

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

27th Report of Session 2017–19

Domestic Gas and Electricity (Tariff Cap) Bill

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chairman)

[Lord Flight](#)

[Lord Jones](#)

[Lord Lisvane](#)

[Lord Moynihan](#)

[Lord Rowlands](#)

[Lord Thomas of Gresford](#)

[Lord Thurlow](#)

[Lord Tyler](#)

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprrcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103 and the fax number is 020 7219 2571. The Committee's email address is hldelatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Twenty Seventh Report

DOMESTIC GAS AND ELECTRICITY (TARIFF CAP) BILL

1. The Bill provides for the imposition of caps on the rates that gas and electricity suppliers are able to charge domestic customers in Great Britain who are on standard variable or default rates. The Department for Business, Energy and Industrial Strategy has provided the Committee with a Delegated Powers Memorandum.¹

Clause 1—Cap on standard variable and default rates

2. The Bill is based on a single delegated power. Clause 1 requires the Gas and Electricity Markets Authority (Ofgem) to modify the standard conditions of the supply licences of gas and electricity suppliers so they include conditions which impose a cap on all standard variable and default rates which may be charged under domestic supply contracts (“tariff cap conditions”). The other provisions of the Bill supplement this core power.
3. The Department explains in the memorandum² why a delegated power is being used to set the tariff cap conditions, and why the exercise of that power is not subject to Parliamentary scrutiny:
 - A key part of the tariff cap conditions will be the methodology for calculating the tariff cap. It will be unavoidably detailed and complex which makes it inappropriate for inclusion on the face of the primary legislation. Also, there needs to be flexibility to change the tariff cap conditions if market conditions change. Clause 6 of the Bill contains provision requiring Ofgem to carry out a review of the tariff cap conditions every 6 months.
 - The approach in the Bill is consistent with the general approach to gas and electricity regulation under which the majority of obligations imposed on suppliers are contained in their supply licences, with the power to make modifications to the licences generally conferred on Ofgem as the regulator. The absence of any Parliamentary scrutiny for modifications which impose tariff cap conditions is consistent with the approach elsewhere in legislation.
4. We take the view that the Department made a reasonable case for providing for the tariff cap conditions to be set by means of a delegated power. We also consider it reasonable for that power to be conferred on Ofgem without its exercise being subject to Parliamentary scrutiny.

Clause 7—Review of competition for domestic supply contracts

5. The Bill does not provide for the tariff cap conditions to last indefinitely. Clause 8 provides for the tariff cap conditions to cease to have effect at the end of 2020, 2021, 2022 or 2023. The precise year at the end of which the tariff cap conditions will cease to have effect is determined by the process for reviewing competition for domestic supply contracts set out in clause 7.

1 Department for Business, Energy and Industrial Strategy, Domestic Gas and Electricity (Tariff Cap) Bill [Delegated Powers Memorandum](#)

2 See paragraphs 12–19 of the Delegated Powers Memorandum.

6. Clause 7 requires Ofgem to carry out an annual review into whether conditions are in place for effective competition for domestic supply contracts. The first such review has to be carried out in 2020 and is then to be carried out in each of the following years until at the latest 2022. Ofgem is required to publish a report of its review, which must include a recommendation as to whether the tariff cap conditions should continue for the next year. Clause 7(5) requires the Secretary of State to consider the report and to publish a statement setting out whether the Secretary of State considers that conditions are in place for effective competition.
7. Where the Secretary of State's statement in any of the years 2020 to 2022 is to the effect that the conditions are in place for effective competition, the tariff cap conditions will cease to have effect for the following and subsequent years. There is no provision in the Bill for Parliamentary scrutiny of the Secretary of State's decision under clause 7(5).
8. Clause 7(5) is explained in the Delegated Powers Memorandum. The Memorandum states³ that it is the Government's intention that the tariff cap conditions should only remain in place for a temporary period until effective competition for domestic supply contracts is in place. It goes on to say that:
- “This power provides an efficient means for the Secretary of State to determine, based on up-to-date information and advice from Ofgem, whether the tariff cap conditions should remain in force for another year. No Parliamentary scrutiny is proposed since the statement will be a matter of judgement for the Secretary of State based on Ofgem's report”.
9. We are not convinced by these arguments. Although the Department states in the Memorandum that clause 7(5) does not entail the exercise of a legislative power, it is clear that the substantive effect of the exercise of the power will be legislative since it will determine the period of time for which tariff cap conditions imposed under the Bill are to have effect. The Secretary of State's decision will in practice determine the length of time for which the Bill as a whole has effect because the provisions of the Bill will apply only for so long as there is a requirement on Ofgem to impose tariff cap conditions on gas and electricity supply licences.
10. **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.**

Clause 9—Consequential modification of licence conditions

11. Clause 9 allows Ofgem to make modifications to the standard conditions of supply licences in consequence of the tariff cap conditions ceasing to have effect. The power is framed so that Ofgem may make such modifications as they consider “expedient or necessary”.
12. **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.**

3 See paragraphs 37 and 38 of the Delegated Powers Memorandum.

APPENDIX 1: MEMBERS AND DECLARATIONS OF INTEREST

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 16 May 2018, Members declared no interests.

Attendance

The meeting on the 16 May 2018 was attended by Lord Blencathra, Lord Flight, Lord Jones, Lord Moynihan, Lord Thomas of Gresford, Lord Thurlow and Lord Tyler.