

One of the major contributors to high energy bills, especially over winter months, is the poor quality of our housing stock. As

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<sup>68</sup> Brian Milligan, [Theresa May revives plan to cap energy prices](#), BBC, 4 October 2017

<sup>69</sup> Citizens Advice, [Citizens Advice responds to Prime Minister's announcement of plans for a cap on energy bills](#), 4 October 2017

<sup>70</sup> Nicola Slawson, [Households could save £100 a year as energy price cap moves closer](#), 26 February 2018

<sup>71</sup> Natalie Thomas, [Theresa May's pledge to cap energy bills hits utility shares](#), Financial Times, 4 October 2017

Ministers have highlighted earlier this week, energy efficiency measures have helped to keep bills down – to around the same level we were paying nearly a decade ago. Making our homes energy efficient would be the most effective way of reducing bills for customers over the long term.<sup>72</sup>

Following publication of the Bill, Laurence Slade of Energy UK reportedly told *The Guardian* that a cap must be high enough to allow competition and cover suppliers' costs:

It's vital the cap doesn't halt the growth of competition which is helping customers to find a better deal and save on their energy bills.

It's also important that the cap accurately reflects suppliers' costs, most of which are out of their direct control.<sup>73</sup>

On 22 February 2018, shortly before the Bill was laid, Centrica (the owner of 'big six' supplier British Gas, announced it would cut 4,000 jobs. In addition to intense competition and customers using more digital services, Centrica also said the Government's plans for a price cap was linked to their cost efficiency programme and repeated they fundamentally disagreed with the cap.<sup>74</sup> An article in the Telegraph expressed concern that other suppliers may also cut jobs.<sup>75</sup>

Following the publication of the Bill, the cap was also criticised by some consumer groups (but not because of any impact on Energy companies). Martin Lewis, founder of the advice website MoneySavingExpert.com, called it a "halfway house" saying the Government needed to choose between competition or regulation.<sup>76</sup>

An article by *The Guardian's* financial editor criticised the pressure on Ofgem saying the Government were asking them to deliver "contradictory goals" and that Ofgem would need to choose between curbing "rip-off prices" or maintaining incentives for switching.<sup>77</sup>

### 4.3 Support for a change to a relative price cap

The think tank Policy Exchange has advocated a relative price cap instead of an absolute cap:

The setting of an absolute cap on energy would represent a significant leap towards re-regulation of the energy market. It could severely impact competition, innovation and investor confidence. One of the adverse effects of a price cap could be that all prices tend upwards towards the cap, since the cap itself mollifies any criticism of overcharging. It could mean that the low-

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<sup>72</sup> Energy UK, [Energy UK comments on the announcement of a Draft Bill on an energy price cap](#), 4 October 2017

<sup>73</sup> Nicola Slawson, [Households could save £100 a year as energy price cap moves closer](#), *The Guardian*, 26 February 2018

<sup>74</sup> BBC, [British Gas owner Centrica to cut 4,000 jobs after 'weak' year](#), 22 February 2018

<sup>75</sup> Bradley Gerrard, [Fears mount that energy firms will 'slash and burn' jobs to cope with price cap](#), *The Telegraph*, 26 February 2018

<sup>76</sup> Andrew Capstick, [Energy price cap could start this year as Bill launched in Parliament](#), MoneySavingExpert.com, 26 February 2018

<sup>77</sup> Nils Pratley, [May's energy price cap is messy – heaven help the regulator](#), *The Guardian*, 27 February 2018

price deals are withdrawn from the market (as firms can no longer cross-subsidise them). Suppliers would have less of an incentive to innovate. New entrants to the market could be deterred, and some suppliers may exit the market altogether if it becomes sufficiently unattractive.

[...]

[Under a relative price cap] by limiting the degree of Government intervention, the impact on competition and innovation is also minimised. There would still be a competitive market, and innovation can continue. All suppliers would be under pressure to create attractive fixed term deals to acquire new customers, and also to reduce their SVT.<sup>78</sup>

The energy supplier Octopus Energy has been a long-standing supporter of a relative price cap and believes that the market is not competitive and a relative price cap would encourage real competition.<sup>79</sup> A number of MPs, especially John Penrose MP, have also expressed support for a relative price cap. In August 2017, it was reported that a cross party group of MPs, including several former ministers, had signed a letter organised by John Penrose MP calling for a temporary, relative price cap.<sup>80</sup>

Following the publication of the Bill, John Penrose MP reportedly told *The Independent* that an absolute cap could 'magnify rather than solve problems' if wholesale prices fell in the 6 months between cap reviews.<sup>81</sup>

### 4.4 Regulatory Policy Committee opinion on the Bill

On 26 February 2018, alongside the publication of the Bill, the Government published its Impact Assessment<sup>82</sup> and the Regulatory Policy Committee (RPC) published its opinion of the Bill. The RPC approved the bill as 'Fit for Purpose' but criticised the Government for not presenting any evidence for the cap improving the market, especially in the context of the CMA not recommending a cap:

The Department expects that, in the long term, improvements to market conditions (such as the introduction of smart meters) will obviate the need for a cap. It does not, however, present any evidence underpinning this expectation, or set out what it might do if the introduction of smart meters does not have the expected results.

[...]

It notes that the CMA arrived at a different conclusion - a tariff cap only for the most vulnerable - based on this analysis. It then

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<sup>78</sup> Richard Howard, [Energy price cap should be relative, not absolute](#), 25 April 2017.

<sup>79</sup> Greg Jackson, [A relative price cap is the key to a free market for energy](#), *City AM*, Friday 28 April 2017

<sup>80</sup> Ashley Cowburn, [Tory MPs lash out at Theresa May over dropped pledge to cap energy prices for millions of families](#), *The Independent*, 20 August 2017

<sup>81</sup> Ben Chapman, [Energy price cap triggers mixed reactions from consumer groups](#), *The Independent*, 27 February 2018

<sup>82</sup> Department for Business, Energy and Industrial Strategy, [Domestic Gas and Electricity \(Tariff Cap\) Bill Impact Assessment](#), 26 February 2018

argues that for reasons of equity, it proposes to extend the cap to all households, and that this position is supported by the cross-party BEIS Select Committee. It does not, however, offer any evidence in support of this decision or address how it expects a cap to be applied equally to all consumers, regardless of their circumstances, to deliver an efficient or an equitable position.<sup>83</sup>

The RPC also criticise the Government for not providing any evidence of their view that the risks to competition of an absolute cap are lesser than those for a relative cap.<sup>84</sup>

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<sup>83</sup> Regulatory Policy Committee, [Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 22 February 2018

<sup>84</sup> Regulatory Policy Committee, [Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 22 February 2018

## 5. Second Reading

Second Reading of the Bill took place on 6 March 2018.

The Secretary of State Greg Clark introduced the Bill by stating:

[...] the Bill has been constructed to be proportionate and to be directed at a particular problem that we expect to be temporary. On that basis, I hope it will enjoy support from across the House and we can swiftly progress it so that we can correct an intolerable situation in which consumers have been exposed to paying £1.4 billion more than they would in a competitive market. That abuse should end. This Bill will give Ofgem not only the ability to do so, but the requirement that it should do so, and I commend it to the House.<sup>85</sup>

Shadow Secretary of State Rebecca Long Bailey said the Labour Party welcomed the Bill but concluded by stating that more reform to the energy market was needed:

The Opposition are pleased that the Government have caught up and finally brought forward legislation to ensure that a price cap is implemented, but the Bill is frankly too little, too late, for millions of people who will not feel benefit this winter and nor, it would seem, for half of next winter. This sticking plaster is only guaranteed to be in place until the end of 2020, so the Government need urgently to bring forward radical proposals for long-term reform of the energy market. We have already set out a clear plan, and it is time that this Government started to catch up.<sup>86</sup>

Members from all parties expressed support for the Bill throughout the debate. In her closing statement, the Minister for Energy and Climate Change Claire Perry said:

There is really strong consensus across the House both on the need for the Bill and, broadly, on the scope and structure of the proposed legislation.<sup>87</sup>

A number of Conservative MPs said they were cautious about intervening in markets but supported the Bill's attempt to tackle unfairness.<sup>88</sup> However, several concerns with the Bill were raised, by members of all parties, such as the level of the cap, the conditions for 'effective competition', and wider issues in the energy market.

### 5.1 Level of the cap

The level of the cap will be set by the regulator Ofgem. Rebecca Long Bailey said in her remarks that she took issue with the fact the Secretary of State does not provide any direction on the level of the cap:

I have several issues with the Bill as drafted, but I start with the fact that it does not provide any direction from the Secretary of

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<sup>85</sup> HC Deb, 6 March 2018, vol 637, [c212](#)

<sup>86</sup> HC Deb, 6 March 2018, vol 637, [c218](#)

<sup>87</sup> HC Deb, 6 March 2018, vol 637, [c273](#)

<sup>88</sup> HC Deb, 6 March 2018, vol 637, [c233](#) and [c269](#)

State on his preferred level of cap, which effectively passes the buck to Ofgem.<sup>89</sup>

John Penrose MP expressed concern about changes in prices between cap reviews:

...What if Ofgem picks a number and the international price of energy falls the very next day? What then? Switching customers in the ultra-competitive part of the market would find their prices drop quickly as energy firms react to the news, but Ofgem's capped prices for loyal, non-switching customers on default tariffs—that is the example my hon. Friend talks about—would not move at all for another six months, when the cap can be reset according to the terms of the Bill. In that situation, the cap would be ineffective at protecting the customers it is designed to help and, because it is officially blessed by Ofgem, it would embed and legitimise high prices.<sup>90</sup>

On this point, Sir Oliver Letwin disagreed and said the Bill as drafted enables Ofgem to “set the cap by formula” meaning there was flexibility to overcome the problem Mr Penrose described.<sup>91</sup> Mr Penrose said he did not share the same confidence in Ofgem<sup>92</sup> and also repeated his view that a relative price cap would be good for the market.<sup>93</sup>

Mark Menzies MP raised the question of how suppliers could appeal against the level of the cap:

...No part of the Bill allows energy providers to challenge the level at which Ofgem sets the price cap, other than by judicial review. I have asked a number of written questions on this point, and it appears that the Government are simply not prepared to admit that this is an inadequate means of appeal against the cap. As a non-lawyer, I am always very suspicious of matters that are settled in the court.<sup>94</sup>

Some members also referred to the importance of the Bill's sunset Clause, ensuring it was a temporary measure. James Heappy said:

To resort to my former career as a soldier, I hope that the Government see this as a raid into the energy market, rather than an occupation.<sup>95</sup>

## 5.2 Effective competition

The price cap will be lifted in 2020 if the Secretary of State declares that the conditions are in place for effective competition in the market, based on a review by Ofgem (Clause 7).

