



## Domestic Gas and Electricity (Tariff Cap) Bill HL Bill 168 of 2017–19

### Summary

The Domestic Gas and Electricity (Tariff Cap) Bill is a government bill that proposes a temporary price cap on certain energy tariffs for domestic consumers in Great Britain. It completed its stages in the House of Commons on 30 April 2018. The Bill was introduced in the House of Lords on 1 May 2018 and is due to have its second reading on 22 May 2018.

The Bill follows a 2016 report by the Competition and Markets Authority (CMA) which found that the large energy suppliers had market power over their customers, and as a result, consumers paid in total around £2 billion per year more for their energy in 2015 than in a competitive market. The sector's regulator, the Office for Gas and Electricity Markets (Ofgem), estimated possible average per household savings of £300 in 2017.

The cap covers all domestic 'standard variable' and 'default' tariffs. Ofgem has stated that it needs five months to implement a cap, and the Government has said that it expects the cap to be in place by the winter of 2018/19. It would apply until the end of 2020, but can be extended yearly as far as 2023 under certain conditions.

The Bill has 13 clauses. Clauses 1 to 3 define the cap, its conditions and exemptions. Clauses 4 to 5 specify the procedures which Ofgem must follow in introducing or modifying the cap. Clauses 6 to 9 require Ofgem regularly to review the level of the cap, and towards the end of the initial period, to review market conditions more widely. They also specify the circumstances in which the cap can be extended or terminated, and allow Ofgem to impose further conditions on suppliers once it has ceased to operate. Clauses 10 to 13 specify consequential changes, define terms and provide information on the Bill's geographical reach, date of implementation and short title.

The Bill has cross-party support and completed its House of Commons stages unamended. However, there were concerns from some MPs that it may harm competition, while others suggested that the form of the cap is not optimal. Regular themes in the House of Commons debates included: how best to protect vulnerable consumers; ensuring that the cap should be a temporary measure while other steps were taken to promote competition in the market; how to measure what "effective competition" in the industry is; and whether there should be a right of appeal for consumers and suppliers against the cap.

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## 1. Introduction and Background

As part of a series of liberalising measures in energy markets which began in the 1980s, domestic consumers were first given the freedom to choose their gas and electricity suppliers between 1996 and 1999.<sup>1</sup> The market that has emerged over time is dominated by the ‘big six’ companies (British Gas, Eon, EDF, Npower, Scottish Power and SSE). The combined market share of these companies, while reduced from 98 percent in the second quarter of 2013,<sup>2</sup> remained at 78 to 79 percent as at the fourth quarter of 2017.<sup>3</sup> In addition to these six there were 63 smaller suppliers.<sup>4</sup>

In 2013, the then Prime Minister, David Cameron, announced a “competition test”.<sup>5</sup> This was carried out jointly by the Office of Gas and Electricity Markets (Ofgem), the Office of Fair Trading (OFT) and the Competition and Markets Authority (CMA). Their report found that much of the market was characterised by “weak competition”,<sup>6</sup> and that there were “indications that suppliers may have had an opportunity to earn high profits”.<sup>7</sup> Following this report, Ofgem referred the market to the CMA for a full investigation. Reporting in 2016, the CMA agreed that the ‘big six’ had “unilateral market power” over their customers.<sup>8</sup> It estimated that “domestic customers as a whole paid an average of £1.4 billion a year more than they would have done under well-functioning retail markets over the period 2012 to 2015, reaching £2 billion in 2015”.<sup>9</sup> The CMA also found that the ‘big six’ had earned “excess profits” while at the same time displaying “a material degree of inefficiency”.<sup>10</sup>

In a more recent report, Ofgem concluded that in 2017, “for the typical household, a standard variable tariff costs about £300 more each year than the cheapest tariff available”.<sup>11</sup> The explanatory notes to the present Bill also express concerns that new entrants have gained market share by attracting customers through low cost initial deals, after which consumers are moved

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<sup>1</sup> [Explanatory Notes to the Domestic Gas and Electricity \(Tariff Cap\) Bill](#), p 2.

