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GENERAL COMMITTEES

Public Bill Committee

DOMESTIC GAS AND ELECTRICITY (TARIFF CAP) BILL

Second Sitting

Tuesday 13 March 2018

(Afternoon)

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Saturday 17 March 2018

The Committee consisted of the following Members:

Chairs: Sir Edward Leigh, † Siobhain McDonagh

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Brown, Alan *(Kilmarnock and Loudoun)* (SNP)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Donelan, Michelle *(Chippenham)* (Con)
† Flint, Caroline *(Don Valley)* (Lab)
† Ford, Vicky *(Chelmsford)* (Con)
† Gaffney, Hugh *(Coatbridge, Chryston and Bellshill)* (Lab)
† Grant, Bill *(Ayr, Carrick and Cumnock)* (Con)
† Harris, Rebecca *(Lord Commissioner of Her Majesty's Treasury)*
† Heappey, James *(Wells)* (Con)
† Kerr, Stephen *(Stirling)* (Con)
† McCarthy, Kerry *(Bristol East)* (Lab)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Perry, Claire *(Minister for Energy and Clean Growth)*
† Robinson, Mary *(Cheadle)* (Con)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)

Farrah Bhatti, Nehal Bradley-Depani, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 13 March 2018

(Afternoon)

[Siobhain McDonagh *in the Chair*]

Domestic Gas and Electricity (Tariff Cap) Bill

2 pm

The Chair: We now begin line-by-line consideration of the Bill. Today's selection list, which is available in the Committee Room, shows how the amendments selected have been grouped for debate—generally because they relate to the same or similar issues. Please note that decisions on amendments will take place not in the order in which they are debated, as shown on the selection list, but in the order in which they appear on the amendment paper. Decisions on each amendment will be taken when we reach the relevant clause. I will use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules after debate on the relevant amendments.

Clause 1

Cap on standard variable and default rates

Dr Alan Whitehead (Southampton, Test) (Lab): I beg to move amendment 3, in clause 1, page 1, line 3, leave out

"after this Act is passed"

and insert

"and no later than 30 November 2018".

It is a pleasure to serve under your chairmanship, Ms McDonagh. Let me start us off this afternoon with what I hope will be the first of many amendments that the Minister and other Conservative Members think so reasonable and constructive that they feel impelled to accept them.

Amendment 3 relates to our consensus that an energy price cap needs to be agreed across the board and brought in as soon as possible. Without presuming to speak on behalf of all Committee members, I believe that we are all united in our support for a temporary cap to allow the market to be set right. We hope that by the time the cap comes to an end, we will be reasonably assured that the market is working much better and that the circumstances that led to the cap's introduction will not be repeated further down the road.

The Committee is united on our endeavour this afternoon. We want to finish our deliberations, get the Bill passed as speedily as possible, and have it on the statute book by the summer—hopefully the early summer—so that Ofgem can execute it. We heard this morning from Ofgem's chief executive, Dermot Nolan, about the processes that Ofgem will be required to undertake to ensure that the price cap is properly implemented. The Bill requires it to have regard to a number of concerns, which I am sure we will discuss in our deliberations.

Essentially, Ofgem has the task of ensuring that the provisions in the legislation for the implementation of the price cap are legally waterproof, that the measures in the Bill around Ofgem's responsibility for having regard to those various pillars are properly carried out, and that Ofgem has the arrangements in place that it will need to look periodically at what is happening to wholesale prices and to produce reports and proposals for how those wholesale price changes can be taken into account under the umbrella of the cap. Ofgem has to get a whole range of things right before the cap is properly in place. It is proper and right that Ofgem takes a reasonable amount of time to ensure that happens.

We heard this morning that Ofgem already has some consultations and discussions under way in anticipation of the Bill shortly being on the statute books, but there are a number of statutory things that it has to do and a number of further consultations that it has to undertake. We were told this morning that all this is about five months' work as far as Ofgem is concerned. 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 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.

To get this price cap in place not just over winter but as winter comes in—absolutely on the nail, given the time that Ofgem says it will need to get this Bill into shape and to get an operational cap—we will clearly want to ensure that that timetable is adhered to as closely as possible. That is why I asked Dermot Nolan this morning whether he thought the five-month period was an exact period, a maximum period or an approximate period. What was his view? He said that they would do their best to ensure it was within that five-month period. However, I did not get the impression from that evidence this morning that Ofgem was saying to us, "We can absolutely stand by the idea that there is a maximum possible period of that amount of time for us to do our work."

James Heappey (Wells) (Con): My reading of Mr Nolan's evidence this morning was somewhat different. I thought that he very much felt this could be delivered within five months. The only note of caution he sounded was over a legal challenge. I am not sure that any timeline that we prescribe in legislation would prohibit such a legal challenge from one of the current large suppliers.

Dr Whitehead: The hon. Gentleman is absolutely right. If there do turn out to be legal challenges, despite our best efforts in this Committee to ensure that the Bill is as watertight as it can be, it is conceivable that the whole timetable of a price cap could be seriously derailed—I think we have all understood that, as far as the process is concerned. Indeed, one reason there is legislation, rather than Ofgem going down the road of a price cap under its own steam, which it has been claimed at various times could have been the case, is to ensure that, as far as possible, the proposals and what Ofgem puts in

place around them, are legally watertight. That comes in two parts. First, there is the question of ensuring that the legislation is as watertight as possible, but there is also a duty on Ofgem to ensure that, in translating the instruments in the legislation into a workable price cap, it takes measures that are also legally watertight, so that it does not slip up after we have done the good work in Committee of making the legislation as watertight as possible.

Vicky Ford (Chelmsford) (Con): In the evidence session this morning, I clearly asked whether Ofgem would be ready for next winter, and Ofgem was not only clear that it would be ready for next winter, but outlined the very robust, transparent and deep process being undertaken to ensure that.

Dr Whitehead: Yes, indeed. The hon. Lady will recall that, in answer to my question, Ofgem went through the processes it is statutorily required to undertake, together with an estimate of the time that that would take. Between us, we were able to get on record a pretty clear note of intention from Ofgem that, subject to the possibility that the whole thing could come off the rails because of an unexpected legal intervention, it would bend its efforts to ensure that the process of five months was adhered to.

The amendment seeks to go a small step further and to place on the face of the Bill an indicative time by which Ofgem should have done its business, to ensure that the working price cap becomes reality under the Act. The amendment does not seek to interfere with, foreshorten or undermine what Ofgem is trying to do, quite properly, to make the Bill a reality.

Vicky Ford: I am sorry, but I read the amendment completely differently. If we have all agreed that Ofgem has made it clear that it will go through the process to come up with the right level of cap—taking the right level of evidence—by next winter, and that the only thing that could delay it would be a legal judgment, why would we even suggest, through the amendment, that it may not be ready? That throws unnecessary doubt on the process, which would still be subject to a legal challenge were the amendment there. I think it would just add confusion and doubt.

Dr Whitehead: I fully accept the hon. Lady's reading of the amendment, but I assure her that that is not its purpose.

2.15 pm

Caroline Flint (Don Valley) (Lab): Does my hon. Friend agree that it is quite useful to discuss this at the start of our Bill consideration, because our constituents will want to know that, in truth and earnest, we are going to push, in whatever way we can, to ensure—let us hope we do not have as bad a winter as we have had in recent weeks—that we get this cap into place? It is worth while to have this discussion. I hope the Minister can give reassurance in her response that it is up to all our endeavours to ensure that the cap is in time for when those winter bills drop on our mats.

Dr Whitehead: I thank my right hon. Friend for that intervention underlining the thrust of what I have to say. 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. To put in the Bill what we actually want to happen clarifies matters for the future, rather than spreading confusion. We will have declared—I use that word because we cannot entirely proof ourselves against the possibility of an unexpected legal challenge, although, if I can be congratulatory to the Bill's constructors for a moment, they have done a good job of ensuring that it is as legally unchallengeable as it can be—

Stephen Kerr (Stirling) (Con): I perfectly understand where the hon. Gentleman is coming from, because Ofgem's performance over the last few years has been less than inspiring. Having said that, both sides of the House have said, and we heard it again from Ofgem today, that we know what our destination is with the Bill. I cannot understand what we gain by putting a date in it, beyond what we have already amassed in terms of collective evidence and collective will that we have to see this enacted before next winter.

Dr Whitehead: I fully accept that there are different interpretations of the best way forward within the overall agreed framework of where we want to go. Perhaps hon. Members take the perfectly reasonable, honourable and thought-out view that we have got what we want to say in the Bill, we have heard what Ofgem thinks it can do and we are happy to leave it there. My view is that it would be helpful to properly encapsulate our position on the Bill by saying in it what we want to happen—by setting an out-date for the considerations that Ofgem has to undertake before the cap becomes real.