Rebecca Long Bailey described this aspect of the Bill as ambiguous:

Just as ambiguous is the mechanism for deciding whether to extend the cap beyond the end of 2020. The Bill merely states:

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<sup>89</sup> HC Deb, 6 March 2018, vol 637, [c124](#)

<sup>90</sup> HC Deb, 6 March 2018, vol 637, [c220](#)

<sup>91</sup> HC Deb, 6 March 2018, vol 637, [c220-221](#)

<sup>92</sup> HC Deb, 6 March 2018, vol 637, [c221](#)

<sup>93</sup> HC Deb, 6 March 2018, vol 637, [c222](#)

<sup>94</sup> HC Deb, 6 March 2018, vol 637, [c234](#)

<sup>95</sup> HC Deb, 6 March 2018, vol 637, [c239](#)

“The Authority [Ofgem] must carry out a review into whether conditions are in place for effective competition for domestic supply contracts.”

It does stipulate that the review must include an assessment of progress made in installing smart meters, but unfortunately that is as good as it gets. The industry has expressed concern that this provision is unclear—I agree.<sup>96</sup>

Mark Pawsey raised concern that the cap may in fact decrease competition, given the growing number of suppliers in the market:

There will be precious little incentive for people to look at alternative suppliers and change and that the rate of switching we have managed to get in recent years will start to fall back.<sup>97</sup>

Rachel Reeves, Chair of the Business, Energy and Industrial Strategy Committee, said she hoped that would not be the case:

I hope that does not happen. Ofgem and the Competition and Markets Authority are putting the cap in place to make it easier for customers to switch. Northern Ireland, where there is a price cap, has as much switching as we do. The international examples suggest that we can have switching in a market that also has a price cap.<sup>98</sup>

Caroline Flint said that this would not be the case:

A cap does not mean an end to competition. A reasonably set upper limit on unit prices that is reviewed every six months allows lots of opportunity for competition beneath the cap. It is not a difficult concept. The cap is a maximum; it is not a requirement to charge prices at that level, and the industry knows that full well. It also knows that it will put a bar on unfair prices, and not before time.<sup>99</sup>

Sir Oliver Letwin said the cap should be removed when challengers were able to fully compete:

...The answer is when the challengers have actually been able to move into the market in great numbers, because the cross-subsidy in the predatory pricing model has faded away and we therefore have a proper energy supply market.<sup>100</sup>

### 5.3 Wider market issues

Several members argued that they believed the market needed to be reformed beyond the cap and expressed views on smart meters, energy efficiency and investment. For example, Albert Owen MP said:

It would be wrong to say that [the cap] is a panacea: it is not. Many other pieces of work need to be done. I hope—I will work with the Government on this—that during the period of the price cap, we will look at other parts of the energy market, which the Prime Minister rightly described as “broken”.<sup>101</sup>

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<sup>96</sup> HC Deb, 6 March 2018, vol 637, [c215](#)

<sup>97</sup> HC Deb, 6 March 2018, vol 637, [c229](#)

<sup>98</sup> HC Deb, 6 March 2018, vol 637, [c229](#)

<sup>99</sup> HC Deb, 6 March 2018, vol 637, [c237](#)

<sup>100</sup> HC Deb, 6 March 2018, vol 637, [c230](#)

<sup>101</sup> HC Deb, 6 March 2018, vol 637, [c252](#)

Simon Clarke also stressed that the measure was temporary so reforms could take place, referring specifically to the smart meter roll out:

This is not a permanent solution, but it will buy time for the ambitious programme of reform that the Government are delivering to take effect. The provision of faster, cheaper and more reliable switching, backed by smart meters and simpler, clearer energy bills, is an essential step that was proposed by the Competition and Markets Authority and is now being introduced by Ofgem. In the meantime, a temporary cap must a good idea. It will promote choice while also ensuring that the energy market works for everyone.<sup>102</sup>

Other ideas to help with energy bills were also suggested, such as energy efficiency. For example, Drew Hendry said:

There needs to be an acceptance that this is just one measure and there are many more measures—including on energy efficiency, which should have had much more attention from the Government.<sup>103</sup>

Peter Aldous also said it was important to prevent the cap discouraging investment in the energy sector:

I sense that we are moving in the right direction, but I do have one concern nagging me at the back of my mind about the possible unintended consequences. I hope that the Minister will be able to address my worry about a negative knock-on impact on investment in the energy supply sector.

[...]

We are on the cusp of an exciting future [in terms of renewables and energy storage] that could bring significant benefits to the UK and create thousands of jobs, often in parts of the country where regeneration is badly needed. That requires enormous investment and, up to now, Britain has been an attractive destination for such investment due to its straightforward regulatory framework and limited state intervention. Everyone knows where they stand, and it is vital that we do not lose that hard-earned reputation.<sup>104</sup>

## 5.4 Response to debate

In her closing remarks, the Minister Claire Perry responded to eight concerns that she said had been raised in the debate:

- Vulnerable customers: In addition to the safeguard tariff, the Minister said she expected a whole package of measures that will improve the options for vulnerable customers including “smart metering, next-day switching, the midata project,<sup>105</sup> the CMA policies about engagement with those disengaged customers, and an expectation that Ofgem will continue to scrutinise and actively monitor tariffs to make sure that any gaming creeping into the system is knocked on the head.”
- Incentivising competition: the Minister said the cap would not disincentivise competition, “the powers given to Ofgem have to

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<sup>102</sup> HC Deb, 6 March 2018, vol 637, [c258](#)

<sup>103</sup> HC Deb, 6 March 2018, vol 637, [c249](#)

<sup>104</sup> HC Deb, 6 March 2018, vol 637, [c262](#)

<sup>105</sup> For more information see: Gov.uk, [Call for evidence: implementing midata in the energy sector](#), 14 December 2016

ensure that we do not disincentivise competition, while ensuring that companies have an incentive to improve the efficiency of their operations.”

- Appeals to the cap: some members (Mark Menzies, Peter Aldous and Alan Brown) raised concerns about appeals to the CMA about the cap. The Minister said “Ofgem’s decision on the cap can be judicially reviewed. Courts can consider these issues more quickly than the CMA, and a whole range of evidence can be taken in such a case, whereas the CMA decisions, the range of those who can comment is very restricted. I do not want anything that slows the introduction of the cap.”
- Ofgem’s powers: the Minister said the Government wanted “a rational, functioning, economic regulator in a market that is so vital in keeping the lights on, keeping investment going and keeping people warm in their homes, not a political rush to do things.”
- Green tariffs: Caroline Flint said green tariffs should not be exempt from the cap as although renewables are important, paying the highest tariff for 100% green energy “cannot be justified”. The Minister said “[Ofgem] will have to scrutinise carefully and consult during the process of the design of the cap to ensure that it is fit for purpose. As we heard from many Members, the expectation will be that customers should not have to overpay to be on a green tariff.”
- Variable or fixed tariffs: Sir Oliver Letwin MP said Ofgem should be able to continuously update the cap, rather than only every 6 months. The Minister said “The structure of the cap should be able to take into account changes in the wholesale system. Clause 6(1) states that the period of consideration has to be no greater than six months, but it is entirely within Ofgem’s powers to change the cap more frequently. Of course, as we know, standard variable tariffs are currently updated only one or two times a year. Companies buy forward and hedge their energy prices, so it is not usual for very strong changes in wholesale prices to be incorporated. We will get to see the structure of the cap and its sensitivity to those prices going forward.”
- Co-operative energy providers: Gareth Thomas, amongst others, argued that community energy suppliers were beneficial to the market. The Minister said: “We already have co-operative energy structures—White Rose Energy, Robin Hood Energy and so on—and there is no barrier to those companies coming forward and delivering.”
- Removing the cap: several MP’s queried what would constitute effective competition for the removal of the cap. The Minister said “We will have a series of tests, and we have set out clearly in the Bill what those tests will be. Ultimately, we want loyal customers to be treated as well as, if not better than, new customers who are being attracted by cheaper deals. That will be the absolute test.”<sup>106</sup>

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<sup>106</sup> HC Deb, 6 March 2018, vol 637, [c273-276](#)

## 6. Committee Stage

Committee Stage of the Bill took place over three sessions, beginning with an evidence session.

### 6.1 Evidence session

Before the debate on amendments to the Bill, an evidence session was held including representatives from small suppliers Octopus Energy, Good Energy and Bulb, the regulator Ofgem, and consumer groups Citizens Advice, Which?, and National Energy Action.

#### Setting the cap and appeals

Rob Salter Church, the interim senior partner for consumers and competition at Ofgem, described the actions that Ofgem would be taking over the 5 month period that Ofgem have said is required to implement the cap:

That five-month period will start with us issuing a statutory consultation, which will run for eight weeks, or two months. That is something that we are required to do by law as part of the due process that we go through. Thereafter, we would have a period to analyse fully the responses to the consultation. As we said, that will be a transparent process; there will be lots of information that we will need to review. Thereafter, when we publish our decision and the final drafting of the cap, it is subject to a 56-day notice period, which again is a legal requirement that we have to go through before the changes can take effect. When you add those various stages together, it gets to five months.<sup>107</sup>

Dermot Nolan, CEO of Ofgem, answered a question on reviewing the cap every 6 months, which was an issue raised at Second Reading. Mr Nolan said that the timeline for assessing the cap was a trade off between smooth prices and rises and falls in the cap level:

The Bill suggests that the price cap must be updated every six months or less. There is an inherent trade-off. One of the things I particularly want to hear about from consumer bodies is over what period people want their prices to change. All the evidence we have in many ways suggests that people like smooth energy prices. They do not like spikes in their own bill. If the cap is set every six months, and a one-week spike is smoothed out over that six months, there is an appeal to that—you get relatively sure prices over a six-month period.

At the same time, you find that if there have been spikes of whatever form during a six-month period—if there has been, say, a fall in energy prices after two or three months—people say, “Why is this fall in wholesale prices not being reflected in my bill? Why do I have to wait six months for it? Why can I not have it after three months?” If we did a three-month price cap, that would ameliorate that issue, but we might be a little bit more vulnerable to spikes and changes in prices. How we balance that is not straightforward and is one of the things that we would particularly want to hear from consumer groups on during a consultation.<sup>108</sup>

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<sup>107</sup> Tariff Cap Bill Deb, 13 March 2018, [c15](#)

<sup>108</sup> Tariff Cap Bill Deb, 13 March 2018, [c16](#)

The issue of appeals against the cap was also raised. Juliet Davenport, CEO of Good Energy, said she was concerned there were no sanctions for Ofgem if they “got the cap wrong”:

One risk with an absolute price cap that I am concerned about is that Ofgem will be setting the prices. There is no downside to Ofgem with getting that wrong; if Ofgem sets that price incorrectly—I know you are seeing Dermot after this, so you can ask him the question—what are the sanctions against Ofgem for getting that price wrong?

[...]