<sup>2</sup> Ofgem, ‘[Electricity Supply Market Shares by Company: Domestic \(GB\)](#)’, accessed 1 May 2018; and Ofgem, ‘[Gas Supply Market Shares by Company: Domestic \(GB\)](#)’, accessed 1 May 2018.

<sup>3</sup> Ofgem, ‘[Electricity Supply Market Shares by Company: Domestic \(GB\)](#)’, accessed 1 May 2018; and Ofgem, ‘[Gas Supply Market Shares by Company: Domestic \(GB\)](#)’, accessed 1 May 2018.

<sup>4</sup> Ofgem, ‘[Number of Active Domestic Suppliers by Fuel Type \(GB\)](#)’, accessed 1 May 2018.

<sup>5</sup> [HC Hansard, 23 October 2013, col 293](#).

<sup>6</sup> Office of Fair Trading, Ofgem and Competition and Markets Authority, [State of the Market Assessment](#), 27 March 2014, p 11.

<sup>7</sup> *ibid*, p 7.

<sup>8</sup> Competition and Markets Authority, [Energy Market Investigation: Summary of Final Report](#), 24 June 2016, p 38.

<sup>9</sup> Competition and Markets Authority, [Modernising the Energy Market](#), 24 June 2016, p 6.

<sup>10</sup> Competition and Markets Authority, [Energy Market Investigation: Summary of Final Report](#), 24 June 2016, p 47.

<sup>11</sup> Ofgem, [State of the Energy Market: 2017 Report](#), 31 October 2017, p 3.

on to “poorer value standard variable and default tariffs”<sup>12</sup> (ie the price plans customers end up on indefinitely if they do not make an active decision to change).<sup>13</sup>

Turning to possible remedies, the CMA identified that “engaged consumers”, who are “fully aware of the options available to them”, are able to make “an informed choice about the relative merits of those options” and can then switch between suppliers if they so desire, “are an essential component of well-functioning energy markets”.<sup>14</sup> However, the most recent figures (for the last quarter of 2017) show that only 19 to 20 percent of customers changed their supplier annually.<sup>15</sup> Moreover, Ofgem reports that those least able to afford higher bills are less likely to switch, and are therefore more likely to remain on the poorer value tariffs.<sup>16</sup>

Accordingly, Ofgem is putting in place a range of measures aimed at increasing switching and competition more generally.<sup>17</sup> Examples include the rollout of “smart meters”<sup>18</sup> and policies to simplify and speed up the switching process.<sup>19</sup> However, Ofgem has acknowledged that these remedies will take time to have an effect.<sup>20</sup> It has, therefore, already taken more direct action in the form of price caps for those it describes as the most “vulnerable customers”.<sup>21</sup> Initially, these covered consumers on prepayment meters (around four million customers),<sup>22</sup> but were subsequently extended to a further one million customers in receipt of the ‘warm home discount’ (a discount on energy bills of £140 per year available to certain low income groups).<sup>23</sup> The Domestic Gas and Electricity (Tariff Cap) Bill would broaden the cap to cover all consumers on ‘standard variable’ and ‘default’ tariffs.

In their manifestos for the 2017 general election, the Conservative, Labour and Scottish National parties all included proposals for a form of energy

<sup>12</sup> [Explanatory Notes to the Domestic Gas and Electricity \(Tariff Cap\) Bill](#), p 2.

<sup>13</sup> Competition and Markets Authority, [Energy Market Investigation: Summary of Final Report](#), 24 June 2016, p 23.

<sup>14</sup> *ibid*, p 52.

<sup>15</sup> Department for Business, Energy and Industrial Strategy, [‘Quarterly Domestic Energy Switching Statistics’](#), 29 March 2018.

<sup>16</sup> Ofgem, [Providing Financial Protection to More Vulnerable Consumers](#), 20 December 2017, p 4.

<sup>17</sup> Rob Salter-Church, [‘How Ofgem is Creating a More Competitive, Fairer Market’](#), Ofgem, 12 February 2018.