Although I do not doubt for a moment the bona fides of Ofgem, or the sincerity of what Dermot Nolan said this morning, nevertheless, if we are not as clear as we can be about what we want to put forward in the Bill, it is conceivable—no more than conceivable—that someone could say, "Actually, we said five months, but some unexpected circumstances have cropped up—not a legal challenge, but other things—so we can push that further down the line. We'll have to say that we are a bit sorry about that, but that's how it is." I do not want that circumstance to be even remotely in the minds of anyone at Ofgem over the next few months.

Kerry McCarthy (Bristol East) (Lab): Is it not also a fact that in 2012, under the last Government, the then Prime Minister promised that he would force companies to switch customers to the lowest tariff? When he was talking about the "green crap" on energy bills, he also promised to use regulatory measures to reduce energy bills for consumers. As we have already heard, if we had introduced measures after last year's election, when there was a manifesto commitment to do it, customers would have been protected in the cold weather we have just had. So I think it is only fair that people have some concerns about whether this is actually going to happen, when there have been so many false promises in the past.

Dr Whitehead: My hon. Friend makes a powerful point. Today, thinking about the cap, we are not in such a position that we can look back with complete equanimity and say, "Actually, everything that could have been done to hasten the cap, once it was decided that there

[Dr Whitehead]

should be a cap, has been done over that period." There has been quite a bit of equivocation since, for example, the suggestion at the time of the Conservative manifesto for the last election that there should be a cap. It made an appearance but then went through a period when there seemed to be some resiling from that particular commitment.

As hon. Members will recall, there were indeed suggestions and discussions that Ofgem, in its own right, could and should undertake a cap: a cap would need no legislation from Government, so Ofgem could go ahead and put one in place. Indeed, as I recall it, a letter to Ofgem from the Secretary of State during the summer in effect said that. At the time, as hon. Members will also recall, Ofgem came back fairly publicly to say, "We are not convinced that we have the powers to do this," or rather, "We may technically have the power to do this, but we wouldn't be proof against legal challenge were we to go ahead and introduce a price cap administratively without the back-up of legislation from Parliament."

As hon. Members will again recall, it was at that point—I think it was at the Conservative party conference—that the Prime Minister reasserted the fact that she wanted a price cap. Perhaps we will come on to what she said about the consequences of that price cap in a moment, but she certainly said at Conservative party conference that she wanted a price cap and that, in effect, legislation was to be introduced to produce one. So, arguably, we could say that, had we got on with legislation from the moment that the idea that there should be a price cap was put forward, we would not be sitting here today. Instead, we would be contemplating a price cap having been introduced, probably this autumn.

James Heappey: The hon. Gentleman makes his case well, but I remain to be convinced that putting in a deadline makes a difference. The biggest pressure that Ofgem will be operating under once we clear the Bill through Parliament—surely the biggest variable in the whole process—is an enormous amount of political pressure. Given that the hon. Gentleman does not propose a sanction against Ofgem should it miss the deadline, one would imagine that the political pressure Ofgem will be under from both sides of the House to deliver the cap is more than enough to deliver it very quickly. He will remember that the last time that there was a notice of insufficient margin, with the price spike that it brought, was in the middle of November 2015, so a date of the end of November seems somewhat arbitrary. We want it done as quickly as possible.

Dr Whitehead: The hon. Gentleman's point about the amendment not suggesting any sanctions on Ofgem is an interesting one. Were that suggestion put into operation, it would require about six more pages of amendments to secure a sanctions regime against Ofgem, but that is not how Ofgem works. In effect, Ofgem has a requirement to do things—in its charter of existence, in legislation—and it is instructed by legislation and not, by the way, in final and legal terms by what a Minister may or may not write to it on a daily basis. It is supposed to go along with what is in legislation. That was the problem that arose with the letter from the Secretary of State to Ofgem when the idea of a legislatively based price cap appeared to be up in the air.

Ofgem made the point that it would prefer, or that it thought it necessary, to have some kind of legislation on the statute book to guide and advise it—or, more than that, to be a framework for its carrying out of its responsibilities. The Bill requires Ofgem to do all sorts of things but contains no sanction. It does not set out what would happen to Ofgem—whether Dermot Nolan would be taken out, and something would be done to him—if it did not do all that is specified. The point is that there are requirements on Ofgem under its charter from Government.

The Chair: Order. May I suggest to the shadow Minister that we have an awful lot of amendments to deal with this afternoon, and sanctions are slightly off track.

Dr Whitehead: Yes, I am happy to accept your guidance, Ms McDonagh. I am being enticed down the road I have taken by hon. Friends and colleagues, and of course as far as I am able I will not give way to temptation.

The central point, on which I want to end, is that we do not need a lot of sanctions to get Ofgem to do what it is supposed to do under legislation; but if something is in legislation it is pretty sure that it will get done, because that is how it works. An out date in the Bill would be a little further help in making sure that Ofgem would do what it has said it will do to put the measure into practice. Hon. Members will have a view on how important or necessary that approach is, but I do not think it can be gainsaid that putting the date into the Bill would provide a little further assurance.

That is the basis for the amendment. I hope that Members will support it, if they decide they want that further assurance, but I am sure that the Minister will come up with persuasive reasons why another view could be taken. We will listen with interest.

The Minister for Energy and Clean Growth (Claire Perry): It is a pleasure to serve under your chairmanship, Ms McDonagh. I thank all members of the Committee. We have a highly qualified Committee here to deliver, over the next few days, what we all want: a legally watertight price cap Bill that enables some of the more egregious pricing structures in the energy market to be addressed.

The amendment moved by the hon. Member for Southampton, Test is intended, as he said, to put a hard-stop deadline on the implementation of the Bill. I understand his reasons exactly. We have discussed the Bill and are broadly in agreement about what we are trying to achieve. I agree that it is imperative for the measure to be in place before the end of the year. People say "before next winter", and that somehow rolls into 2019. I want it on the statute book and implemented by the end of the year—ideally well before 31 December—because we owe it to the customers whom we are trying to protect. We have all been clear about that, and it is the message delivered in multiple debates and in multiple communications with Ofgem and suppliers. I shall speak in a moment about the possible risks of accepting the amendment.

Something else that is refreshing is that all parties have committed to getting the Bill through. I do not suggest that there will not be strenuous attempts to amend it, but I intend that it should be sent up to the

other place in good order, so that it can go through the Lords effectively and we can get what we want, which is for the Bill to be in place and in good shape by the summer recess.

It was helpful to have the witness sitting this morning. We heard Ofgem say that, once we have given the go-ahead on Royal Assent, it will have to take a whole series of statutory measures, including developing the cap. Of course, some of that work has already started, quite rightly. We do not need to do this sequentially; we can do it in parallel. We are then going through a fairly transparent consultation process to make sure that any possible objections or concerns about the tests we have set out in the Bill on competition, switching and maintaining investment are met. There is a statutory duty to have a consultation period. We heard this morning that that will take five months, albeit with some things starting already and processes going on in parallel.

2.30 pm

I am concerned that we make the cap as robust and watertight as possible. I am not sure that we have amendments on possible alternative routes of appeal, but we can certainly talk about that. We need to shut down routes by which this cap could be seen off. My concern is that if we put a date on the face of the Bill and for some reason a process of challenge is brought forward by the suppliers over the Ofgem methodology, or somehow the price cap implementation deadline proposed by the hon. Gentleman is missed—then what? I do not know; but we would certainly be back in unknown legal territory where we had not met the deadline, and therefore our strong desire to get pedal to the metal and get the cap implemented would take a real setback.

I think we all share the aspiration that this Bill should be passed quickly. We want to get it through both Houses of Parliament in as good a shape as possible. However, I am concerned, first, that by putting a hard stop date in the Bill, we may constrain the critical process that Ofgem has to go through to set the cap at the right level, and secondly, that we potentially increase the risk of a successful challenge to the cap once it is structured and put in place. So I was reassured to have heard from Ofgem again this morning. Ofgem wrote to the Chair of the Select Committee, who did an excellent job in pre-legislative scrutiny, setting out its strong belief that it understands the need to do this and can complete the necessary analytical processes. 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. With that explanation I hope I have persuaded the hon. Gentleman to withdraw his amendment —though I appreciate that his amendments are tabled in the spirit of trying to improve the legislation.

Alan Brown: It is a pleasure to serve under your chairmanship, Ms McDonagh. I was not originally going to talk, but 25 minutes into the Bill Committee my frustrations kicked in. It felt like 25 minutes of almost agreeing with the amendment. We have got an amendment with a date and everybody agrees that it is a reasonable deadline and timeframe. We are seeming to agree that Ofgem has committed to doing this in five months. I thought that Dermot was absolutely resolute in the evidence session in saying "We will do it in five months", but his colleague had slightly more caveats and was slightly more restrained.