The only thing I would comment on is this. In a business you have got a first line, a second line and a third line of defence. Normally, Ofgem would be your second line of defence. The issue you have got is that you are blurring their rules: they are acting as first line and second line. That is where the appeal is a concern because they are setting the prices, and then they have got to judge themselves, almost, on setting the prices.<sup>109</sup>

Bulb Energy CEO Hayden Wood, supported a transparent methodology,<sup>110</sup> but along with Octopus Energy CEO Greg Jackson said that a long appeal process would delay the process of setting the cap:

**Greg Jackson:** Appeal rights—for example, Competition and Markets Authority appeal rights—would probably mean that every time the cap is being reviewed every six months or quarter, it gets tied up in process. It means it never actually happens. Of course, that is what the big six want.

**Hayden Wood:** I completely agree. If consumers are going to benefit from this, we want them in by the next winter, and also Ofgem needs to be able to set the price, and not have to go through a long appeals process because, as Juliet said, things move in the energy market, so it needs to be nimble.<sup>111</sup>

These two energy suppliers also advocated implementing a relative cap underneath the absolute cap. Octopus energy have been longstanding supporters of a relative cap. However, when asked about this idea, Dermot Nolan of Ofgem said this was a further complexity to the cap that was “undesirable”.<sup>112</sup>

### Lifting the cap/effective competition

Mr Nolan answered questions on Ofgem’s report to the Secretary of State, required under Clause 7. Mr Nolan indicated their [State of the Energy Market](#) report would form the basis on any analysis for the Government:

Last year we published a response to the Competition and Markets Authority—which, going forward, will form the core of our report to the Secretary of State, as envisaged under the Bill—that we called a state of the market. It was a detailed look at the state of competition in the retail sector. It will look at a number of indicators; it will be on the basis of this suite of indicators—there will not be one perfect one. It will include the numbers switching, but also survey evidence, levels of satisfaction in the market,

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<sup>109</sup> Tariff Cap Bill Deb, 13 March 2018, [c9](#) and [c11](#)

<sup>110</sup> Tariff Cap Bill Deb, 13 March 2018, [c10](#)

<sup>111</sup> Tariff Cap Bill Deb, 13 March 2018, [c11](#)

<sup>112</sup> Tariff Cap Bill Deb, 13 March 2018, [c20](#)

whether people feel more trust in the market, and whether the vulnerable, in particular, feel empowered to switch or still feel disengaged. We will focus on and continue to develop a suite of indicators that will form the basis of a report to the Secretary of State, which, as envisaged in the Bill, we will make on a yearly basis.<sup>113</sup>

Mr Nolan said that Ofgem believe protections may still be necessary for vulnerable customers once the cap is removed:

There are two more points—I know I am listing them off, but I want to be clear. One is that we think vulnerable protections will still be necessary if a full price cap is removed. We will look at whether any vulnerability price caps should be kept and, in particular, whether other forms and ways of protecting vulnerable customers, including things such as collective switches, could be used.<sup>114</sup>

Rich Hall, Pete Moorey and Peter Smith, from Citizens Advice, Which?, and National Energy Action respectively also supported protections for vulnerable customers.

Mr Smith said that more could be done by the Bill to help households in fuel poverty by improving energy efficiency:

NEA believes we must also tackle the vicious overlap between the households with the lowest incomes living in the least efficient homes. That needs to continue to be a priority, and, sadly, we have seen a dramatic drop-off recently in home energy efficiency delivery rates. You could build that into one condition by which Ofgem could make an assessment about whether we are now pulling on that lever as hard as can, maybe as part of an ambitious energy efficiency infrastructure programme.<sup>115</sup>

## Smart meters

Numerous questions were raised on the relationship between the roll out of smart meters and the lifting of the cap. There was disagreement between the suppliers on the impact with Mr Wood of Bulb saying “we do not see a relation between them” and Ms Davenport of Good Energy saying the future SMETS2 meters will allow a smart process in terms of switching.

Mr Nolan said smart meters were necessary for a digitised energy sector:

On smart metering, I know there were different views among the earlier panel, but smart metering is helpful. It is in some sense a necessary condition for, if you like, a digitised retail energy sector. There will be faster and more reliable switching processes.<sup>116</sup>

Mr Moorey of Which? agreed, saying they facilitated a new kind of market:

Smart meters themselves are only the facilitator of a new kind of market.

[...]

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<sup>113</sup> Tariff Cap Bill Deb, 13 March 2018, [c18](#)

<sup>114</sup> Tariff Cap Bill Deb, 13 March 2018, [c18](#)

<sup>115</sup> Tariff Cap Bill Deb, 13 March 2018, [c27](#)

<sup>116</sup> Tariff Cap Bill Deb, 13 March 2018, [c18](#)

However, we are now just starting to see potentially a very different energy market, because of smart metering and then smart appliances, as well as the introduction of electric vehicles, storage and a whole range of other changes. They should make energy an attractive industry for new kinds of players to enter, which may well mean that consumers start to be offered very different kinds of things. It may well be, as Dermot said, that there will be much more bundled products, whereby suppliers effectively offer to look after your whole house—your whole life—and that may well be attractive.<sup>117</sup>

## Impact on Competition

In response to a question of whether prices would bunch around the cap, Mr Jackson of Octopus said there should be plenty of room for competition below the cap and switching should not be seen as a panacea for a competitive market:

To answer those three questions, on the bunching question we do not agree. There are 70-odd energy suppliers in the retail market currently. The majority of them price below any realistic level at which an absolute cap would be introduced. If there is any bunching, it will be the welcome bunching of the suppliers that currently charge their loyal customers more than an absolute cap by bringing their prices down to that level. Underneath any realistic cap, there is still plenty of room for competition, and competition among the challengers that have to fight for and win every single customer from scratch will be unabated.

In terms of switching rates, the first thing is that the idea that very high levels of switching is a good thing is outdated. For 20 years, consumers have been told that they have to switch; in any given year, no more than 15% to 20% will do so. All the rest are getting ripped off. What we need is a market in which you get good value without switching, and an absolute cap is a step in the right direction. It is an excellent measure that will help reduce the rip-off for those who switch and those who do not.<sup>118</sup>

Mr Nolan said the impact on switching may be similar to the result of implementing the prepayment meter cap, with some cheaper deals disappearing but others still being available:

We have a prepayment meter cap already. I said that switching is only one aspect of competition; I want to be clear on that. After the prepayment cap, we saw that some of the cheaper deals left the market, but not all of them did. Some stayed, including from existing suppliers, and there were still cheaper deals from some of the smaller suppliers. I think that is likely to occur. There might be a measured drop in switching for a period of time, but as long as the mechanisms are put in place, this can facilitate competition over the medium and long term.<sup>119</sup>

However, Mr Moorey of Which? said they were concerned about a risk of reducing competition or customer service:

However, as you are probably aware, we have some concerns about the risks presented by a price cap and the impact that could have for consumers as a whole, which may well be mitigated by

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<sup>117</sup> Tariff Cap Bill Deb, 13 March 2018, [c26](#)

<sup>118</sup> Tariff Cap Bill Deb, 13 March 2018, [c4](#)

<sup>119</sup> Tariff Cap Bill Deb, 13 March 2018, [c21](#)

the measures in the Bill regarding Ofgem, ensuring that it maintains attempts to promote competition.

Nevertheless, the things that we are concerned about with the introduction of a price cap are that we do not see any softening of competition and that we do not see prices for consumers overall going up. It is likely that for some consumers we will see some price rises, as some tariffs get removed. We do not want to see a reduction in the standard of customer service, which is often deemed as being poor among the larger suppliers; the annual satisfaction survey that we do at Which? every year shows that the larger suppliers do very poorly on a whole range of metrics.<sup>120</sup>

## Green tariff exemptions and wider infrastructure impacts

There was disagreement between suppliers about whether green tariffs should be exempt from the Bill. Mr Wood of Bulb said:

Today Bulb supplies green gas to more homes in the UK than any other energy supplier. We are growing so quickly that there are new green gas plants being built at pace in order to meet the demand from our future customers. We see absolutely no reason why a green gas tariff should be exempt from the Bill. The cost of providing green gas to homes is between £25 to £50, which is much smaller than the £200 gap between the best tariffs in the market and the most expensive tariffs under a capped regime.<sup>121</sup>

Mr Jackson of Octopus agreed saying the exemption could allow a *"loophole that allows exploitative suppliers to create fake green products in order to evade the cap"*.<sup>122</sup> However, Ms. Davenport of Good Energy said the exemption was needed to allow green gas infrastructure to develop:

In our view, green gas is an area that is developing in the UK. At the moment, we have a limited amount of green gas. I think the heat targets under the Climate Change Act 2008 are quite significant, and we as a country are behind those targets. We are doing relatively well on electricity, but not so well on gas. My personal view is that we need to try to seed that market. People want to choose.

It reminds me of the early stages of the mobile phone market. If we had said that everybody had to have access to mobile phones right at the beginning, we would not have ended up with a product that was cheap enough. So if you think about technological innovation, that is the way we should go. I think it is the same in this area. We should allow the early adopters to come into this marketplace, which is why there is the idea of giving an exemption on that. We should allow the infrastructure investment.<sup>123</sup>

There was greater agreement between the small suppliers that infrastructure investment in general should not be impacted by a cap. Mr Jackson said a properly functioning market will generate more investment, and Mr Wood said the cap would mean more homes buy

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<sup>120</sup> Tariff Cap Bill Deb, 13 March 2018, [c25](#)

<sup>121</sup> Tariff Cap Bill Deb, 13 March 2018, [c7](#)

<sup>122</sup> Tariff Cap Bill Deb, 13 March 2018, [c7](#)

<sup>123</sup> Tariff Cap Bill Deb, 13 March 2018, [c7](#)

their energy from efficient renewable suppliers, thus stimulating investment in renewables.<sup>124</sup>

More evidence on green tariffs was provided in the written evidence to the Committee from the Green Gas Certification Scheme<sup>125</sup> (run as a not for profit by a subsidiary of the Renewable Energy Association).

## Written Evidence

In addition to the evidence session, the Committee received written evidence. This included submissions from comparison sites, industry trade body Energy UK, and suppliers, including some of the Big Six.