<sup>18</sup> Department of Energy and Climate Change, [Smart Meter Roll-out for the Domestic and Small and Medium Non-domestic Sectors \(GB\): Impact Assessment](#), January 2014, p 15.

<sup>19</sup> Rob Salter-Church, [‘How Ofgem is Creating a More Competitive, Fairer Market’](#), Ofgem, 12 February 2018.

<sup>20</sup> Ofgem, [‘Vulnerable Customer Safeguard Tariff’](#), accessed 2 May 2018.

<sup>21</sup> Rob Salter-Church, [‘How Ofgem is Creating a More Competitive, Fairer Market’](#), Ofgem, 12 February 2018.

<sup>22</sup> Ofgem, [‘Ofgem Extends Price Protection to 1 Million More Vulnerable Households This Winter’](#), 11 October 2017.

<sup>23</sup> Ofgem, [‘Vulnerable Customer Safeguard Tariff’](#), accessed 2 May 2018.

price cap.<sup>24</sup> A commitment to “tackle unfair practices in the energy market” followed in the Conservative Government’s Queen’s Speech,<sup>25</sup> and the Prime Minister, Theresa May, subsequently announced the publication of a draft bill containing a price cap in her party conference speech.<sup>26</sup>

The draft bill was published on 12 October 2017.<sup>27</sup> The Business, Energy and Industrial Strategy Committee conducted pre-legislative scrutiny, including written and oral evidence sessions with market and consumer representatives, competition experts, Ofgem and the Department for Business, Energy and Industrial Strategy. It reported on 7 February 2018. The Committee agreed with the CMA analysis outlined above, stating that “competition in the domestic energy market is not working effectively for 12 million customers”<sup>28</sup> and recommended that “Ofgem continues to look for creative ways to encourage customer engagement and switching”.<sup>29</sup> However, the Committee also criticised the regulator, stating that “Ofgem has been too slow and reluctant to use its extensive powers to step in and protect the interests of customers, especially vulnerable customers”.<sup>30</sup> The Committee supported many aspects of the draft bill, including the price cap in the form proposed, but recommended that Ofgem be required to review the level of the cap every six months.<sup>31</sup> It also recommended changes to the ‘green tariff exemption’, whereby price plans actively chosen by the customer because of their support for the generation of energy from renewable sources would not be subject to the cap: for example, they suggested exempting ‘green gas tariffs’, as well as those for green electricity, and called for “stronger definitions, standards and checks” for green tariffs.<sup>32</sup> Other recommended changes related to reducing the potential for legal challenges<sup>33</sup> and clarifying the conditions for lifting the cap.<sup>34</sup>

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<sup>24</sup> Conservative Party, [Conservative Party Manifesto 2017](#), May 2017, p 60; Labour Party, [Labour Party Manifesto 2017](#), May 2017, p 20; and Scottish National Party, [Scottish National Party Manifesto 2017](#), May 2017, p 38.

<sup>25</sup> Prime Minister’s Office, [The Queen’s Speech and Associated Background Briefing](#), 21 June 2017, p 9.

<sup>26</sup> Conservative Party, [Theresa May’s Speech to Conservative Party Conference](#), 4 October 2017.

<sup>27</sup> Department for Business, Energy and Industrial Strategy, [Draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 12 October 2017.

<sup>28</sup> House of Commons Business, Energy and Industrial Strategy Committee, [Pre-legislative Scrutiny of the Draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 13 February 2018, HC 517 of session 2017–19, p 3.

<sup>29</sup> *ibid*, p 11.

<sup>30</sup> *ibid*, p 3.

<sup>31</sup> *ibid*, p 23.

<sup>32</sup> *ibid*, pp 24–5.

<sup>33</sup> *ibid*, p 23.

<sup>34</sup> *ibid*, pp 26–7.