I cannot see any problem in getting a deadline that puts a marker down: humans work better to a deadline. It sends a message to our constituents and the people out there that we have this clear deadline. I listened to the comments from the Minister and I understand that she is saying that she wants to minimise any risks going forward in getting the Bill implemented. What if there is a legal challenge and then the deadline becomes a possible issue? But given that we have already agreed that we think this is a robust Bill that has been well written and well crafted, I think we have got to have confidence that it is robust. Having a date on the face of the Bill will make it that bit more robust and watertight.

Claire Perry: I appreciate the hon. Gentleman's support, and I am delighted that we have cross-party support. I think we are all agreed that this is a robust Bill. I thank the hon. Gentleman for sharing his tribute to the parliamentary team, who have done a good job drafting it.

Stephen Kerr: I would like to pick up on the comments made by the hon. Member for Kilmarnock and Loudoun about the robust performance that we saw from Ofgem this morning. Frankly, that could be, in part, because when Ofgem appeared before the Select Committee scrutinising the legislation, it was less than robust—the witness was less than robust. I think he has got the message: he cannot be neutral on this; he has to be robust. We saw that today and that gives me great confidence that we will see this Bill enacted in the way we envisage.

Claire Perry: I defer to my hon. Friend's experience. He sat through this process, doing an excellent job on the Business, Energy and Industrial Strategy Committee, and has seen the evolution of this robustness.

In response to the hon. Member for Kilmarnock and Loudoun, I think the Bill is absolutely robust. We are agreed: we have a tight, well-drafted Bill that does not allow for random amendments. The challenge is that the actual job of setting the price cap has, quite rightly, been given to the independent regulator. We have to go through a process of transparency and confidence building, if you like, with participants in the market, so that the number is set at the level we want to deliver maximum benefits to consumers without the dis-benefits of driving investment out of the industry, or indeed providing a less competitive environment. That is why I have been persuaded that Ofgem gets the deadline, believes it has the right to do it, but has asked for a period in which, quite rightly, it can go through a very transparent process. The more transparency the better, because that will head off any possible legal challenge. I wish we did not have to be in the world of worrying about future legal challenges, but I think we are all convinced that we need to make the whole process as robust as possible.

In responding to the hon. Gentleman from north of the border, Kilmarnock and Loudoun, I hope I have persuaded the hon. Gentleman from a long way south of there to withdraw his amendment.

Dr Whitehead: I would not say that I am wholly convinced but, as I mentioned in my opening remarks, to some extent it is a matter of how one views what has been said so far and the degree to which one thinks that this really is going to work as well as it could. Having been in this place for some while, I must admit that I am of a mind that one ought to legislate for things being as terrible as they possibly can be, and make sure that one moves upwards from there. Obviously, that view is not entirely shared but, on the other hand, it is also not a particularly big deal. We have heard from Ofgem that it is pretty committed to that five-month period. As I said, if all goes well with this Bill getting on the statute books when we think it will, that just about gets us to the right time. I am happy to withdraw this amendment on that basis, but I hope that I will not have to say I told you so come 31 December if it is all not in place as well as it should be. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 4, in clause 1, page 2, line 15, at end insert—

"(e) the need to ensure that customers on standard variable and default rates have their annual expenditure on gas and electricity reduced by no less than £100 as a result of the tariff cap conditions, and

(f) the need to ensure that adequate protection exists for vulnerable and domestic customers, including those customers protected by the safeguard tariff."

The Chair: With this it will be convenient to discuss the following:

Amendment 8, in clause 8, page 5, line 21, leave out from beginning of line to end of line 24 and insert "—

(a) the statement published by the Secretary of State in that year under section 7 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts, or

(b) effective competition does not exist for vulnerable or disabled domestic customers,

'(none) in which case the tariff cap conditions have effect for the year 2021."

Amendment 9, in clause 8, page 5, line 26, leave out from "unless" to end of line 29 and insert "—

(a) the statement published by the Secretary of State in that year under section 7 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts, or

(b) effective competition does not exist for vulnerable or disabled domestic customers,

'(none) in which case the tariff cap conditions have effect for the year 2022."

Amendment 10, in clause 8, page 5, line 31, leave out from "unless" to second "in" in line 33 and insert "—

(a) the statement published by the Secretary of State in that year under section 7 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts, or

(b) effective competition does not exist for vulnerable or disabled domestic customers,"

New clause 1—*Duty to consider the needs of vulnerable and disabled domestic customers*—

'(1) When exercising its duties under section 1, the Authority must have regard to—

(a) the need to protect vulnerable and disabled domestic customers, and

(b) the needs of domestic customers protected by the Authority's safeguard tariff at the date the cap outlined in section 1 comes into force.

(2) When exercising their duties under sections 7 and 8, the Authority and the Secretary of State must have regard to—

(a) whether effective competition exists for vulnerable and disabled customers, and

(b) additional protection in place for vulnerable and disabled customers."

This new clause requires the Secretary of State and the Authority to have regard for vulnerable and disabled customers when exercising their powers in setting, reviewing and terminating the cap.

Dr Whitehead: 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. Amendment 4 has two further pillars: one relates to further amendments to enforce that. As stated in the amendment, it refers to

"the need to ensure that adequate protection exists for vulnerable and domestic customers, including those customers protected by the safeguard tariff."

We know that a number of customers are protected by a safeguard tariff. Effective price caps relating to those ranges of customers are already under way and, as far as this Bill is concerned, the price cap that will be introduced will add to those protections, placing a much wider tariff cap on to SVT customers in particular, whether or not they are vulnerable. It also substantially widens the scope.

We suggest that it would be a good idea to put in the pillars relating to Ofgem's work; the fact that they should have consideration, particularly for those vulnerable domestic customers and those protected by the safeguard tariff, should relate to this wider tariff. That seems a reasonable addition, as a reminder to Ofgem that it ought to be considering that issue during its discussions about making the price cap a reality.

The other pillar suggested in amendment 4 is that Ofgem should bear in mind what sort of saving—it cannot be exact, obviously—should be considered as being possible as a result of those tariff cap conditions. I have a view on what that figure ought to be—not because I put the figure forward, but because the Prime Minister did. I will not ask hon. Members about their reading habits, but some of them may have seen a piece in *The Sun* newspaper on 25 February.

Stephen Kerr *indicated dissent.*

Dr Whitehead: The hon. Gentleman shakes his head. I cannot possibly comment on that. I got this on the internet, by the way. The headline was "Millions of Brits in line for £100 as Theresa May delivers on energy price cap promise". Underneath, it said:

"The price cap on 11 million gas and electricity bills is to come in by end of the year as The Sun's Power to the People campaign pays off".

"It was *The Sun* wot done it"—not us, by the way.

Claire Perry: It is worth saying that that fine newspaper *The Sun* has campaigned for an end to various aspects of rip-off energy tariffs, and it is great that it was celebrating the fact that we had finally launched this Bill and got the provisions in. In this case we should all say, "Power to the people!"

Dr Whitehead: Since I do not read *The Sun*, I am not entirely up to date with all its campaigns, but obviously the Minister does and is. We will leave it there.

2.45 pm

Bim Afolami (Hitchin and Harpenden) (Con): I understand the thinking behind amendment 4. At first glance, one might almost be persuaded by it—until one looks at the clause in its entirety. The first sentence of clause 1(6), which governs all its paragraphs, states that functions must be exercised

"with a view to protecting existing and future domestic customers".

That consideration is already in the legal framework.

With respect to the hon. Gentleman's second pillar, the reference to £100 in his proposed new paragraph (e) is very prescriptive. It would make Ofgem's already pretty difficult job—setting the cap at a level that satisfies all the conditions—even harder.

Dr Whitehead: I appreciate the hon. Gentleman's point. Paragraph (e) would, conceivably, make life more difficult for Ofgem with respect to what it has to consider. As he correctly points out, it is required first to take a very general view

"to protecting existing and future domestic customers who pay standard variable and default rates",

and then

"in so doing it must have regard to the following matters"—

those listed in the following paragraphs. In other words, if my reading is correct, after Ofgem has undertaken its initial consideration, it has a number of specific further considerations to take into account. All our amendment says is, "Here are two more to add to the list."

Vicky Ford: 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 unacceptably high rates. I am rather concerned about the one-size-fits-all nature of the amendment.

Dr Whitehead: The hon. Lady has a point, but if hon. Members read amendment 4 and clause 1(6) reasonably carefully, they will see that

"the need to ensure that customers on standard variable and default rates have their annual expenditure on gas and electricity reduced by no less than £100 as a result of the tariff cap conditions"

would be a consideration—I emphasise the word "consideration"—that Ofgem needed to take into account.

James Heappey: I am afraid that I agree with my hon. Friend the Member for Chelmsford. A number of the larger supply companies have already sought to get ahead of the Bill by transferring their most loyal, or "sticky", customers from what used to be called SVTs—standard variable tariffs—to other tariffs that are called something else but may be just as expensive. My concern is that the hon. Gentleman's amendment is overly prescriptive and might allow the energy companies to get round what we seek to achieve.