Energy UK said they had some concerns with the Bill:

Our main concerns are:

- Ensuring competition and engagement in the market continues to grow;
- That the cap should reflect suppliers' costs including, for example, the costs of undertaking the smart metering programme
- That there is an appropriate Competition and Markets Authority (CMA) appeals process; and
- That there is greater transparency and clarity on how Ofgem will set the cap - and the conditions for lifting it.<sup>126</sup>

N-power said they believed competition was growing and that possible unintended consequences of intervention had been 'dismissed too lightly'.<sup>127</sup> Centrica, the parent company of British Gas, repeated Energy UK and N-power's concerns:

Centrica agrees that the energy market is not working for everyone and needs to change to deliver a fairer and more competitive market. However, there is a risk some of the mechanisms being proposed by the Government could result in worse outcomes for consumers and undermine investment, innovation and competition in the sector.<sup>128</sup>

Eon suggested criteria that they believed were necessary to make the cap a success:

E.ON believes that for the market-wide Tariff Cap to be successful, four key conditions should be met. These are a matter for Ofgem in any cap's implementation, but it is important to bear in mind these conditions during the Bill's progress through Parliament:

- a. It should be objectively time limited before returning to the market.
- b. The cap must allow suppliers to recover the costs of operating in the market. The PPM [pre-payment meter] and vulnerable price cap methodologies did not achieve this and must be corrected. Specifically the cost of the smart metering programme has been

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<sup>124</sup> Tariff Cap Bill Deb, 13 March 2018, [c5](#)

<sup>125</sup> Green Gas Certification Scheme, [Written Evidence to the Bill Committee](#), 14 March 2018

<sup>126</sup> Energy UK, [Written Evidence to the Bill Committee](#), 14 March 2018

<sup>127</sup> N-power, [Written Evidence to the Bill Committee](#), 14 March 2018

<sup>128</sup> Centrica, [Written Evidence to the Bill Committee](#), 14 March 2018

largely ignored, and the allowances for low carbon generation support schemes have been set too low.

c. There must be a sufficient level of headroom factored into the cap to allow suppliers to earn a fair margin and encourage competition even under a price cap. Headroom levels under the PPM and vulnerable caps has severely constrained the levels of engagement.

d. The cap must apply to all suppliers and ensure there is a level playing field between them by removing distortions such as the exemptions small suppliers currently receive from ECO and WHD [Warm Home Discount].<sup>129</sup>

## 6.2 Discussion in Committee

The Government did not put forward any amendments to the Bill at Committee stage. The Opposition and the Scottish National Party (SNP) laid 11 amendments and 4 new Clauses. Amendments were only proposed to Clauses 1, 3, 6, 7 and 8 and are discussed in full in the sections below.

All amendments and new Clauses were withdrawn after debate except amendment 7 which was defeated at division. The Bill therefore passed to Report Stage without amendment.

However, Dr. Alan Whitehead suggested the Opposition may return to a few amendments at Report. Key areas where the Opposition continued to have concerns with the Bill related to:

- what to do when the cap is lifted if competition is still deemed to not be effective (Amendments 2 and 11),
- a deadline for Ofgem to implement the cap by (Amendment 3),
- the criteria Ofgem must have regard to when reviewing whether conditions are in place for “effective competition” (Amendment 7), and
- whether a “relative tariff differential” should be implemented after the cap is terminated to limit the difference between the cheapest and most expensive tariffs (New Clause 4).

### Amendments to Clause 1: Implementing the Cap Amendment 3

Opposition amendment 3 suggested amending Clause 1 to create a deadline by which Ofgem must implement the cap. The Bill said the cap must be implemented “as soon as reasonably practicable” and the amendment added “and no later than 30 November 2018”.

Dr. Alan Whitehead said:

In principle, if we assume that the Bill will be on the statute books by the end of June, the five-month timescale that Ofgem has set itself would mean that the cap could be effective by the end of November this year.

Pretty much everybody associated with this Committee and the passage of the Bill has said that they fervently want to see this legislation enacted and a proper price cap in place before winter

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<sup>129</sup> E.ON, [Written Evidence to the Bill Committee](#), 14 March 2018

this year. By that, I am sure they do not mean when a cold snap takes place next February and looks a bit like winter, but the onset of winter—about the time people get their winter fuel allowances. That will ensure that the price cap is in place and benefiting customers in advance of the bills they face over winter.<sup>130</sup>

The debate centered around the interpretation of Ofgem’s comments in the evidence session about whether the implementation period of 5 months for the cap was achievable. Conservative MPs, such as James Heappy said his interpretation was that Ofgem had said the target was achievable unless in the case of a legal challenge. However, Dr. Whitehead said earnest intentions [by Ofgem] were not enough:

Although we may take serious account of Ofgem’s earnest intentions, which we heard about this morning, we are not legislating for the good side of earnest intentions, but for what we want to happen in the end with the Bill.<sup>131</sup>

The Minister Claire Perry said she did not think that a statutory deadline would be helpful:

Although I strongly share the hon. Gentleman’s desire, I feel there is nothing to be gained by making this a statutory deadline. That potentially creates implementation risks which would mean this long-awaited price cap could not be put in place.<sup>132</sup>

The amendment was withdrawn though Dr. Whitehead said he was not “*wholly convinced*”.<sup>133</sup>

#### **Amendment 4, 8, 9, 10, and New Clause 1**

The group of amendments referred to the list of considerations that Ofgem “must have regard to” under Clause 1 when drawing up the cap and the conditions for effective competition which would allow the cap to be removed under Clause 8.

Opposition amendment 4 had two parts. The first suggested requiring Ofgem to set a cap at a level that would mean customers on capped tariffs save no less than £100 annually. This is a figure that has been quoted in the media when discussing the tariff cap.<sup>134</sup> The second part of Amendment 4 suggested that Ofgem consider the need to provide adequate protection for vulnerable customers when setting the cap.

Opposition amendments 8, 9 and 10 suggested amending Clause 8 regarding the statement by the Secretary of State on his decision extending the price cap. The amendments would require that for the price cap to be extended, the statement should say that effective competition for domestic supply contracts was not yet in place, and that effective competition for vulnerable and disabled domestic consumers was not in place.

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<sup>130</sup> Tariff Cap Bill Deb, 13 March 2018, [c36](#)

<sup>131</sup> Tariff Cap Bill Deb, 13 March 2018, [c37-38](#)

<sup>132</sup> Tariff Cap Bill Deb, 13 March 2018, [c41](#)

<sup>133</sup> Tariff Cap Bill Deb, 13 March 2018, [c43](#)

<sup>134</sup> Steve Hawkes, [Millions of Brits in line for £100 as Theresa May delivers on energy price cap promise](#), The Sun, 25 February 2018

New Clause 1, proposed by the SNP, sought to require Ofgem to have regard to the need to protect vulnerable and disabled customers when exercising its powers under Clauses 1, 7 and 8, i.e. in setting, reviewing and terminating the cap.

On the amendments, Dr Alan Whitehead said:

The amendments and new clause 1 are grouped together because they refer to the pillars of consideration that Ofgem—the authority—must have regard to when drawing up the process of turning our legislation into a practical price cap. That is essentially the subject matter of clause 1(6), which sets out the four pillars instructing the authority about its considerations. They include incentives for holders of supply licences to improve their efficiency; setting the cap at a level that enables holders of supply licences to compete effectively; the need to maintain incentives for domestic customers; and the need to ensure that holders of supply licences who operate efficiently are able to finance activity, as authorised by the licence.

The amendments essentially agree that those pillars should be in place, and it is right that Ofgem should have clear guidance in the legislation about how to go about their business. We suggest that further pillars be added to the considerations that Ofgem should have in mind when it is doing its work after we have done ours.<sup>135</sup>

On amendment 4, Dr. Whitehead referred to media quotes of the Prime Minister saying the cap would save households “*at least £100*”.<sup>136</sup> On vulnerable and disabled provisions he said:

Vulnerable or disabled domestic customers are in a different position with their energy bills from a lot of other people who would previously have been on standard variable tariffs. Disabled people routinely face much higher energy bills than non-disabled people.

[...]

The purpose of the amendment is to ensure that the Minister is sure that effective competition exists for those households with higher bills, so that they are open to the benefits of competition in the same way as those people who are paying lower bills. If the Minister does not think that competition exists for that subset of the population, the Secretary of State would be required to say that the conditions were not in place for the termination of the energy price cap that year.<sup>137</sup>

Vicky Ford said she was concerned the £100 limit was too “*one-size-fits-all*” in nature:

The way I read amendment 4, it suggests that all customers on standard variable and default rates will get a £100 reduction, whereas the Prime Minister’s statement was that the millions of consumers who are on unacceptably high default rates would get a reduction. In the statement this morning, there was a suggestion that at least two of the big six do not have

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<sup>135</sup> Tariff Cap Bill Deb, 13 March 2018, [c44](#)

<sup>136</sup> Tariff Cap Bill Deb, 13 March 2018, [c45](#)

<sup>137</sup> Tariff Cap Bill Deb, 13 March 2018, [c48](#)

unacceptably high rates. I am rather concerned about the one-size-fits-all nature of the amendment.<sup>138</sup>

Dr. Alan Whitehead stressed it was a criteria for Ofgem to consider rather than have to implement.<sup>139</sup>

A number of MPs on the Committee agreed with the need to support vulnerable and disabled people, regardless of their views on the amendments. Issues raised included approval to the Warm Home Discount scheme, energy efficiency for rented buildings, data sharing with energy companies to protect vulnerable consumers, and the reformation of the Energy Company Obligation scheme.<sup>140</sup>

Claire Perry said the amendments were not appropriate:

Turning to amendments 4, 8, 9 and 10 and new clause 1, I hope I have persuaded the Committee, first, that to put an arbitrary number for savings in the Bill would not be appropriate. It would not be an average number and is not necessary, because we can see from the safeguarding tariff that bills have fallen. Also, we would all expect that number to be greater.

Secondly, I think we are all seized of the need to protect and improve services for vulnerable customers. That is part of Ofgem's duty and is part of the tariff cap conditions and the conditions for competition. There is a lot of support already. I take the point made by my hon. Friend the Member for Wells that more needs to be done. That is why we would like to bring in ECO, to make sure that that customer group is paying the least possible for their energy and getting the best possible service.<sup>141</sup>

Dr Whitehead said that as a result of the on the record discussion in the Committee "*Ofgem might consider itself to be rather better instructed*" on vulnerable customers. He also said he took the point that in practice, the £100 figure may be "*problematic*" for Ofgem.<sup>142</sup>

The amendments were withdrawn.

### **Amendments to Clause 3: Exemptions from the cap Amendment 5**

Opposition amendment 5 related to green gas and electricity tariffs and suggested inserting the word "wholly" to provide that green tariffs were "wholly supporting the production of gas, or the generation of electricity, from renewable sources".

The debate centred around whether the exemption for green tariffs was necessary at all as there was concern that it could lead to suppliers "gaming" the cap and also arguments that consumers shouldn't need to pay more for green tariffs.

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<sup>138</sup> Tariff Cap Bill Deb, 13 March 2018, [c45](#)

<sup>139</sup> Tariff Cap Bill Deb, 13 March 2018, [c46](#)

<sup>140</sup> Tariff Cap Bill Deb, 13 March 2018, [c50-53](#)

<sup>141</sup> Tariff Cap Bill Deb, 13 March 2018, [c54](#)

<sup>142</sup> Tariff Cap Bill Deb, 13 March 2018, [c54](#)

Dr Whitehead said his view was that there should be an exemption<sup>143</sup> and the insertion of “wholly” would prevent suppliers gaming the system with fake green tariffs.