The Government accepted the Committee's recommendations in full,<sup>35</sup> and made amendments to the draft bill accordingly.<sup>36</sup> The revised Bill was introduced in the House of Commons on 26 February 2018.<sup>37</sup>

## 2. Summary of Clauses

The Bill contains 13 clauses, as follows:

**Clause 1** contains the requirement for Ofgem to modify the licence conditions for gas and electricity suppliers to include a price cap for domestic consumers on standard variable and default tariffs. It allows Ofgem to modify the cap conditions, and sets out the principles which Ofgem should consider in setting the conditions of the cap: for example, promoting competition, maintaining the financial integrity of suppliers and creating incentives both for suppliers to improve efficiency and for consumers to switch contracts.<sup>38</sup>

**Clause 2** requires that the tariff cap conditions describe how the cap is to be calculated. It includes a statement of restrictions on the conditions and areas where Ofgem has discretion on their content. It also requires Ofgem to consult on the methodology of the cap prior to its introduction, and includes powers to conduct subsequent consultations.<sup>39</sup>

**Clause 3** sets out exemptions from the cap, including customers already protected by the prepayment meter cap and existing or future 'vulnerable consumer' caps. It also includes the 'green tariff exemption' referred to above, and a requirement to consult on how that exemption is introduced.

**Clause 4** describes how and whom Ofgem should notify about proposed licence modifications, and requires it to consider any resulting representations made within a specified time period, which must not be less than 28 days.<sup>40</sup>

**Clause 5** sets out how the licence modifications (following the notification period above) should be published and how long after publication they can take effect, which must not be less than 56 days.<sup>41</sup>

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<sup>35</sup> [HC Hansard, 6 March 2018, col 211.](#)

<sup>36</sup> House of Commons Business, Energy and Industrial Strategy Committee, [Pre-legislative Scrutiny of the Draft Domestic Gas and Electricity \(Tariff Cap\) Bill: Government Response to the Committee's Fourth Report](#), 28 February 2018, HC 865 of session 2017–19.

<sup>37</sup> UK Parliament website, ['Bill Stages—Domestic Gas and Electricity \(Tariff Cap\) Bill 2017–19'](#), accessed 2 May 2018.

<sup>38</sup> [Explanatory Notes](#), p 6.

<sup>39</sup> *ibid*, p 6.

<sup>40</sup> *ibid*, p 7.

<sup>41</sup> *ibid*, p 7.

**Clause 6** requires Ofgem to review the level of the cap at least every six months, and to publish a statement on the outcome of the review.

**Clause 7** specifies actions to be taken by Ofgem towards the end of the initial period of the cap's application, ie 2020. It must carry out and publish a review of “whether conditions are in place for effective competition for domestic supply contracts” and, on the basis of its conclusions, recommend whether to extend the cap for a further year. If it does so, the review cycle must be repeated in 2021 and, if applicable, 2022. The final decision on whether the “conditions for effective competition” are in place falls to the Secretary of State on each occasion.

**Clause 8** clarifies that the cap will terminate at the end of 2020 if the Secretary of State decides that the conditions for effective competition are in place, or in 2021, 2022 or 2023 following the review procedure outlined in clause 7. The cap must cease at the end of 2023.

**Clause 9** concerns the point at which the cap ceases to have effect, and provides Ofgem with the power then to make related changes to licence conditions as it considers necessary or expedient.

**Clauses 10 to 13** set out consequential amendments to other legislation and define terms, geographical reach (England, Scotland and Wales (Northern Ireland has separate arrangements for energy supply)), commencement date and short title.<sup>42</sup>

### **3. Consideration of the Bill in the House of Commons**

#### **3.1 Second Reading**

Moving the Bill on 6 March 2018, the Secretary of State for Business, Energy and Industrial Strategy, Greg Clark, spoke of the significance of the issue:

On average, each household spends around £1,250 a year on energy at home—it is one of our biggest household bills—and for the poorest 10 percent of households, energy is 10 percent of their annual household expenditure.<sup>43</sup>

Mr Clark then highlighted some of the key issues affecting the domestic energy market, including the degree of consumer detriment, the market