Dr Whitehead: I do not think the amendment would allow energy companies to get round what we seek to achieve, although I accept the analysis that it may produce more work for Ofgem. I based amendment 4 on what the Prime Minister said. One could argue that she was being overly prescriptive—I do not know.

Alan Brown: I am glad the hon. Gentleman has explained that the £100 is not arbitrary, but a figure from the Prime Minister. Equally, I assume the Prime Minister's £100 was arbitrary as well, so I must admit that I have concerns about stipulating a figure in the Bill. When I asked about it earlier, Ofgem said that there would be unintended consequences.

Presumably, concerns have been expressed about the big energy companies gaming in terms of exemptions and green tariffs. I am concerned that they will use this as a way to do gaming, so that they provide savings on paper by dodging and changing rates before the legislation kicks in. Could he address that?

Dr Whitehead: The hon. Gentleman makes an important point about what could happen prior to the cap coming in. Energy companies could be gaming ahead of the game with their prices, so what would savings look like after that? I am not sure that we can do anything about that right now. As Ofgem mentioned, if energy companies are too blatant in their price rises over the next period, they will be in breach of their obligations to Ofgem anyway.

We have seen several instances of small price rises recently. We heard about one—a comparative gas price—this morning. Bulb, one of the witnesses this morning, put up its rate by £24 just a few weeks ago. That was for particular purposes, but one could argue that it was a gaming price rise ahead of the legislation. Bulb was very clear that it was not, and that it was for other purposes, but we clearly have to be alert to that possibility.

If that does happen, what anyone has said about what savings would result from this price cap would have to be taken relative to whatever that price was at the point when the price cap was introduced. It would be possible for consumers to say at that point, "Actually, we were promised a £100 price saving. It does not look like a £100 saving to me, because it is a saving against a price rise that will end up increasing my bills." In wishing to place this in the legislation, I am indicating that we in this Committee do not wish to let the public down regarding what might happen with this price cap.

[Dr Whitehead]

The Prime Minister has already said that there will be a £100 saving. Indeed, I do not know whether this applies to anyone present, but interestingly *The Sun* article states:

"Government insiders say the cap should save at least £100, potentially rising to £300 a year with increased competition and faster switching."

Government insiders, whoever they are, are suggesting that the £100 is a minimum and it could be considerably more.

Stephen Kerr: More important than any quotation from *The Sun,* the number that really counts is the £1.4 billion of detriment that was identified in the CMA report. That is the number we should be going on. Confusing the issue by coming up with arbitrary numbers in the Bill means taking our eye off the ball of the £1.4 billion.

Dr Whitehead: The hon. Gentleman is right to draw attention to the CMA figure. Customers were, in effect, being overcharged by that over a considerable period. Indeed, that was a substantial precursor to the idea that there should be a price cap in legislation in the first place. A regime was in place that allowed overcharging by a variety of devices, a number of which were identified by CMA in its report. We want not only to cap the price for a certain period of time, but to ensure that the behaviour that allowed more than £1 billion to be overcharged is not repeated. We do not want to be back here in a few years' time, saying "That is terrible—now we have to implement another price cap."

The issue is not just about the price cap, but about what happens afterwards. We need to do what we can, both during the passage of the Bill and during the price cap, to ensure that circumstances in the market prevent such overcharging from happening again. One of the underlying aims of the Prime Minister's statement about the savings that would arise was that the price cap should be more than just a temporary punishment for certain energy companies; it should be an attempt to reset the market so that things work differently. The proposal for the £100 saving derives from that.

In May 2017, the BBC site—I do watch the BBC—reported that the

"Prime Minister…said 17 million households would benefit by up to £100 from the cap on poor value standard variable tariffs."

What has been in the papers recently is slightly different, but it is clear that the original plan was a £100 saving for customers paying standard variable tariffs. That is the public's expectation, as franked by the Prime Minister, of the consequences of the price cap; committing to it in the Bill would show that our intention is in line with the results they expect. Including the £100 saving as a consideration for Ofgem would complete the circle. As I say, it was a suggestion not from any Opposition Member, but from the Prime Minister, about how the Bill should work. We merely seek to enshrine her words in the Bill.

Our other amendments serve essentially the same purpose but relate to later clauses, especially clause 8, which sets out a clear mechanism for the circumstances in which the cap can be terminated, describing subsection by subsection what will happen at the end of each year from 2020 until 2023, when the sunset clause has effect. In each year, the trigger for rolling over the tariff cap conditions for another year is that

"the statement published by the Secretary of State in that year under section 7 is to the effect that the conditions are not yet in place for effective competition for domestic supply contracts".

Our amendments would insert an additional condition for effective competition in each year, based on whether the Secretary of State thinks that

"effective competition does not exist for vulnerable or disabled domestic customers".

3 pm

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. Estimates from the charity Scope suggest that more than a quarter of households with a disabled person—roughly 4.1 million households—spend more than £1,500 a year on energy. Of those, 790,000 households spend more than £2,500 a year on energy. That is the circumstance they find themselves in with regard to household expenses and living costs. Compared with the average tariff of just over £1,000, that is a considerable additional burden of energy costs on those households.

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.

That is what those amendments do. They are a sensible addition to the Bill—to what Ofgem should consider in the first place and to what the Secretary of State should consider in the last place, as it were, as the price cap moves through its life up to 2023. I hope the Minister will see a way to accept some or all of the amendments. Their intention is certainly to strengthen the Bill and the Minister's consideration of it, and not anything else.

Alan Brown (Kilmarnock and Loudoun) (SNP): I rise to speak to new clause 1, which is tabled in my name. It replicates or mirrors amendments 8, 9 and 10 in trying to provide explicit support for vulnerable and disabled consumers.

In the Minister's opening remarks this morning—in private and in the evidence session—she expressed her concern to ensure that vulnerable customers are protected in future. Clearly, part of the Bill's aim is to protect the vulnerable and those who have been getting ripped off. When I asked one of the panels about improving the Bill, and I specifically mentioned vulnerable and disabled people, the representative from Citizens Advice said that the protections are implicit in the Bill, but not explicit. Ofgem agreed that the protection of vulnerable people needs to be considered, although it believes that some measures are already in place. New clause 1 would explicitly ensure that vulnerable and disabled consumers have that protection and consideration in terms of effective market competition for the grouping they sit within.

New clause 1 effectively mirrors a clause proposed by Scope—a charity whose strapline claims that it exists

"to make this country a place where disabled people have the same opportunities as everyone else."

Given that Scope are expert advocates and campaigners, I was happy to move this new clause.

As Scope rightly observes, people with disabilities are often high consumers of energy due to their impairment or condition. The hon. Member for Southampton, Test highlighted that a quarter of the households in which a disabled person resides—4.1 million households—spend more than £1,500 per year on energy, and nearly 800,000 households spend over £2,500 a year. That is a huge, significant sum and clearly has a huge impact on their expenditure. In terms of market regulation, it therefore makes absolute sense to make specific provision for vulnerable and disabled consumers.

We heard that some disabled people are protected under current schemes, but not all disabled people are automatically eligible for the warm home discount, and nor do they automatically get registered on the priority services register. That, again, reinforces why the Bill needs to make explicit provision for vulnerable and disabled people when setting, implementing and reviewing the cap, particularly in terms of whether conditions for effective competition are in place and whether the cap should be lifted.

We have already heard that, as predicted, additional protections will need to remain in place post cap. I want to conclude with an example from Scope. This is from someone called Lynley:

"Before I became disabled, I never gave heating a second thought. But now, as I'm home every day, things are very different. I find it hard to stay warm as I can't move around to generate any heat. I need the heating on pretty much constantly. I also use an electric heat pad to help manage my pain and an electric powerchair to go outside. This equipment requires charging frequently. My energy bills are much higher than before, and—coupled with the loss of my income as a teacher—have made getting by very difficult."

There is cross-party support for the Bill as a whole, and we all agree that it is about doing the right thing to protect consumers from getting ripped off in what has been a market failure to date. But let us do this absolutely properly and make sure that the rights of the vulnerable and the disabled are explicitly protected in the Bill as well.

Claire Perry: I would like to speak to amendments 4, 8, 9 and 10 and new clause 1. I will start with the first part of amendment 4, which requires a hard estimate on the face of the Bill as to what the saving might be. I was delighted to hear the hon. Member for Southampton, Test quoting our Prime Minister so extensively. I could quote some of the things she has said about the Labour party, but I would not like to challenge the spirit of cross-party consensus. *[Interruption.]* The hon. Gentleman really does not want to tempt me on that.

We can all sit and make estimates of what the savings ought to be, but all of that will depend on the level at which Ofgem chooses to set the cap.