However, Committee members expressed concern, with James Heapey MP saying that the amendment would “*risk letting perfect be the enemy of the good*”.<sup>144</sup>

Claire Perry said:

It may be that, in setting out its view on what constitutes the tariff, Ofgem will say that it is 75%, or 95%, or 50%, and we will all have a chance to respond at that point. I absolutely accept the spirit in which the hon. Member for Southampton, Test tabled the amendment, but I fear, as we talked about, that it would have the unintended consequences of driving some tariffs out of the market and creating other perverse incentives.<sup>145</sup>

However, she also committed to write to each member of the committee with information on green tariffs:

The offer I would make to every member of the Committee is for my team to put together a list of all the green tariffs in the market already and perhaps to ask for some evidence for to what the price premium is, so that when we look at this issue again on Report we will perhaps all feel a little bit better informed about this part of the market structure.<sup>146</sup>

Dr Whitehead described this as suggestion as “*very welcome [and] wholly constructive*”<sup>147</sup> and withdrew the amendment.

The Minister Claire Perry wrote a [letter](#) to Bill Committee members on green tariffs in the market on 25 March 2018.<sup>148</sup>

## Amendments to Clause 6: Review of level at which cap is set

### Amendment 6

Opposition amendment 6 suggested changing the period within which Ofgem must review the cap level from 6 months to 3 months.

Dr. Alan Whitehead said the change would allow the cap to be better calibrated with wholesale prices:

That would mean that the movement in wholesale prices could be better calibrated against what the cap consists of. Certainly, there have been suggestions that sticking to the requirement for a six-month review by the authority could lead to some clunkiness in the proceedings, because the cap would be in a certain position up to that six-month point, and then it would be clunked up and be in place for another six-month period.<sup>149</sup>

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<sup>143</sup> Tariff Cap Bill Deb, 13 March 2018, [c54](#)

<sup>144</sup> Tariff Cap Bill Deb, 13 March 2018, [c55](#)

<sup>145</sup> Tariff Cap Bill Deb, 13 March 2018, [c65](#)

<sup>146</sup> Tariff Cap Bill Deb, 13 March 2018, [c63](#)

<sup>147</sup> Tariff Cap Bill Deb, 13 March 2018, [c65](#)

<sup>148</sup> [Correspondence](#) between Claire Perry MP and Bill Committee members, 25 March 2018

<sup>149</sup> Tariff Cap Bill Deb, 13 March 2018, [c68](#)

However, the Minister said that the Bill says “at least” every 6 months so Ofgem could change the cap more often:

I feel that with the words “at least” we have provided in the Bill for Ofgem to react to market movements or any other structural changes that would affect consumers. That flexibility is there.<sup>150</sup>

Dr. Whitehead withdrew the amendment.

## Amendments to Clause 7: review of “effective competition”

### Amendment 1

Clause 7 requires Ofgem to carry out a review on whether conditions are in place for effective competition which will then be the basis for whether the Secretary of State decides to lift or extend the cap. Amendment 1, proposed by the SNP, suggested amending Clause 7 to require the Secretary of State to publish a statement on the criteria for “*effective competition*” on which Ofgem should base its report, within 6 months of the passing of the Act.

Alan Brown, the SNP spokesman who moved the amendment, said it was important to know how the changes energy companies make will be measured:

The Government’s aim is that the cap will be only temporary—perhaps lasting only two years. Therefore, it is a limited timeframe. That makes it even more important that, as soon as we can, we understand what the companies will be measured against. If a report is laid that sets out the criteria within six months, that takes away the risk of moving targets, in terms of the suppliers changing how they are operating, but perhaps not in the way we want. Obviously, we want to manage how they operate and make that most effective for consumers.<sup>151</sup>

Claire Perry referred to the finding by the BEIS Select Committee that said “*we believe that Ofgem have the required expertise to set and measure indicators of effective competition and make the appropriate recommendation to the Secretary of State*”.<sup>152</sup>

Alan Brown withdrew the amendment.

### Amendment 7

Opposition amendment 7 suggested amending Clause 7 to include a list of criteria Ofgem must have regard to when producing their review. The list is:

- (a) progress has been made in installing smart meters for use by domestic customers,
- (b) incentives for holders of energy supply licences to improve their efficiency have been created,
- (c) holders of energy supply licences are able to compete effectively for domestic supply contracts,

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<sup>150</sup> Tariff Cap Bill Deb, 13 March 2018, [c69](#)

<sup>151</sup> Tariff Cap Bill Deb, 13 March 2018, [c72](#)

<sup>152</sup> Tariff Cap Bill Deb, 13 March 2018, [c72](#)

- (d) incentives for domestic customers to switch to different supply contracts are in place,
- (e) the barriers which prevent the customers from switching from different supply contracts quickly and easily are addressed,
- (f) holders of supply licences who operate efficiently are able to finance activities authorised by the licence,
- (g) holders of supply licences have eliminated practices that are to the detriment of customers in their tariff structures,
- (h) District Network Operator costs and dividends are proportionate to expectations and the impact of that on domestic supply contracts, and
- (i) vulnerable and disabled customers are adequately protected<sup>153</sup>

Dr Whitehead said the amendment was a “*bookend*” to the cap process, putting the similar requirements on lifting the cap as are in place for setting the cap:

The amendment would essentially take a number of conditions about the circumstances in which the cap should be set up that are mentioned earlier in the Bill and puts them in place as conditions for terminating the cap. It therefore bookends the temporary cap process. It would also add protections for a couple of our other concerns, such as vulnerable and disabled customers, and we can all agree that that should be the case. That is particularly important in terms of Parliament, through the Minister, retaining the ability properly to determine whether the cap should be removed or not. Although I have considerable faith in Ofgem to do the right thing, that is what we will be doing if we leave the Bill as it is. Legislation should not be based on leaving someone to do something on the basis of their good intentions and good offices.<sup>154</sup>

Claire Perry said she was concerned that the list of conditions would become a “*box-ticking*” exercise and that because the market moves so quickly, conditions listed now may soon be out of date:

Suppose that in the Bill we say, “We think that Ofgem should have regard to one of the hon. Gentleman’s conditions”, but the market evolves so quickly that the condition becomes irrelevant.

[...]

I fear that, by setting out what appear to all of us to be very sensible conditions, we risk creating “a box-checking exercise” and risk creating again future legal obligations that would come back and basically render what we want to achieve null and void.<sup>155</sup>

However, Dr. Whitehead said he wanted the Minister to say they would think of some conditions and come back with something at Report:

What I have tried to do with this particular amendment—by the way, I am not particularly precious about every last line of it—is to craft a number of considerations that should reasonably pass by the eyes of Ofgem when it is thinking about whether conditions have returned to the market or not, so that it is shaped. Indeed, if the Minister were to say, “Yes, jolly good idea, but we’re not

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<sup>153</sup> Domestic Gas and Electricity (Tariff Cap) Bill, [Notices of Amendments](#), 8 March 2018

<sup>154</sup> Tariff Cap Bill Deb, 13 March 2018, [c75](#)

<sup>155</sup> Tariff Cap Bill Deb, 13 March 2018, [c77](#)

quite sure that all the conditions are absolutely right. We'll take it away and come back with something on Report that will set that out in a rather better way," I would be overjoyed. It is an attempt to try to make things work, rather than to get everything right first time.<sup>156</sup>

The amendment was pressed to a division where it was defeated 9 to 8.

## **Amendments to Clause 8: extension/termination of tariff cap**

### **Amendment 2**

Clause 8 is the sunset Clause of the Bill, requiring the cap to be lifted by 2023 at the latest. Amendment 2, moved by the SNP, suggested amending Clause 8 so that in the event of the cap lasting until 2023, the Secretary of State should publish a statement on whether new legislation may be required to extend the cap beyond 2023.

Alan Brown of the SNP who moved the amendment said there was a risk there may still not be effective competition in 2023:

I have tabled my simple amendment because, as we know, the market is not working, but there is no guarantee that it will remedy itself in the time proposed, although we hope it will. There is a risk that there will still be no effective competition in 2023, so the amendment suggests that if we get to that final year of the temporary cap, the Government should make a statement outlining whether they believe it appropriate to introduce further legislation for a new tariff cap with effect beyond 2023.<sup>157</sup>

Claire Perry said it was important that the cap was a temporary measure:

Frankly, the Government have no wish for a price cap to be a permanent feature of our energy market. We debated that point briefly last week. I think there is strong consensus in the Committee—if I have not misjudged it—that the cap should have a sunset clause. In order for a sunset clause to be effective, there should be an end date to the legislation. Of course, as we discussed last week, that does not simply mean we will pass the Bill quickly through both Houses—as I hope we will—and have the cap in place by the end of the year, as Ofgem has assured us is possible; we will also all be working alongside Ofgem to ensure that the conditions for effective competition are in place by the 2023 deadline. I think we would all want to see those conditions in place well before that date.<sup>158</sup>

Alan Brown withdrew the amendment.

### **Amendment 11**

Opposition amendment 11 was similar to amendment 2 in that it suggested changes to Clause 8 in the event of the cap being extended to 2023. Amendment 11 suggested the Secretary of State should publish a report on "further measures that can be taken to ensure that conditions are in place for effective competition". The amendment

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<sup>156</sup> Tariff Cap Bill Deb, 13 March 2018, [c79](#)

<sup>157</sup> Tariff Cap Bill Deb, 15 March 2018, [c83](#)

<sup>158</sup> Tariff Cap Bill Deb, 15 March 2018, [c86](#)

suggested that such a report must include the merits of pooled trading arrangements.

Dr Alan Whitehead said:

Hon. Members might be tempted to wonder, if the conditions for proper market operation are not securely in place by [2023]—in each of the previous years, Ofgem has reported that the conditions are not in place and therefore the Minister would almost certainly not agree that the price cap should be taken off—what happens in that last year, when those considerations do not apply?

The amendment would make it necessary, under those circumstances, to look at other factors across the market, not just in retail but in wholesale trading, and to consider the conditions that would lead to better operation of the market as a whole. It would require the Minister to produce a report in that last year about what conditions in the wholesale market might bolster the market in terms of working properly, looking particularly at trading and how the market might work under a trading pool system.<sup>159</sup>

Claire Perry said that the CMA report did not support pooled trading:

The CMA, in its very comprehensive review of market competition, compared the principle of bilateral trading relationships, which the hon. Gentleman has eloquently expounded, with a pool approach. Its view was that the evidence did not support a move to such a pooling system, primarily because there is sufficient liquidity in the market—Ofgem reviews the liquidity arrangements—and there is price transparency for all the pool participants already. The CMA's conclusion was that if we all accept that we need to move to a more competitive market, the evidence does not suggest a move to bilateral pooled trading relationships.<sup>160</sup>

Dr Whitehead said he was *“not persuaded that this notion is not needed in the Bill in the eventuality of the cap going to 2023”*<sup>161</sup> but as the purpose of the amendment was to discuss the possibility of pool trading, he withdrew the amendment.

## New clauses

There were 4 new clauses proposed by the Opposition and the SNP.

### New Clause 1

New Clause 1, moved by the SNP, sought to require Ofgem to have regard to the need to protect vulnerable and disabled customers when exercising its powers under Clauses 1, 7 and 8, i.e. in setting, reviewing and terminating the cap. The Clause was discussed with amendments 4, 8, 9 and 10 and was withdrawn, see above.