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<sup>42</sup> [Public Bill Committee, \*Domestic Gas and Electricity \(Tariff Cap\) Bill\*, 15 March 2018, session 2017–19, 3rd sitting, col 95.](#)

<sup>43</sup> [HC Hansard, 6 March 2018, col 205.](#)

power of suppliers, and the need for the regulator to be “more agile”.<sup>44</sup> He summarised as follows:

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.<sup>45</sup>

However, he did emphasise that the cap is not the optimum long-run solution, stating that this should be “to promote competition as the best driver of value and services for consumers”.<sup>46</sup>

Responding on behalf of the Opposition, Rebecca Long Bailey, Shadow Secretary of State for Business, Energy and Industrial Strategy, said that “although the principle of this Bill is positive, I remain concerned that, as drafted, it does not go far enough”.<sup>47</sup> For example, she argued “it does not provide any direction from the Secretary of State on his preferred level of cap, which effectively passes the buck to Ofgem”.<sup>48</sup> Her belief was that the principles which Ofgem would have to use to set the cap, and review whether it should be extended past 2020, were “at best ambiguous”. She called for greater clarity on the actual level of savings for consumers, and a clearer definition of “effective competition”, which would determine in what circumstances the cap is extended.<sup>49</sup> She also wished to see particular consideration of vulnerable and disabled customers,<sup>50</sup> and called for a hard deadline to ensure that the cap was in place before winter 2018/19.<sup>51</sup>

John Penrose (Conservative MP for Weston-Super-Mare), who organised a cross-party letter on the subject,<sup>52</sup> supported the principle of the Bill, but described the difficulty in setting an appropriate cap in conditions where the wholesale price for energy can change rapidly.<sup>53</sup> He put forward the argument for a relative cap, which would set the maximum price any supplier could charge for its standard variable (default) tariff in relation to

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<sup>44</sup> [HC Hansard, 6 March 2018, col 206.](#)

<sup>45</sup> *ibid*, col 212.

<sup>46</sup> *ibid*, col 211.

<sup>47</sup> *ibid*, col 213.

<sup>48</sup> *ibid*, col 214.

<sup>49</sup> *ibid*, col 215.

<sup>50</sup> *ibid*, cols 215–6.

<sup>51</sup> *ibid*, cols 216.

<sup>52</sup> BBC, ‘[Scores of Tory MPs Join Energy Cap Call](#)’, 29 September 2017.

<sup>53</sup> [HC Hansard, 6 March 2018, col 220.](#)



the same supplier's "competitive deals".<sup>54</sup> He suggested this would address the source of the "rip-off" faced by consumers.

Speaking on behalf of the Scottish National Party, Alan Brown, SNP Westminster spokesperson on Transport, Infrastructure and Energy issues, also supported the principle of the Bill.<sup>55</sup> However, he suggested that consideration be given to allowing suppliers and consumer groups to appeal the cap to the CMA.<sup>56</sup> He also raised a series of wider issues, such as the appropriateness of the smart meter roll out strategy, the impact on bills of the cost of energy derived from nuclear power, and the need for greater energy efficiency in homes. Finally, he proposed consideration of a "not-for-profit public energy supply company".<sup>57</sup>

Some other speakers in the debate also considered the question of whether a right of appeal to the CMA should be added to the Bill. The chair of the Business, Energy and Industrial Strategy Committee, Rachel Reeves (Labour MP for Leeds) argued against this, on the grounds that it could delay or stop the cap's introduction.<sup>58</sup> However, Mark Menzies (Conservative MP for Fylde) supported it, stating that "to impose a price cap in a long-standing liberalised energy market—has never been done before. We are sailing into completely uncharted waters".<sup>59</sup>

Other issues raised included the possibility that the more complicated regulatory environment under the cap might impact the willingness of companies to invest in energy infrastructure,<sup>60</sup> and concerns over what the obligations on suppliers would be once the cap was removed, so that the market does not "go back to business as usual".<sup>61</sup>

### 3.2 Committee Stage

A public bill committee examined the Bill over the course of three sittings. In the first sitting, the Committee took evidence from three smaller energy suppliers, Ofgem and three groups representing consumers (this evidence is summarised in section 4 of this briefing).<sup>62</sup> The second and third sessions consisted of line-by-line scrutiny of the Bill. A number of probing amendments were tabled by opposition parties. All but one were withdrawn before division.