Alex Norris (Nottingham North) (Lab/Co-op): Does the Minister think that it is regrettable that, in the newspaper with the biggest circulation in the nation, a legitimate expectation may now be created that the saving will be at £100 or greater?

Claire Perry: I am sure the hon. Gentleman listened to the Prime Minister talking about the Labour party as being divided, divisive, tolerating anti-Semitism and supporting voices of hate. He probably does not want to trade quotes the Prime Minister has given.

However, let me move back to what we discussed in relation to the previous amendment. We talked extensively about how Ofgem needed to set the level of the cap to avoid crowding out investment, to encourage switching and, importantly, to set the cap at a level that does not facilitate strong legal challenges. That is why it is so important that we let Ofgem—which I think we all now believe does have the capability, and does share our commitment, to get this done by year end—get on and set the cap.

My hon. Friend the Member for Chelmsford made the point about setting an arbitrary figure. The problem with that is that this is not an average figure. We all know that we tend to work in averages, so just having that as the target would lead to all sorts of gaming.

The three things we all want are for the cap to come in, for it to be set at the right level and for it to be proportionate—once again, I wish we were not worrying about legal challenges, but we have to make sure. This is absolutely vital.

The hon. Member for Southampton, Test and I have discussed at length the difference between a cap and a freeze. We do want this cap to move over time. We know that prices go up as well as down. We know that the wholesale cost changes. We want to have the most efficient energy system we can, but the cost may increase. Having this number in the Bill would, in effect, bind Ofgem into setting a number that had no relation to the underlying costs.

I absolutely support the hon. Gentleman's intentions. He and I both want to see these sorts of savings. In fact, the average spread between the cheapest tariffs in the market and the average of the standard variable tariffs is more like £300, so we would both confidently expect the savings to be greater than this. I will turn to the prepayment meter cap—the safeguarding cap—in a second in relation to the specific regard for vulnerable customers, but it is notable that the average saving after the April increase will be north of £100. Customers who are on that tariff are more than £100 better off than they would have been if that tariff had not come into place, so there is evidence that more than that amount could be achieved.

I will turn now to the second part of amendment 4, plus amendments 8 to 10 and new clause 1, which was tabled by the hon. Member for Kilmarnock and Loudoun.

Kerry McCarthy: If I heard correctly, the Minister was saying that people on the safeguarding tariff would be better off. However, in evidence this morning we heard that people will be eligible for it only if they have successfully applied for the warm home discount. Is that right? There is a waiting list and money runs out before time, so would she give consideration to the notion that it should be people who are eligible for the warm home discount and not just the people who have actually managed to get it?

Claire Perry: That is a very important point, and the hon. Lady is extremely knowledgeable in this area. She brings me to the second part, when I will hopefully address her point.

[Claire Perry]

The safeguarding tariff came into force in April 2017. That perhaps gives the lie to the idea that the previous Government did nothing; this was all part of the pressure that we put in place. The tariff initially affects people who are on prepayment meters, who are often exactly as the hon. Member for Kilmarnock and Loudoun described—perhaps living in fuel poverty. That tariff is put in place by the CMA—it is nothing to do with Ofgem—and it will run until 31 December 2020. We have seen Ofgem extend that to this additional group—those who have claimed warm home discount—as the hon. Lady quite rightly said. She raises an interesting point, and we should take a look at it to ensure the maximum number of people are capable of achieving that safeguarding discount.

I asked the team to look at the impact on the bills of customers on these tariffs. Before the safeguarding tariff came in, the PPM average standard variable tariff was about 5% more expensive than the average standard variable tariff. Now, those who are on the PPM and vulnerable tariff pay on average 8% less than those on standard variable tariffs. That is absolutely working, independently of the Bill, to deliver the savings that we want to see for vulnerable and disabled customers. Those caps will continue to be in place, and it is very important that both are in place and that the Bill does nothing to remove eligibility for them.

I want to talk about some of the other duties on Ofgem, which are already covered in clauses 1(6), 7 and 8. They require Ofgem to protect all existing and future domestic customers, including vulnerable and disabled customers, and to consider whether effective competition is in place for the domestic energy supply as a whole. When effective competition is considered, it has to apply for all customer groups, including vulnerable and disabled customers.

James Heappey: Before the Minister gets too far from the issue of vulnerable customers and the cap, I thought National Energy Action's evidence this morning was interesting. It is probably premature to react to that evidence by enacting the Opposition's amendments. Could the Minister confirm that she will go back and look at whether the evidence provided this morning warrants some action, perhaps before the Bill comes back on Report?

3.15 pm

Claire Perry: Again, it was a very effective evidence session this morning. I was just going to come on to some of the other support we are looking to provide, in particular through the Energy Company Obligation, where we may be looking to help a broader group of people than is currently eligible.

I want to touch on some of the other duties that Ofgem already has in relation to protection of this customer group. The original gas and electricity Acts place a duty on Ofgem to protect the interests of existing and future customers. In carrying out this duty, Ofgem should have regard to the interests of individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low income and individuals residing in rural areas. So I would argue that Ofgem already has these duties in place as part of its conditions. Indeed, the Bill, in which we make it explicit that we need Ofgem to consider all customers and all competition in setting the cap, makes the amendment surplus to requirements.

Stephen Kerr: I just have a brief question. I know the Minister has acknowledged the Select Committee's work on pre-legislative scrutiny. One of the recommendations in its report was about amending the Digital Economy Act 2017 to allow data to be shared with energy companies. That is a huge impediment right now to getting help to the most vulnerable—particularly those who are on SVTs.

Claire Perry: Yes. Again, I want to thank my hon. Friend and the Select Committee for bringing forward a series of recommendations, which we have accepted. He refers to a statutory instrument that is being started in the Cabinet Office, which I am assured will receive assent—or whatever the right word is—during the passage of this Bill, subject, of course, to cross-party support. That opens up the opportunity for much better data sharing to support vulnerable and disabled consumers.

It is extremely important that we continue to look at this group. We heard today that some of those we might consider most vulnerable are also the most assiduous switchers, because they simply do not have a penny to spare. I guess the issue I have, which is why we are here, is that we do not want people to have to invest the time in shopping around to feel that they are always getting the best deal.

Households that are receiving the warm home discount, in addition to qualifying for the safeguarding tariff, get £140 a year. Of course, we protect our pensioners, with up to £300 a year for winter fuel payments. Sadly, the cold weather payment was also triggered in the last couple of weeks, and that was another £25 during the cold snap. There is also the priority services register, which is a free service provided by suppliers for people of pensionable age who are disabled or chronically sick, have a long-term medical condition or are in a vulnerable situation. Those people go to the front of the queue should an emergency—a supply interruption—interrupt their heating or cooking facilities.

Finally, I want to mention the ECO consultation, which we will bring forward shortly. It is my intention, as far as possible, to pivot the whole of ECO to focussing on the challenge of fuel poverty and trying to make sure that those in the greatest poverty receive the greatest benefit, but also to use the programme to support more innovation and more targeting. I live in an off-grid area, and I am fed up of getting ECO leaflets through my door. It does not feel like the best targeted scheme to me, and I would like it to be targeted at those who are perhaps time-poor and need the help the most.

Kerry McCarthy: In the NEA's evidence this morning, it said that one of the additional things needed for a package for the most vulnerable customers was energy efficiency measures. I know the Government are consulting on energy efficiency programmes, and particularly on amending the energy efficiency standards for rented homes. May I urge the Minister to make sure that that is brought forward quickly as well, because it will take a

while to implement these measures in people's homes? This is not just about lowering the bills; it is about making sure that people are not using huge amounts of electricity and gas in the first place.

Claire Perry: The hon. Lady is quite right: the great thing about energy efficiency in the home is that it cuts both carbon emissions and bills, so it is a win-win situation, and that is why we have set an ambitious target. She is right that we have started with homes in the rented sector and the social rented sector, and our intention is to make sure that progress is delivered as soon as possible.

Dr Whitehead: I am grateful to the Minister for not exactly spilling the beans but giving us a little preview of what the Government will come up with in response to the consultation on ECO. If there is to be much more concentration on those in fuel poverty, regardless of one's view on whether the total sum on ECO is sufficient to do what we want on energy efficiency, that is a positive step.

Will the Minister also say a word or two about the regulations that I think are still not yet with us on the responsibilities of landlords to raise the energy efficiency of their properties? I am sure the Minister will know that overwhelmingly those who are vulnerable and in fuel poverty are concentrated in that private rented sector—

Claire Perry: I am not sure I agree.

Dr Whitehead: Substantially, I think we can agree. Does the Minister have any idea whether the regulations will turn up shortly? Secondly, if they do turn up, will they have within them the requisite amount of money that landlords should spend on bringing their properties up to band E, so that we can have reasonable assurance that will help vulnerable and fuel-poor customers?