### New Clause 2

New Clause 2, moved by the SNP, sought to require the Secretary of State to have regard for customers in rural areas when setting, reviewing and terminating the cap.

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<sup>159</sup> Tariff Cap Bill Deb, 15 March 2018, [c90](#)

<sup>160</sup> Tariff Cap Bill Deb, 15 March 2018, [c93](#)

<sup>161</sup> Tariff Cap Bill Deb, 15 March 2018, [c93](#)

Alan Brown, the SNP spokesman who moved the New Clause, listed some of the issues faced by rural customers such as lower incomes, off gas grids heating costs, less efficient properties, digital connectivity issues making switching harder, and limited mobile coverage preventing the roll out of smart meters.<sup>162</sup>

Claire Perry listed some of the future plans to help rural customers, such as commitments to review off grid heating and how the Energy Company Obligation (ECO) supports rural customers. She said the Clause was not necessary as Ofgem must protect all customers:

I have mentioned additional help, but I suppose the question is whether we should specify in the Bill that more should be done. My argument is that the new clause is not necessary, because the Bill already explicitly requires Ofgem to protect all existing and future standard variable and default customers, including consumers in rural areas. Furthermore, Ofgem's role as the regulator under the existing gas and electricity Acts confirms that it has a duty to protect the interests of all existing and future customers. It should specifically have regard to the interests of individuals living in rural areas, among other things.<sup>163</sup>

The Clause was withdrawn.

### **New Clause 3**

New Clause 3, moved by the Opposition, sought to require the Secretary of State to lay before both Houses a report on the merits of extending the cap to small businesses within three months of the Bill passing.

Dr Whitehead who moved the Clause said that although the Bill's title specifically refers to "domestic" tariffs, small businesses can have many similarities with domestic customers:

It seems a little invidious that the cut-off point for the price cap is the end of the domestic customer level. I am sure no hon. Member present is in this position, but it is quite possible for a very large house with multiple activities going on in it to consume a lot more electricity than a high street retailer or a small business. A number of small businesses will find that their electricity bills are not capped even though, to all intents and purposes, they are indistinguishable from domestic customers as far as their patterns of use, means of purchase and so on are concerned.<sup>164</sup>

Claire Perry said she was very interested in the problem and committed to looking at it further, but that it did not fit in the Domestic Bill:

While I invite the hon. Gentleman to withdraw the new clause on the basis that the Bill focuses on domestic customers, where we already have more information, I am extremely interested in the problem of how we might provide better customer service and pricing availability to small business customers. I am perfectly happy to commit to looking at the problem very seriously and to have a proper and open discussion, as the hon. Gentleman and I tend to do, about what more might be done. I would send a very strong signal that, if at some future point a price cap mechanism

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<sup>162</sup> Tariff Cap Bill Deb, 15 March 2018, [c95](#)

<sup>163</sup> Tariff Cap Bill Deb, 15 March 2018, [c97](#)

<sup>164</sup> Tariff Cap Bill Deb, 15 March 2018, [c98](#)

might help small businesses, that is not something I would turn away lightly.<sup>165</sup>

The New Clause was withdrawn.

#### **New Clause 4**

New Clause 4, moved by the Opposition, sought to require the Secretary of State to draw up a “relative tariff differential” to be implemented when the absolute cap is removed.

Dr Alan Whitehead said although he is in favour of an absolute price cap, New Clause 4 would help the market work effectively when the cap is removed:

Those customers, who have been the focus of the Bill, are the most prone to particular energy companies effectively trading on their loyalty to change the terms of the tariffs over a period of time, so that they migrate towards the top end of the tariff range, rather than the bottom end, which they may have entered into an agreement on in the first place. Even if someone is on a fixed-term tariff offered at a particular point by an electricity company with a substantial tariff range, thinks they got a particularly good deal from that company and is a loyal customer, they may well find themselves placed on a new tariff towards the top end of that company’s tariff range when that mode of deal comes to an end. In many instances, people do not know that has happened: they thought they were getting a good deal but find that they are paying through the nose for their electricity.<sup>166</sup>

Claire Perry said this discussion was a repeat of Second Reading where they had discussed the limitations of a “relative cap”:

The [BEIS] Select Committee, [...] made it very clear that it felt that a relative cap would simply be gamed.

As the right hon. Member for Don Valley mentioned, there is also the problem that companies will simply lift up their skirts and raise their whole tariff. The hon. Member for Southampton, Test may say that companies would then lose their customers, but we come back to the question of whether people will actually move. Yes, companies may lose those hyper-price-sensitive switchers who are very engaged, but they may not lose the customers we are really here to help today—those who are more vulnerable and not as savvy.<sup>167</sup>

Dr Whitehead said he did not accept the Minister’s views on the negative consequences:

I simply do not accept what the Minister says about bad unintended consequences. I do not think that is realistic. Conversely, having something like this in place would be a positive driver of a return to not only good market conditions but proper protections for those operating tariff arrangements under those otherwise good market conditions. It is important that, in the ending of the absolute cap, we get both sides right. It is not just a question of the market working well. It is a question of

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<sup>165</sup> Tariff Cap Bill Deb, 15 March 2018, [c99](#)

<sup>166</sup> Tariff Cap Bill Deb, 15 March 2018, [c101](#)

<sup>167</sup> Tariff Cap Bill Deb, 15 March 2018, [c104](#)

people in that market who have disadvantageous circumstances being protected properly as it goes forward.<sup>168</sup>

He also said that New Clause 4 was not proposing a cap, though it had been branded as such, and that he would like to return to the issue at Report,<sup>169</sup> before withdrawing the Clause.

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<sup>168</sup> Tariff Cap Bill Deb, 15 March 2018, [c105](#)

<sup>169</sup> Tariff Cap Bill Deb, 15 March 2018, [c105](#)

## 7. Report Stage and Third Reading

Since Committee Stage finished on 15 March 2018, some energy suppliers have announced energy price increases.<sup>170</sup><sup>171</sup> The Minister Claire Perry, referring specifically to British Gas, called the increase “unjustified”.<sup>172</sup>

Report Stage and Third Reading of the Tariff Cap Bill took place on 30 April 2018. The Bill passed to the House of Lords without amendment.

At Report Stage, the Government tabled no amendments but MPs tabled 1 new clause and 9 amendments, largely repeating the concerns raised at Committee Stage:

- New Clause 1, ‘Ongoing relative tariff differential’, moved by the Opposition, was the same as New Clause 4 at Committee Stage. The Clause sought to allow the Secretary of State to develop a relative tariff cap that could be implemented after the tariff cap is lifted.
- Amendment 1, moved by Frank Field, sought to require Ofgem to consider whether energy suppliers were moving customers onto cheaper tariffs when considering whether there is an effective market.
- Amendment 2, moved by John Penrose and supported by 15 additional Conservative MPs, would require the tariff cap to be relative, rather than absolute.
- Amendment 3, also moved by John Penrose and supported by the same MPs, was consequential to Amendment 2 and provided a definition of “cheapest advertised rate”.
- Amendment 4, also moved by John Penrose and the group of MPs, sought to add conditions for Ofgem to consider when setting the cap, including wholesale price projections and the difference between the cheapest and most expensive tariffs.
- Opposition amendment 5, similar to amendment 3 at Committee Stage, sought to require Ofgem to implement the cap within 5 months of the Act being made.
- Opposition amendment 6, similar to amendment 4 at Committee Stage, sought to require Ofgem to ensure the cap reduced consumer bills by at least £100.
- Opposition amendment 7, also similar to amendment 4 at Committee Stage, sought to require Ofgem to have regard to vulnerable customers, when setting the cap.
- Opposition amendment 8, the same as amendment 7 at Committee Stage, sought to set out issues that Ofgem must have

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<sup>170</sup> Adam Williams, [Energy customers brace for further price rises](#), *The Telegraph*, 15 April 2018

<sup>171</sup> Which? [Scottish Power raises energy prices](#), 20 April 2018

<sup>172</sup> BBC, [British Gas price rise unjustified, says government](#), 10 April 2018

regard to when carrying out their review on the conditions for effective competition.

- Amendment 9, moved by Rachel Reeves and supported by 28 cross party MPs, was similar to amendment 7 in that it sought to require Ofgem to have regard to the protection of vulnerable customers when setting the cap.

On the opposition amendments, Dr Alan Whitehead said they were repeating amendments from Committee Stage because they wanted to “strengthen” the bill:

We do not want to overthrow or weaken the Bill, and we understand that it needs to be robust against possible challenges. Our amendments would therefore have the sole effect of strengthening the Bill and its purpose, and would ensure that its architecture fully reflects that purpose.<sup>173</sup>

On his amendments, and a relative cap, John Penrose said:

My amendments would make a relative cap either possible or required, depending on which version was chosen. I do not expect or intend to press the amendments to a Division, but I want everybody to realise that there is a more competitive, more flexible, less bureaucratic, more customer-friendly and generally better alternative, and that at the moment we are not taking it.<sup>174</sup>

The Minister Claire Perry responded to each amendment in turn. Following the debate, Dr Alan Whitehead withdrew all amendments but pressed New Clause 1 to division:

On the basis of the explanations that have been put forward, we will be happy not to move our amendments, but we will wish to press new clause 1, which has not been properly understood or responded to this evening.<sup>175</sup>

The New Clause was defeated at division by 288 votes to 125.<sup>176</sup>

## 7.1 Third reading

At Third Reading, the Secretary of State Greg Clark said:

As the House knows, the Government are committed to reforming the energy market. The Smart Meters Bill, which is progressing through the House of Lords as we speak, represents another important stepping stone towards a more competitive market. The Domestic Gas and Electricity (Tariff Cap) Bill will ensure that British families are protected as we correct an intolerable situation in which, according to the independent competition authorities, consumers have been exposed to paying £1.4 billion a year more than they would in a competitive market. That abuse should end. The Bill will not only give Ofgem the powers to achieve that, but introduce the requirement that it should do so, and I commend it to the House.<sup>177</sup>

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<sup>173</sup> HC Deb 30 April 2018 vol 640 [c73](#)

<sup>174</sup> HC Deb 30 April 2018 vol 640 [c83-84](#)

<sup>175</sup> HC Deb 30 April 2018 vol 640 [c101](#)

<sup>176</sup> HC Deb 30 April 2018 vol 640 [c102-104](#)

<sup>177</sup> HC Deb 30 April 2018 vol 640 [c106](#)

Speaking for the Opposition, Rebecca Long Bailey said she was happy to see the Bill move on in a “speedy” way, but she repeated her comments from Second Reading that the Government had taken too long to deliver the Bill and it remained a “sticking plaster” on the energy market.<sup>178</sup>

Alan Brown, speaking for the SNP, also supported the Bill and suggested additional measures for consumers:

If we really want customers’ bills to come down, we will need further state intervention, including home energy efficiency schemes. I will finish with my usual plea about getting onshore renewables back on to the market because they are the cheapest form of energy at the moment. We know how successful the bidding process has been for offshore renewables, so let us get the cheapest form of energy back to market and help to bring down customers’ bills.<sup>179</sup>

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<sup>178</sup> HC Deb 30 April 2018 vol 640 [c107-108](#)

<sup>179</sup> HC Deb 30 April 2018 vol 640 [c109](#)

## 8. House of Lords Stages

### 8.1 Delegated Powers Memorandum

On 22 May 2018, the House of Lords Delegated Powers and Regulatory Reform Committee published their 27<sup>th</sup> Report of Session 2017-19 which covered the Domestic Gas and Electricity (Tariff Cap) Bill. The report contained two recommendations on the powers of the Bill:

We consider the significance of the power in clause 7(5) is such (particularly with its potential impact on domestic consumers) that any decision to bring the tariff cap conditions to an end before 2023 should be subject to Parliamentary scrutiny, with the affirmative procedure applying to the exercise of that power.