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<sup>54</sup> [HC Hansard, 6 March 2018, col 222.](#)

<sup>55</sup> *ibid*, col 222.

<sup>56</sup> *ibid*, col 224.

<sup>57</sup> *ibid*, col 225.

<sup>58</sup> *ibid*, col 227.

<sup>59</sup> *ibid*, col 234.

<sup>60</sup> *ibid*, col 263.

<sup>61</sup> *ibid*, col 229.

<sup>62</sup> [Public Bill Committee, Domestic Gas and Electricity \(Tariff Cap\) Bill, 13 March 2018, session 2017–19, 1st sitting.](#)

The amendment which was divided on was moved by the Shadow Minister for Energy and Climate Change, Alan Whitehead. It proposed that greater clarity be provided on the criteria by which Ofgem determine whether “effective competition” is in place.<sup>63</sup> In reply, the Minister for Energy and Clean Growth, Claire Perry, quoted the Business, Energy and Industrial Strategy Committee’s comments that “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>64</sup> Ms Perry said the amendment might restrict that expertise and ability, would be overly prescriptive in a dynamic and changing market, and may lead to suppliers treating improved competitiveness as a box-ticking exercise.<sup>65</sup> Moreover, she stated that the conditions will be made explicit by Ofgem when first consulting on how the cap should be set.<sup>66</sup> The amendment was defeated by nine votes to eight.

The withdrawn amendments included one which sought to tighten the definition of the ‘green tariff exemption’, so that it applied only to tariffs for energy derived “wholly” from renewable sources to make it harder to avoid the cap.<sup>67</sup> The Minister replied that the Department for Business, Energy and Industrial Strategy would conduct further research to look at what green tariffs were on the market and what the additional costs for them were.<sup>68</sup>

Two further withdrawn amendments considered the situation if the cap was extended to 2023 and then expired. One of these sought to require the Government to publish (at the point of expiration) a report on what further measures might be taken to promote competition,<sup>69</sup> while the other would have required the Government to give a formal opinion on whether it was appropriate to introduce further legislation for a new cap going beyond the date of the Bill.<sup>70</sup> On the latter, the Minister argued against on the basis that there was a “strong consensus in the Committee” that the cap should be temporary, and that the proposal “creates disincentives and uncertainty in a market where we have to have certainty to generate investment”.<sup>71</sup>

In addition, the Committee discussed a proposed new clause to introduce, at whatever date the cap was lifted or expired, a “relative tariff differential”, echoing the relative cap raised by John Penrose at second reading.<sup>72</sup> The

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<sup>63</sup> [Public Bill Committee, \*Domestic Gas and Electricity \(Tariff Cap\) Bill\*, 13 March 2018, session 2017–19, 2nd sitting, col 73.](#)

<sup>64</sup> *ibid*, col 72.

<sup>65</sup> *ibid*, cols 77–8.

<sup>66</sup> *ibid*, col 80.

<sup>67</sup> *ibid*, cols 54–5.

<sup>68</sup> *ibid*, col 63.

<sup>69</sup> [Public Bill Committee, \*Domestic Gas and Electricity \(Tariff Cap\) Bill\*, 15 March 2018, session 2017–19, 3rd sitting, cols 89–90.](#)

<sup>70</sup> *ibid*, cols 85–6.

<sup>71</sup> *ibid*, cols 86, 88.

<sup>72</sup> *ibid*, col 100.

Minister referred back to that earlier debate, and to the report of the Business, Energy and Industrial Strategy Committee, concluding that the evidence on balance was against the relative price cap, as it “would simply be gamed [...] companies will simply lift up their skirts and raise their whole tariff”.<sup>73</sup> Again, this amendment was withdrawn without division.