Claire Perry: At the risk of being ruled out of order, I will write to the hon. Gentleman. He is quite right that we want to make sure that people are not living in private rented accommodation with poor quality safety or energy efficiency. We intend to introduce those regulations—indeed, they are already on the statute book. We intend to make sure of the maximum amount of cash that is required.

The other question on this is that the vast majority of landlords are small: they are people owning one or two properties that they rent out. As the hon. Gentleman will know, the whole scheme was based on the green deal. It was a Bill Committee that I was proud to sit on; we thought that was going to provide a financing mechanism, but it has not. That is why the work of the Green Finance Taskforce, which we will be bringing forward to assist in financing mechanisms, will be helpful. I will write to him with those details.

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.

On that basis I invite the hon. Member for Southampton, Test, to withdraw his amendments.

Dr Whitehead: As I have mentioned, our amendments are requirements on Ofgem to take these matters into account. It may be that, as a result of what we have discussed in Committee—after all, it will be on the record—that Ofgem might consider itself to be rather better instructed.

Claire Perry: I want to emphasise that this is exactly why this process is so incredibly helpful. The signalling that collectively we can give about the need to consider the conditions that might be there—albeit perhaps buried in a statute book somewhere—is vital. That is why it is a pleasure to have these conversations.

Dr Whitehead: I think the Minister for giving that additional weight to the points we made this afternoon, which will amplify our intentions for those reading our deliberations. It is clear that the intention behind the amendment—what Ofgem should have regard to in setting the tariff cap—is shared across the Committee.

I also take the point in practice that the first part of amendment 4 would give Ofgem additional work and could be a little problematic as far as getting the amount right before the price cap comes in is concerned. It might have been prudent for the Prime Minister to put those caveats in what she said a little while ago about how the Bill was to proceed, but on the basis of our discussion this afternoon, I do not wish to proceed further and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 1 ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Clause 3

Exemptions from the cap

Dr Whitehead: I beg to move amendment 5, in clause 3, page 3, line 17, after "Authority" insert "wholly".

Hon. Members will find the amendment rather hard to spot. It is to insert one word, "wholly", and I want to explain why that is important and give some of the background to how the clause came about in the first place. There is no universal agreement on the need for the clause. After all, it exempts certain providers of certain tariffs from conditions that elsewhere will apply as far as the price cap is concerned. The providers exempted under subsection (2)(b) are those that appear to the authority to support the production of gas or the generation of electricity from renewal sources. There are a number of arguments about whether an exemption should be in place; my view is that there should be.

[Dr Whitehead]

We heard in the evidence session this morning about suppliers of renewable tariffs ensuring that what they source is genuinely from renewables. They might undertake power purchase agreements from independent producers so that they can guarantee that their tariffs are sourced directly from those producers or, under certain circumstances, they might have their own supply of renewable energy because they have themselves invested in wind farms or other forms of such energy and therefore know that their renewable energy is wholly such. Under those circumstances, those companies—there are a number of them—inevitably incur rather more complicated arrangements in the delivery of their tariffs and in guaranteeing that these really are what they say they are, wholly renewable tariffs delivered to customers on that basis.

3.30 pm

Bambos Charalambous (Enfield, Southgate) (Lab): When I asked Octopus and Bulb this morning whether there was a need to tighten the definition of renewable energy, they both agreed that there was. They saw it as a way of the big six getting round the cap. So does my hon. Friend agree that there needs to be a tightening of the definition?

Dr Whitehead: Yes, I certainly do. If one first agrees that this particular provision should be made, the question of tightening it is quite an important aspect of the Bill.

I am sure that hon. Members will be aware that the draft Bill, when it first appeared, had a much wider and I think much less satisfactory definition of the circumstances under which an exemption could be made. The Select Committee that considered the draft Bill and produced its excellent report singled out this particular clause as one that should be strengthened, as my hon. Friend the Member for Enfield, Southgate has pointed out. It thought it should be strengthened on the basis that a number of stakeholders viewed the Bill as then drafted as allowing for

"unscrupulous suppliers to game the system and avoid the cap by moving customers on poor-value tariffs onto loosely-defined green tariffs."

It recommended:

"The Government should work with Ofgem to strengthen the definition, standards and checks for electricity tariffs with environmental claims so the system cannot be gamed in this fashion and undermine the success of the cap."

That concern was absolutely right. Regrettably, it is the case that throughout the present tariff offer a number of tariffs are in place that purport to be green tariffs, but when we drill down to what they consist of, they are pretty much not green tariffs. They may have a part of renewable energy in their make-up. It may be claimed that the company is advantageously purchasing renewable energy as part of its overall purchase arrangements, but of course we know in terms of today's energy mix that it is fairly difficult to rigidly remove oneself from purchasing any renewable energy in the portfolio of purchases for tariff purposes.

James Heappey: I have huge sympathy with the point that the hon. Gentleman is making. My concern is that we risk letting the perfect be the enemy of the good. There may well be tariffs that are 95% or 99% green that really should be supported, but would not be under his amendment. The wider issue of greenwashing is a matter for the regulator more generally, rather than specifically a matter for this Bill.

Dr Whitehead: I take the hon. Gentleman's point. I have tried to think about this point precisely on those sort of lines. It is difficult, in looking at such tariffs, to see the circumstances under which a company offering not a wholly renewable tariff is protected from a slippery slope—from going right down that slope and saying, "Well, as long as there is something in there that is renewable, we can call it a renewable tariff."

I was about to make a point about the circumstances under which companies trade. Normally, because of the extent of renewable penetration into the energy system, most companies will come across a renewable supply as part of their trading arrangements. As I said, it is pretty difficult to avoid that, so we can imagine how relatively easy it is in principle for someone sitting in a company boardroom to say "How can we produce a tariff that looks like a green tariff but does not give us any sort of problem in producing it? Why don't we just set aside what we have come across by chance, as far as our energy supply is concerned, say that it is our green purchase and put it in a tariff? Then we will have a green tariff and will be fine." No work would have been done to distinguish that tariff from anything else, and the company would have no intention of doing anything within their tariff offer but trade in the ordinary way. That is a worry.

Caroline Flint: This is an important area of the Bill. Does my hon. Friend agree that there is a requirement on energy companies to source renewable energy—quite rightly—and those costs are already spread across all bill payers? Why should there be a premium on top?

Dr Whitehead: The point that my right hon. Friend makes is, I think, taken into account by the circumstances that now apply across the board for energy sourcing. As she and I know, having talked about this for years, the process of the renewables obligation did impose a particular obligation for a proportion of energy purchased to be green. Then there was a system of trading those obligation certificates. Those people not directly purchasing green energy would have to purchase certificates, which could be traded from those who had actually traded in green energy in the first place, so that those involved had, in one way or another, carried out their obligation. The overall design of the renewables obligation system was to encourage the production of green energy, because the beneficiaries of the certificates when they were traded in cash would be the producers. That was a system that very much incorporated in it an incentive to trade in green energy in the first place.

Now, of course, the renewables obligation is no more. It continues as a ghost trade system and will continue on a declining basis, I think, until 2027, but as of March 2017 no more renewables obligation certificates are being issued. They are being replaced by the contracts for difference system, which does not impose an obligation to purchase green energy in the same way as the renewables obligation system did. The prospective system does not, as my right hon. Friend suggested, provide a universal underwriting of green energy production. She is right,

of course, that the system overall encourages renewable energy production, but not in the same way as the renewables obligation.

I do not think that that particularly detracts from my right hon. Friend's fundamental point, but it puts us in a position where we can properly consider the idea that a number of energy companies might accidentally, as it were, purchase green energy that does not, otherwise, have an obligation attached to it, and introduce it as part of a green tariff that is not really a green tariff. I suggest that companies wholly in the business of producing renewable energy, or those that produce it from their own sources or sources guaranteed through a power purchase agreement, or something similar, with the operator, are in a different category. I want to emphasise that difference with respect to the purpose of the amendment.

James Heappey: I think the point made by the right hon. Member for Don Valley was really about the existence of clause 3(2)(b) in the first place. I have a lot of sympathy with that. I think it is unhelpful to mark out green tariffs as a premium product—that is counter-intuitive to the wider effort we are making. However, if clause 3(2)(b) must remain, I am not convinced that the amendment tabled by the hon. Member for Southampton, Test is necessary. I encourage him to consider again whether where we all agree is that Ofgem might take a much more robust view on the practice of greenwashing and that that is the actual challenge that we want the regulator to close with, not necessarily an amendment to the legislation this afternoon.

Dr Whitehead: I would say that the essential point is how far up the beach and close to the walls the greenwashing actually goes. Can we conversely say that we can put greenwashing into a particular box and say "That looks like greenwashing", but as we move up the scale of more and more renewables in the system, the greenwashing ceases and therefore can we say that this really is a renewable product and is something we can apply special exemption arrangements to? That is the nub of the debate.