[...]

We consider that a power to make modifications which are considered “expedient” constitutes a significant widening of the powers conferred by clause 9. No reasons are given in the Memorandum to explain why clause 9 has been drafted in this way. In the circumstances, the House may wish to seek an explanation from the Minister.<sup>180</sup>

### 8.2 Second Reading

The Bill had its First Reading in the House of Lords on 1 May 2018 and [Second Reading](#) on 22 May 2018.

Introducing the Bill, Lord Henley reiterated the Government’s hope to implement the cap by the end of 2018:

During our forthcoming debates, I look forward to hearing from noble Lords with a wealth of experience on a matter of such importance for consumers and for re-establishing trust in the domestic market. As regards when the price cap will be in place, there was significant consensus in another place that it should be implemented by the end of 2018. I note that Ofgem is already well under way with its consultation, including issuing a series of working papers on the design of the price cap.

In conclusion, I hope that our scrutiny will be both timely and harmonious so that this important measure may be implemented by the end of the year.<sup>181</sup>

Speaking for the Opposition, Lord Stevenson of Balmacara said they were “pleased that the Bill is finally before the House today” but that it did not go far enough:

...although the principle underlying the Bill is good, we remain concerned that, as drafted, it does not go far enough. Why? Because our energy market is fundamentally broken and needs to be changed. The Bill is silent about the fundamental changes that need to be made.<sup>182</sup>

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<sup>180</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [Domestic Gas and Electricity \(Tariff Cap\) Bill, 27<sup>th</sup> Report of Session 2017-19](#), 22 May 2018, para 10 and 12

<sup>181</sup> HL Deb 22 May 2018 vol 791 [c992](#)

<sup>182</sup> HL Deb 22 May 2018 vol 791 [c993](#)

In his opening speech, Lord Stevenson asked several questions about the design of the cap:

- I start with the question of why the Bill does not provide any direction from the Secretary of State on what might be a preferred level for the cap. [...]
- Secondly, why is there no duty on Ofgem to consult on how such measures can accurately be quantified? [...]
- Thirdly, we welcome the fact that the Government are bringing in an absolute cap. We are agreed that it will help customers, especially those languishing on standard variable tariffs. However, this absolute cap is time-limited; it will be in place for only a few years before it is lifted. [...] Perhaps the solution would be to require that a relative price differential mechanism should be established and implemented while the absolute cap is in place. [...]
- Fourthly, what is the process when the cap comes to an end in 2020? [...]
- Fifthly, what exactly is a “clear and realistic definition of effective competition”? [...]
- Sixthly, we are concerned that the consumers who benefit from Ofgem’s safeguard tariff may actually see their energy bills rise as a result of the cap.[...]
- Seventhly, we are concerned that, because this Bill is at heart intended to promote switching as a means of reforming the energy market, it will not of itself reduce prices. [...]
- Finally, I am concerned that there is no timetable in the Bill and no guarantee that the price cap will be in place for this winter.<sup>183</sup>

## Appeals

One of the main subjects raised was the ability of suppliers to appeal the level of the cap. Lord Hunt of Wirral said he was “not alone” in his concern about the absence of appeals to the CMA in the Bill:

I know I am not alone in feeling that the Bill does not include the long-established precedent that organisations should be able to appeal to the Competition and Markets Authority against a price control set by a sector-specific regulator. This right exists in every comparable example of sector-specific regulation, including in the energy sector, and plays an important role in driving better regulatory decisions.

[...]

Appeals to the CMA are the long-established way of providing such scrutiny and ensuring that any errors can be corrected efficiently. The CMA is a specialist economic regulator, established to review regulatory decisions and ensure that they are well founded. Price control decisions in every other comparable sector—such as telecoms, water, aviation and post—can be appealed to the CMA, as can other price control decisions made by Ofgem. Price regulation for network companies can also be appealed to the CMA by third parties, including consumer

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<sup>183</sup> HL Deb 22 May 2018 vol 791 [c993-996](#)

organisations. An appeal to the CMA in 2015 on the level of price control imposed by Ofgem found that Ofgem had made an error. As a result, £105 million was returned to consumers.<sup>184</sup>

In response to concerns of appeals resulting in a delay to the cap, Lord Hunt continued:

My noble friend the Minister may add that he has concerns that an appeal could delay or frustrate the introduction of a cap. Ministers have made clear their desire that this legislation should be passed by July and implemented by next winter, but there is no precedent for CMA appeals delaying the implementation of a price control. In the last 11 price control appeals, no delay took place. CMA appeals typically take place while the regulator's original decision remains in place. Any remedies are then implemented prospectively.<sup>185</sup>

The issue of appeals was repeated by a number of members, including Lord Mackay of Clashfern, Lord Carlile of Berriew, Baroness Bloomfield of Hinton Waldrist and Baroness Featherstone.

In his closing remarks, Lord Henley said the BEIS Select Committee had not recommended appeals to the CMA:

Having considered this issue, the committee concluded that, "judicial review is a common and satisfactory appeal route for energy decisions, even highly technical ones".<sup>186</sup>

## Relative caps

Similar to the debate in the Commons, some Peers made arguments in favour of a relative price cap. Lord Teverson said he was concerned about "tease and squeeze":

Unlike some others, I am less convinced that an absolute cap is entirely right. I am referring to "tease and squeeze" and how we get rid of that. It is the main problem with the way the market and pricing work: getting people on board for the first year and then hoping that they forget about you. I wonder whether having the fixed percentage that is allowed between the minimum or entry tariff and consequent tariffs is a better way to do this, but I could be convinced otherwise.<sup>187</sup>

Lord Teverson also said suggested changes to price comparison sites:

However, what I would like to see is price comparison sites being obliged to show what the tariff will be after one year if the consumer fails to renew. That would provide real transparency in the growing switching market. We could look at that issue in a potential amendment. The mortgage market is often held up as the example in that regard, but that may have more to do with Financial Conduct Authority rules; it may be that Ofgem needs to be given similar powers.<sup>188</sup>

Lord Whitty also raised the relative cap:

If the problem is that long-term customers, often customers of the big six who have actually not switched since privatisation, are

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<sup>184</sup> HL Deb 22 May 2018 vol 791 [c999-1000](#)

<sup>185</sup> HL Deb 22 May 2018 vol 791 [c999](#)

<sup>186</sup> HL Deb 22 May 2018 vol 791 [c1018](#)

<sup>187</sup> HL Deb 22 May 2018 vol 791 [c997](#)

<sup>188</sup> HL Deb 22 May 2018 vol 791 [c997](#)

effectively cross-subsidising switchers, company by company—in other words, there is a sort of negative loyalty bonus—then surely the remedy is that the relativity between the tariff with which long-term customers pay, which is normally the default tariff or the standard variable tariff, and the tariff and package for newcomers is the most important metric in this approach. In other words, as my noble friend Lord Stevenson implied, we should perhaps be regulating by differential or by margin between the two, rather than, or possibly in addition to, an absolute cap. I appreciate that this could be complex, because many of the starter rates which entice new customers and switchers are time-limited and in practice revert to something very close to the standard variable tariff after a year or two. That is another practice that perhaps the regulator should look at. But the issue of whether a relative cap is more appropriate than an absolute cap needs returning to. I am not sure that the Government gave an adequate reply to that in the Commons. I would like to hear more clearly the rationale for that today.<sup>189</sup>

Lord Henley said in his closing remarks:

The Government, Ofgem, the Select Committee and another place all believe that what we are doing is the right way to proceed. A relative cap might simply prompt the withdrawal of more competitive rates by larger companies while offering no protection to those on poorer-value tariffs.<sup>190</sup>

## Green tariffs

Similar to the Commons debate, Baroness Featherstone raised the issue of green tariffs, saying she thought it “disappointing” that an exemption was not included in the Bill:

Some noble Lords have raised the point—not always in a good way—that one of the most disappointing parts of the Bill is the omission of the exemption for green energy tariffs. It is not only disappointing but unacceptable. The Government promised that they would seek an exemption for green energy tariffs and when they accepted a recommendation from the Select Committee I had some hope that they meant it. I understood the proviso they put forward that any tariffs exempted from the price cap on this basis would only be agreed to when Ofgem was satisfied as to its credentials in directly supporting the production of renewable energy. That is completely fair—but I do not see it in the Bill.<sup>191</sup>

However, Lord Teverson questioned whether there may be “cheating going on in this area” if there were green exemptions.<sup>192</sup>

Lord Henley said in his closing remarks:

The Bill places a duty on Ofgem to consult on exemptions to the cap for green tariffs—those tariffs that support the production of gas or the generation of electricity from renewable sources. Having consulted, Ofgem will then have the power to implement exemption from the cap. That is for it; we are not opposed to green tariffs being exempt.<sup>193</sup>

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<sup>189</sup> HL Deb 22 May 2018 vol 791 [c1001](#)

<sup>190</sup> HL Deb 22 May 2018 vol 791 [c1019](#)

<sup>191</sup> HL Deb 22 May 2018 vol 791 [c1015](#)

<sup>192</sup> HL Deb 22 May 2018 vol 791 [c997](#)

<sup>193</sup> HL Deb 22 May 2018 vol 791 [c1020](#)

## Vulnerable customers

Peers also debated whether the Bill had sufficient provision for vulnerable customers. In his opening remarks, Lord Stevenson said that vulnerable customers could see bills go up:

If the overall price cap consumes the safeguard tariff, vulnerable customers could see their prices go up by more than £30 as a result of the difference between the safeguard situation and the likely absolute tariff. When responding to these concerns on Report in another place, the Minister agreed that it would be perverse for some of the most vulnerable customers to see their energy prices go up as a result of a price cap and agreed to give the issue further consideration. The Minister did not mention it in his introductory speech, but I hope he has reflected on this and will, during the passage of the Bill, require Ofgem to identify affected customers and put in place measures to offset their loss or else not proceed with removing the safeguard tariff.<sup>194</sup>

Baroness Featherstone raised similar concerns, especially for disabled customers:

Scope is concerned that the new extended safeguard tariff planned by Ofgem, which will be replaced by the Government cap on standard variable and default tariffs, may mean in effect that some consumers with disabilities miss out on support because they may not be on a variable or default tariff. Scope believes it is vital that the Government make Ofgem identify those in receipt of the safeguard tariff and put in place measures to offset potential loss or, alternatively, not proceed with removing the safeguard tariff. The Government must ensure—no, they must guarantee—in this Bill that no one with disabilities will be made worse off by this or future changes in the cap/tariffs. I will table an amendment to establish that principle in law in due course.<sup>195</sup>

Lord Henley said in his response that Ofgem would consider vulnerable customers:

The Bill provides for Ofgem to maintain a cap for vulnerable consumers that is separate from the prepayment meter cap imposed by the CMA. In addition to the duty imposed on Ofgem by Clause 1(6) to protect all existing and future domestic customers on standard variable tariffs, the Gas and Electricity Acts impose duties to protect the interests of customers. In carrying out this duty, Ofgem should have regard to all the points that noble Lords have raised.<sup>196</sup>

## 8.3 House of Lords Committee Stage

Committee Stage of the Bill took place on 11 June 2018. The Government did not table any amendments but other Peers tabled 39. All amendments were either withdrawn or not moved, and the Bill passed to Report Stage unamended.<sup>197</sup>

<sup>194</sup> HL Deb 22 May 2018 vol 791 [c994](#)

<sup>195</sup> HL Deb 22 May 2018 vol 791 [c1015](#)

<sup>196</sup> HL Deb 22 May 2018 vol 791 [c1018-1019](#)

<sup>197</sup> HL, [Revised Marshalled List of Amendments to be moved in Grand Committee](#), 8 June 2018

- Opposition amendment 1 suggested adding a deadline for Ofgem to deliver the cap by 28 October, or within five months of the Act passing – whichever was sooner.
- Amendments 2, 3, 7 and 9, debated together, related to the need for energy suppliers to communicate with domestic customers about the tariff cap and any exemptions.
- Amendments 4 (tabled by Labour) and 12, 27 and 31 (tabled by the Liberal Democrats), suggested that Ofgem must ensure there was adequate protection for vulnerable customers.
- Amendment 5, tabled by Lord Mackay of Clashfern, suggested an appeal route to the CMA for suppliers objecting to the cap. Opposition amendment 6 suggested amending amendment 5 so that the exchequer paid for appeals brought by consumers.
- Opposition amendments 8, 10 and 11, were probing amendments on the limit of Ofgem’s powers under Clause 2, and to allow suppliers to be exempt from the cap.
- Amendments 13 to 15, tabled by the Liberal Democrats, and Opposition amendments 16 to 19, related to Clause 3 on the details of exemptions from the cap and suggested further details on the exemption from the cap for environmental tariffs.
- Amendment 20, tabled by the Liberal Democrats, suggested a new clause that would require the Government to produce a review of the context for the introduction of tariff cap conditions.
- Opposition amendments 21 and 24, related to Ofgem’s role in modifying and reviewing the level of the cap and suggested that Ofgem should state the reasons for any modifications and adjust the cap with regard to wholesale costs and the possible impact of leaving the Internal Energy Market as part of the Brexit process.
- Amendments 22 and 23, tabled by the Liberal Democrats and Labour respectively, suggested requiring suppliers to notify customers of the cap and its impact on them within 28 days of the cap modification being published.
- Opposition amendments 25, 26 and 28 related to the review of “effective competition” for domestic supply contracts in Clause 7. The amendments required a statement from the Secretary of State on the criteria used for the review, and also suggested a series of criteria.
- Amendments 29, 30 and 34, tabled by Baroness Neville-Rolfe, suggested changes to the effect that the cap would end in 2020.
- Opposition amendments 32, 33, and 35 sought to put in place conditions for the tariff cap to be ended, including linking the cap to the completion of the smart meter programme, and requiring any extension to be made through regulations under the affirmative procedure.
- Amendment 36 and 36A suggested new clauses that would require the Government to develop a relative tariff differential to take effect after the tariff cap is removed.

- Opposition Amendment 37 suggested limiting Ofgem’s powers to only make consequential license modifications as it considers “necessary” and not “expedient”.
- Amendment 38, tabled by the Liberal Democrats, suggested a new Clause to require Ofgem to ensure suppliers and price comparison websites present information about the cap in an objective way to allow customers to make informed choices.

## 8.4 Report Stage

Report Stage of the Bill took place in the Lords on 27 June 2018. There were eleven amendments.<sup>198</sup> All amendments were either not moved or withdrawn except Amendment 11 which went to division where it passed by 193 votes to 192.<sup>199</sup>

- Amendment 1, tabled by Lord Grantchester (speaking for the Opposition) and Baroness Featherstone (of the Liberal Democrats) was the same as Amendment 4 at Committee Stage and suggested protections for vulnerable customers.
- Amendment 2, tabled by Labour’s Lord Whitty, was the same as Amendment 2 at Committee Stage and related to the need for energy suppliers to communicate the cap to domestic customers.
- Amendment 3 moved by Lord Mackay of Clashfern, was the same as amendment 5 at Committee Stage and suggested an appeal route to the CMA for suppliers objecting to the cap. Opposition Amendment 4 was similar to amendment 6 at Committee Stage, and suggested that consumer advocates should not be disadvantaged by an appeal process.
- Amendment 5, tabled by the Liberal Democrats, was similar to Amendment 7 at Committee Stage and suggested requiring the cap to be referred to as the ‘temporary price cap’ and no other name.
- Amendment 6, tabled by Lord Whitty, was the same as Amendment 9 at Committee Stage and related to the need for energy suppliers to communicate with domestic customers about the tariff cap and any exemptions.
- Amendments 7, 8, and 9, tabled by Baroness Neville-Rolfe, were the same as amendments 29, 30 and 34 at Committee Stage, and suggested changes to the effect that the cap would end in 2020.
- Opposition amendment 10 was similar to amendments 32, 33 and 35 at Committee Stage and suggested replacing Clause 8 with a new Clause that sought to put in place conditions for the tariff cap to be ended, including requiring any extension to be made through regulations under the affirmative procedure.
- Opposition amendment 11 was similar to amendments 36 and 36A at Committee stage, and suggested that Ofgem develop a relative tariff cap to be put in place on the termination of the tariff cap.

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<sup>198</sup> HL, [Marshaled List of Amendments to be moved on Report](#), 25 June 2018

<sup>199</sup> HL Deb, 27 June 2018, Vol 792, [Division 1](#)

On amendment 11, Lord Grantchester, speaking for the Opposition said:

While accepting and applauding what the Bill achieves, it is nevertheless not quite there. It does not tackle the scourge of “tease and squeeze” by the utility companies. This amendment calls out the behaviour of energy suppliers where they tease customers to nominate a cheaper, more attractive tariff in the first instance, only to move them slowly over time to a higher tariff when the customer will be squeezed again.<sup>200</sup>

Lord Henley responded with a “triple commitment”:

I recognise the concerns of noble Lords opposite in this area and the need for action to protect consumers following the removal of the price cap, should that be necessary. In acknowledging this, I can confirm a triple commitment by the regulator on this issue. I can confirm that Ofgem has committed to assessing whether ongoing protection will be needed for vulnerable consumers beyond the end of the price cap. I can confirm that Ofgem considers that it can implement price protection for selected consumers should that be appropriate. I can also confirm that, ahead of the price cap ending, Ofgem has committed to producing a report on what additional protection might be needed, who needs that protection—we are thinking of vulnerable consumers—and what form that protection should take.<sup>201</sup>

However, Lord Grantchester said the commitments were “somewhat vague”<sup>202</sup> and tested the opinion of the House. The amendment passed by 193 votes to 192.<sup>203</sup>

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<sup>200</sup> HL Deb, 27 June 2018, Vol 792, [c209](#)

<sup>201</sup> HL Deb, 27 June 2018, Vol 792, [c215](#)

<sup>202</sup> HL Deb, 27 June 2018, Vol 792, [c217](#)

<sup>203</sup> HL Deb, 27 June 2018, Vol 792, [Division 1](#)

## 9. Commons consideration of Lords amendment

The House of Lords' amendment was considered by the Commons on 18 July 2018. The Government proposed an amendment (Government amendment 1a) in lieu of Lords amendment 1 above.

The key difference between the two amendments was that while the Lords amendment required Ofgem to develop a relative tariff differential to be put in place when the tariff cap is lifted, the Government amendment required Ofgem to carry out a review into pricing practices. The review would consider whether customers will suffer excessive tariff differentials on the termination of fixed rates, and whether vulnerable customers are in need of protection. If the review concludes that protection should be provided, the amendment states that Ofgem should act appropriately, using its existing powers.

Introducing the amendment, the Minister Claire Perry said:

There are concerns about the possible return of practices such as tease and squeeze, which is essentially enticing people onto cheap fixed tariff deals only to move them on to higher tariff deals when the fixed period ends. I agree wholeheartedly that we must seek to end those practices. However, introducing a requirement such as the Lords amendment seeks to do, which essentially commits us to an indefinite price cap, is not the appropriate solution. Instead, the Government propose amendment (a) in lieu of the Lords amendment, which will ensure that Ofgem must conduct a review before the end of the price-cap period into the pricing practices of suppliers and, in particular, identify whether there are categories of customers who are currently paying, or who may in future be at risk of paying, excessive charges for standard variable and default tariffs.<sup>204</sup>

[...]

Amendment (a) will ensure that the legacy of the Bill, of which we should be extremely proud, is not undone by a return to business as usual by those suppliers that have thought up or carry out additional practices, such as tease and squeeze.<sup>205</sup>

Dr Whitehead, speaking for the Opposition, said:

I am delighted that the Government have responded positively in the shape of their amendment in lieu, which I am pleased to say the Opposition not only were given sight of but had the opportunity to work on in detail, to ensure that between us we had a resolution to the outstanding issue from the other place. We can endorse the amendment and recommend that their lordships consider it a worthy response to the message we received.<sup>206</sup>

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<sup>204</sup> HC Deb, Domestic Gas and Electricity (Tariff Cap) Bill, 18 July 2018, Vol 645, [c458](#)

<sup>205</sup> HC Deb, Domestic Gas and Electricity (Tariff Cap) Bill, 18 July 2018, Vol 645, [c460](#)

<sup>206</sup> HC Deb, Domestic Gas and Electricity (Tariff Cap) Bill, 18 July 2018, Vol 645, [c463](#)

The Lords' amendment was replaced with the Government's amendment.<sup>207</sup>

## 9.1 Royal Assent

On 19 July 2018, the Bill received Royal Assent and became the *Domestic Gas and Electricity (Tariff Cap) Act 2018*.<sup>208</sup>

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<sup>207</sup> HC Deb, Domestic Gas and Electricity (Tariff Cap) Bill, 18 July 2018, Vol 645, [c470](#)

<sup>208</sup> HL Deb, [Royal Assent](#), Vol 792, 19 July 2018

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