### 3.3 Report Stage and Third Reading

#### **Report Stage**

Report stage and third reading in the House of Commons were held on 30 April 2018. The themes of the amendments at report stage largely reflected those at committee stage. There were no Government amendments and only one Opposition amendment (proposing a new clause to be added to the Bill) was moved to a division. In moving the Opposition amendments, Alan Whitehead reiterated that “we do not want to overthrow or weaken the Bill [...] 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>74</sup>

The amendment moved to a division sought to introduce a new clause to mandate a form of relative cap, or relative tariff, once the absolute cap in the Bill had been lifted or expired—a subject which had already been raised at second reading and committee, as summarised above. Speaking to the proposed new clause, Mr Whitehead said that its aim was to “narrow the gap between tariffs after an absolute price cap has been in place so that companies cannot game the market by switching tariffs”.<sup>75</sup> The Minister for Energy and Clean Growth, Claire Perry, responded that this represented “effectively perpetual government intervention in the energy market”, for which, she believed, there was not support in the House.<sup>76</sup> The amendment was defeated by 288 votes to 125.

In moving one of the withdrawn amendments, Mr Whitehead sought clarification on the position of vulnerable customers on the existing safeguard tariffs, stating his preference that, for these customers, the existing tariff should continue—as moving to the new cap might cause their bills to rise by “more than £30”.<sup>77</sup> The Minister responded by saying that while she believed Ofgem’s powers in this area were sufficient, and therefore did not want to amend the Bill, “I will take it away and consider it to see whether there are other messages that we might convey to Ofgem to ensure that this extremely valuable point is not missed”.<sup>78</sup> On a similar amendment, also

<sup>73</sup> [Public Bill Committee, Domestic Gas and Electricity \(Tariff Cap\) Bill, 15 March 2018, session 2017–19, 3rd sitting, col 104.](#)

<sup>74</sup> [HC Hansard, 30 April 2018, col 73.](#)

<sup>75</sup> *ibid*, col 80.

<sup>76</sup> *ibid*, col 98.

<sup>77</sup> *ibid*, col 77.

<sup>78</sup> *ibid*, col 100.

withdrawn, James Heapey (Conservative MP for Wells) requested that the Government give further consideration to the issues around vulnerable consumers before the Bill was tabled in the House of Lords.<sup>79</sup>

### **Third Reading**

Opening the debate at third reading, the Secretary of State for Business, Energy and Industrial Strategy, Greg Clark, reiterated the Government's view that "for 11 million customers on standard variable tariffs, the market is not working", and that "the Bill, along with other measures", will help to end overpricing for customers who have remained loyal to their energy providers.<sup>80</sup>

Responding for the Opposition, Shadow Secretary of State for Business, Energy and Industrial Strategy, Rebecca Long Bailey, supported the Bill, while expressing regret that measures had not been introduced sooner.<sup>81</sup> She agreed that the Bill was not a complete solution to the problems in the market, stating that "the cap is simply a sticking plaster. I hope that the Government will now act speedily and listen to the comments of Members about the wider reforms that our energy market requires".<sup>82</sup>

The Scottish National Party Westminster spokesperson on Transport, Infrastructure and Energy issues, Alan Brown, also supported the Bill. He emphasised the need for adequate safeguards for vulnerable customers, and called for further Government support for home energy efficiency schemes and onshore renewable energy generation.<sup>83</sup>

The Bill was given a third reading without further division.

## **4. External Evidence**

Both the Business, Energy and Industrial Strategy Committee and the public bill committee took evidence from expert witnesses, including energy suppliers, consumer representatives, competition experts, Ofgem and the Department itself.

At the Business, Energy and Industrial Strategy Committee, representatives of the 'big six' expressed opposition to a market-wide cap such as that proposed in the Bill, arguing that "customers who do not engage with the

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<sup>79</sup> [HC Hansard, 30 April 2018, cols 90–1.](#)

<sup>80</sup> *ibid*, col 105.

<sup>81</sup> *ibid*, cols 106–7.