Stephen Kerr: I would like to share with the hon. Gentleman the very words of Dermot Nolan in relation to this issue. In evidence to the Select Committee, he said in answer to a question about how it is decided whether energy is green or not:

> "There are ways to determine the source of energy as to whether the generation of energy by that company has occurred in a sufficiently green fashion, which we have a definition for already, although not a perfect one. We would make specific requirements of companies on that. We would audit them and we would police it. If they were not compliant, we would tell them they must immediately withdraw the tariff or face enforcement action."

That answer and the agenda that Ofgem is following make the amendment redundant.

Dr Whitehead: That is a reasonable and honestly held opinion about the extent to which it is possible easily to distinguish when greenwash is not greenwash and the point at which an energy company, even with a partially green tariff, puts in something that is honestly green and not something that they have just cooked up because they happen to have purchased something that has an element of traceable green energy in it.

Even under the circumstances that the hon. Gentleman mentions, it would be fairly difficult for Ofgem to make easy distinctions when it came to what it was doing about tariffs that could be jumbled up with a lot of brown energy but nevertheless be claimed to be at least partially green.

I have tried to think this through and consider how we might be able to make honest citizens of those companies under such circumstances. It is possible to argue that even if a company accidentally buys green energy, if it is genuine green energy, then yes, it has sourced green energy. However, the bar needs to be set rather higher.

Vicky Ford: The hon. Gentleman's amendment uses the word "wholly". In my view, "wholly" means that 100% of the energy would be renewable. To me, that is wholly unworkable. I want more consumers to get more choice. If they really wish to buy more renewable energy packages, they can do that. I would also like to see green tariffs that encourage smart consumption—smart appliances that switch on and off at peak times, for example. Those could also be bundled into a green tariff.

Furthermore, as more and more people want to buy renewable packages, what happens at a peak time on a very, very cold day when our renewables cannot cover the amount of consumption those consumers need? Would they have to be switched off and have no energy at all? Would they not be allowed any back-up supply? "Wholly" is not the right word.

3.45 pm

Dr Whitehead: I hope the hon. Lady will forgive me for saying this, but she makes a rather good case for my amendment. Let us consider circumstances, such as those she mentions, in which insufficient renewable energy is generated on a particular day to "go round". What we mean by "go round" is that renewable energy, in most instances, is variable. If we look at our little National Grid—

Claire Perry: The app!

Dr Whitehead: The app, to see what is being generated on any particular day, we will see that it varies from 4% or 5% to 20% or more, depending on the circumstances, so it certainly is true that there will be a variable amount of renewable energy to go round.

However, that is not the point as far as renewable energy suppliers who contract to supply wholly from renewable sources are concerned because they will provide themselves with power purchase agreements or will own their own generating capacity and guarantee that, come what may, what the consumer gets as a result of their tariff is renewable. In a sense, they will have pre-empted the "not enough to go round" point by guaranteeing with their arrangements that there is. I suggest, precisely for the reasons the hon. Lady set out, that that can be problematic for those companies. Nevertheless, that is what they guarantee as part of their tariff.

As far as brown energy companies that want to do a bit of greenwashing are concerned, the hon. Lady is absolutely right that if there is not enough green energy to go round they remove the portion of renewable

[Dr Whitehead]

energy from their supply and the tariff becomes browner, even though they say it is partially green. That is precisely what the amendment seeks to avoid, by making the starting point that the exemption applies to tariffs that are clearly wholly renewable and about which it can be said without a doubt that that is what they are—no messing about. That is why they should be exempted.

Michelle Donelan (Chippenham) (Con): Further to the point made by my hon. Friend the Member for Chelmsford, I am a little confused as to why the hon. Gentleman would add "wholly" when he admits that that is a virtually impossible state for companies to be in at present. Would the amendment not make the Bill have a null and void section, if the word "wholly" was used when that was unachievable?

Dr Whitehead: Forgive me, but I was trying to distinguish between other companies and those that guarantee to provide a green tariff come what may because they have either their own supplies or a power purchase agreement with a supplier that guarantees to supply them come what may with renewable energy.

Let us remember that not all renewable energy is variable. Not all renewable energy is reliant on a variable supply being continuously variable. I have recently been to see a number of plants, one of which was a large solar farm close to the Minister's constituency, which had a large battery installation next to it. The power produced from that source is continuous even though the solar is variable because of the existence of the battery. If a company offering a wholly renewable tariff has a power purchase agreement with that producer, it will have a reliable source of renewable energy come what may, because that is the contract it has made. That is essentially the contract that those companies are undertaking on their renewable tariffs.

Michelle Donelan: Is that not disincentivising the green company from growing? It knows that if it takes on more consumers, it cannot 100% guarantee to fulfil their needs on a cold day or in a cold snap. That would cap the green market, which is contrary to what we want to do—we want to encourage it to grow.

The Chair: Order. Before the shadow Minister responds, we will have a short comfort break.

3.50 pm

Sitting suspended.

3.58 pm

On resuming—

The Chair: We return to amendment 5 to clause 3. I call Dr Alan Whitehead.

Dr Whitehead: I was about to reply to the hon. Member for Chippenham, who suggested that the amendment might be superfluous because, as she put it, if companies cannot supply from renewable energy in any event, putting forward an amendment to require an exemption only where a supplier wholly supplies renewable energy might be a step too far for the energy market.

The amendment sets the bar fairly high, but not impossibly high. Companies that genuinely supply renewable tariffs have effectively pre-empted the variability of the market by securing reliable renewable supplies one way or another in advance, because of their power purchase agreements or their individual ownership, so that they can reliably offer a renewable tariff.

On a wider basis, it is true that what we want is to have as much renewable energy on offer as possible, as a general policy good thing, but that amount on offer will necessarily vary, although as I think hon. Members can see—the Minister has mentioned the nice app that we both watch regularly—those numbers have come up enormously in recent years.

4 pm

To all intents and purposes, to have no renewable energy—even on a pretty windless day, the sun might be shining so there is a lot of solar—there would have to be a day in which no wind was blowing anywhere, there was an overcast sky and possibly rain. There would be no wind even on the North sea, or on the other side of the country—those prevailing winds coming in from the Atlantic would not be doing the business for the farms on the western side and in the approaches to the British isles. Subject to ministerial agreement soon, there might also be the Swansea tidal lagoon arrangement—provided the tide is coming in or going out, which it normally does—to provide a pretty reliable source of renewable at that point too.

Objectively, therefore, we are no longer in a position where the sort of circumstances that some hon. Members have suggested might be the case will be the case. However, renewable energy generation is still variable to some extent. That is the point that I essentially want to make: it is important that we distinguish between those companies that know they can genuinely offer a wholly renewable tariff, and can be audited properly as doing so, and those that may offer a part-renewable tariff, but cannot really be audited as to what the constancy of their supply is.

That is what I think we need to do to strengthen marginally what I freely acknowledge to be a much-strengthened clause anyway, compared with how that clause stood before it was looked at by the Select Committee. The Minister has done a good job in responding to the Committee and in ensuring that within that definition there are much clearer lines as to what is renewable and what is not, and what is a renewable tariff and what is not.

I am suggesting a small sparrow on the shoulder of eagles—an additional point to make the provision absolutely right. I hope that the Minister will be able to accept the amendment in the spirit in which it is intended and as an assurance that we get the Bill completely right. That is the beginning and end of the purpose of this amendment. I hope that it can be accepted on that basis.

Caroline Flint: It is a pleasure to serve under your careful stewardship, Ms McDonagh.

I find myself in an interesting position. I completely understand what my hon. Friend the Member for Southampton, Test is trying to do with his amendment. The sense I get from the interventions so far is of common agreement, and that is also the response of the

Select Committee. I am glad to see on page 24 of the Select Committee's report that I have a footnote—I have never been a footnote before, and I am so proud. Good Energy and I, and others, made a submission to the Select Committee about why we have to be very careful about gaming in moving forward in relation to the price cap.

My hon. Friend has clearly outlined the concerns that we have—and share with others across the House and those outside who have made representations—about the danger of people trying to use green as a way to avoid providing fair prices. Let us be clear: we are talking about the sticky customer base—those people who, year in year out, find that their energy bills go up. The CMA review and others have found how people have been overcharged for a number of years now, and there has been much discussion in this place about that. I totally understand my hon. Friend's intent in trying to introduce "wholly" as another way to separate those who might game the system from those who are in all good faith seeking to invest in and buy 100% renewable energy.

My only problem is that I feel that we want to make this legislation as simple and straightforward as possible, given that there is also agreement that this is a temporary measure for a period, which will hopefully allow people to get a fairer Bill for their energy and not be overcharged, and in which we and the Government can look at what further reform might follow from this in the future. My hon. Friend and I have spent many hours discussing that and we think there is much that could be done—but that is not for today's debate, Ms McDonagh.