<sup>82</sup> *ibid*, col 108.

<sup>83</sup> *ibid*, cols 108–9.

market should expect to pay more for their energy”.<sup>84</sup> However, the smaller suppliers who submitted evidence at both the Business, Energy and Industrial Strategy Committee and the public bill committee all supported the cap, with some arguing for a combination of both an absolute and a relative cap.<sup>85</sup> One of these smaller suppliers, Octopus Energy, stated its view that the cap envisaged in the Bill would not stifle competition, as “underneath any realistic cap, there is still plenty of room for competition”.<sup>86</sup> It also did not believe that the cap would reduce investment in the sector. There was disagreement between the smaller suppliers on the desirability of the ‘green tariff exemption’.<sup>87</sup>

Ofgem supported the absolute cap set out in the Bill, and (along with the Department for Business, Energy and Industrial Strategy) opposed a relative cap.<sup>88</sup> Ofgem believed a relative cap would lead to further complications and that it effectively involves “telling a company it cannot charge a low price”.<sup>89</sup> It stated that setting a cap would be a difficult task, but that it was an “absolute priority” for Ofgem.<sup>90</sup> It spoke about the consultation process, which would be aimed at establishing a transparent methodology. It was planned to ensure the cap could be in place within five months, whilst still meeting all statutory obligations and minimising the risk of a legal challenge.<sup>91</sup> Ofgem would also look carefully at the position of vulnerable customers, including whether the existing price caps should be retained and whether protections in this area might be necessary after the removal of the full cap.<sup>92</sup>

The consumer representatives at the public bill committee were from Citizens Advice, Which? and National Energy Action. Their overall view was that protections for vulnerable customers should be a priority, and the Bill would, in the words of Citizens Advice, “provide significant protection to those consumers for the lifespan of the legislation”.<sup>93</sup> However, Citizens Advice and Which? both said that there might be a need for further protections after 2023, possibly via an enduring cap.<sup>94</sup> The consumer groups did not support a relative cap.<sup>95</sup>

<sup>84</sup> House of Commons Business, Energy and Industrial Strategy Committee, [Pre-legislative Scrutiny of the Draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 13 February 2018, HC 517 of session 2017–19, p 16.

<sup>85</sup> [Public Bill Committee, Domestic Gas and Electricity \(Tariff Cap\) Bill, 15 March 2018, session 2017–19, 1st sitting, cols 8–11.](#)

<sup>86</sup> *ibid*, col 4.

<sup>87</sup> *ibid*, cols 5–8.

<sup>88</sup> House of Commons Business, Energy and Industrial Strategy Committee, [Pre-legislative Scrutiny of the Draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 13 February 2018, HC 517 of session 2017–19, pp 18–9.

<sup>89</sup> [Public Bill Committee, Domestic Gas and Electricity \(Tariff Cap\) Bill, 15 March 2018, session 2017–19, 1st sitting, col 20.](#)

<sup>90</sup> *ibid*, col 14.

<sup>91</sup> *ibid*, cols 14–6.

<sup>92</sup> *ibid*, col 18.

<sup>93</sup> *ibid*, col 23.

<sup>94</sup> *ibid*, col 23.

<sup>95</sup> *ibid*, cols 29–30.

The Business, Energy and Industrial Strategy Committee also considered whether the cap would affect competition in the light of a cap system in Northern Ireland. The Committee found that the parallels were limited due to differences in the size and development of the markets, but the tentative conclusion was, as the Consumer Council said, “regulation and competition can usefully co-exist”.<sup>96</sup>

## 5. Further Reading

- House of Commons Library, [The Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 26 April 2018
- BBC, [‘British Gas Price Rise Unjustified, Says Government’](#), 10 April 2018

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<sup>96</sup> House of Commons Business, Energy and Industrial Strategy Committee, [Pre-legislative Scrutiny of the Draft Domestic Gas and Electricity \(Tariff Cap\) Bill](#), 13 February 2018, HC 517 of session 2017–19, p 20.