As someone who very much supports renewable energy, not only for our electricity and power supply but for our heat supply as well, I am not sure of the evidence. I may be convinced during the passage of this Bill that a premium price for green energy stacks up. I might be wrong, but I am not sure it does stack up. I apologise to colleagues on the Committee that I was not able to be here this morning, but I have read the written submissions—in particular, those from Bulb and OVO, who outline their concerns about exempting green tariffs from the legislation. A lot has been done to contribute to today's situation, where the sort of energy that we want, for climate change and in terms of being innovative in the sector, has seen a huge reduction in overall costs and is therefore able to compete very effectively in the market.

Claire Perry: In my mind, the right hon. Lady is not a footnote—she is a major chapter heading. I am enjoying listening to her speech, because it was largely as a result of the great cross-party consensus that we brought in the Act—and some pretty tough decisions, which she supported in her shadow Secretary of State role. That is why we are able to buy renewable energy at prices that do not require a substantial subsidy. That is why we all look forward to a situation where customers should not be charged a premium for that renewable energy source.

Caroline Flint: I thank the Minister for that intervention—I aspire to be a book. *[Interruption.]* A library, no less. Goodness. People will not be able to work out what the hell we are talking about in this Committee!

A lot has been done to drive investment in the renewable sector, and some of that is ongoing. My hon. Friend is quite right that the renewable obligation is coming to, if not its end, then close to it. We also have contracts for difference. We also have the renewable heat incentive for heat. A business in my constituency that produces green gas is a beneficiary of that. In lots of different ways, there continues to be support for renewable energy of one form or another. No doubt, should it get the green light, the tidal lagoon will also be receiving a contract for difference that will guarantee a price for what it produces over a number of years.

I would question my hon. Friend, and also the Minister—she has tried to tighten up the wording and, in this clause, has enabled Ofgem to step in, assess, consult and what-have-you—because I am still not convinced that there is any need for exemptions in the way they suggest. The more complicated things become, the more clarification that is required and the more points at which Ofgem is tied up finding a formula for what the price should be—we will have more discussions down the road about how often that should happen and the methodology for that—the more tasks we are giving it, which could lead to more confusion. The last thing I want, after all this, is a legal challenge that could stop the price cap being in place in time for the people we care about as they start paying their winter bills in 2018 and early 2019.

I hope we can think more about those issues. We may not resolve them today, but we should give them some more thought—I certainly will. I might be wrong about this, and I am happy to receive submissions and thoughts from others outside this place. For reasons of simplicity, and for the development of the renewable energy market and how it has been helped to get to a place where it provides cheaper energy today than our fossil fuels, it is still worth considering whether any kind of exemption is warranted in the Bill.

Alex Norris: It is a pleasure to serve under your chairship, Ms McDonagh. I will briefly follow the contributions of my hon. Friend the Member for Southampton, Test and my right hon. Friend the Member for Don Valley with one simple point.

I should say, for context, that we have obviously broken out into violent agreement—that is always good—not just on the need for the legislation, but on what it is for. It is not the end state that we seek, but a key part of getting us on the journey there. We all want the market and the providers to use this time, whether the full five years or not, to change practices so that, at the other end, the consumer gets what they need. There is a lot of enthusiasm for that.

With that in mind, as we look at each and every line in the Bill, we should think about how the individual words fall and the unintended consequences that might arise from a superfluous word or a missing word, because we know—and we would expect nothing less—that there will be conversations in the big companies about the different ways to approach the next five years. The choice will be whether to genuinely change or to game the system. We have to be mindful of that and look to close down every possible opportunity to game the system, so as to be clear that this is legislation to drive proper change. It is a short-term cap, but will lead to a long-term benefit.

[Alex Norris]

The amendment does that. It takes up the cudgels from what the Select Committee said. It is proportionate, simple and easy to understand. I understand that delivering what sits behind it may be complicated, but it sends a clear signal about what this Parliament values and I support it.

Claire Perry: One little word has provoked a substantial and excellent debate. There is a genuine sense in the Committee that we all want to achieve the same thing: companies not being able to game the system, and tariffs that deliver for consumers and do what they say on the tin, so that if they say they are renewable, they are actually renewable, not just a package of greenwash. That is why I genuinely feel that the crowdsourced approach to legislation can be very good. I pay tribute to the Select Committee process, once again ably represented by my hon. Friend the Member for Stirling, who helped us to focus on the issue. I was pleased to hear several hon. Members comment that we have tightened up the wording accordingly.

We are wrestling with questions around gaming and what a green tariff looks like, and this question of "wholly" or "in part". All those will be addressed by two processes, which I will talk briefly about. First, as the right hon. Member for Don Valley said, we have quite properly tasked Ofgem with looking at the whole issue. I think I am right in saying that it has never been asked to review the whole suite of green tariffs in the market and opine on whether they are any such thing.

A co-benefit of the whole process will be understanding what is out there, whether it is wholly, partially or not at all green, and what the price premium for some of those products is. I was a very early Good Energy customer, over 10 years ago, and—

Kerry McCarthy: So was I!

Claire Perry: I am afraid that, unlike the hon. Lady, I came off it, because it was so expensive—I apologise if she thought we were going to have a nice bonding moment over our green tariff. By the way, having heard the evidence, particularly from some of the more nimble companies coming in, I have every intention of looking very closely at changing my tariff again. However, the point is that the world has moved on. As the right hon. Member for Don Valley pointed out, prices have dropped and there is a question as to why we should be paying a premium tariff.

I would like the amendment to be withdrawn today—albeit on the basis that we do not yet have a brilliant fact base—but 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.

4.15 pm

James Heappey: It is useful that the Minister will go away and make an analysis of the green products that are already on the market. I wonder whether she might also, with the evidence from Octopus and Bulb ringing in her ears, go away and ask the Department to go for just one more lap on whether or not this exemption is necessary all together, or whether it might do more harm than good when it comes to promoting green energy and the way that consumers regard green tariffs.

Claire Perry: I am sympathetic to my hon. Friend's point; he is extremely knowledgeable in this area. However, as we have been through, particularly in the draft scrutiny process, we genuinely do not want tariffs that customers actively choose to be on, and which support the welcome development of creating demand for the renewable market, to be captured, as it were. The hon. Member for Nottingham North made the point about unintended consequences, and that is why word-by-word scrutiny is so important. The BEIS Committee supported that view, and I think the legislation has been substantially improved by that process. I am therefore less inclined for the proposal to be withdrawn completely, but I want to talk a little more about the point that the hon. Member for Southampton, Test made. I have talked about publication transparency. To me, transparency—having Ofgem look at these tariffs, probably for the first time—is an important part of establishing that this is a credible part of the market.

Kerry McCarthy: I should say that although I have been a Good Energy customer for some time, we now have Bristol Energy—there is that conflict between being green and giving support locally; I think it has now introduced a green tariff. Another west country electricity company, Ecotricity—which has made a submission to this Committee very late in the day—is concerned that if the cap is introduced across the board before the green exemptions are looked at, its customers might find their bills having to go down when the cap comes in, only for Ecotricity to have to turn round and say, "Actually, we've got this exemption now. We want to put your bills up." At the risk of delaying the introduction of the cap, I urge the Minister to make sure that the green exemption issue is sorted out at the same time that the cap comes in.

Claire Perry: In standing up for her local enterprise, the hon. Lady pre-empts the second point I was about to make, which is that we will use transparency, but we will also use the Ofgem consultation process to do exactly that. Ofgem has to consult—it has to review the existence of these tariffs and understand what they mean—and it will have to do that as part of creating the cap, because it is a condition of introducing the cap that those exemptions are also carefully defined.

There is an interesting question. There is the transparency issue, there is the consultation issue, but the third thing is this: is it zero, 100 or somewhere in between? It will be explicit, I think, in conducting that analysis that Ofgem has chosen a level of what it thinks this level will be. I totally understand the point that the hon. Member for Southampton, Test made about us all wanting a world in which renewable energy is not intermittent. Indeed, I opened Clayhill solar farm, the country's first subsidy-free solar farm, partly because it has managed to achieve on-site storage, providing both a better economic return and overcoming the problem of intermittency. That is all absolutely correct.

However, we are not there yet, and I was very struck by what my hon. Friends the Members for Wells and for Chelmsford and the right hon. Member for Don Valley said. They said that we want to be in a world where we are not stifling that evolution, but instead creating a demand for those tariffs in the future. 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.

I would like to put on record that the issue of gaming exercises us all. I have said this to the energy companies and I will say it face to face: if they think they should be spending their energies working out ways to game the tariff, as opposed to delivering better consumer value and service, we will put them on notice that that is exactly what none of us wants to see. That is a strong message that we have all delivered.

I am happy to provide more information to inform the debate. I have listened carefully to the excellent contributions, but I hope that the hon. Gentleman sees that this one tiny word creates a series of unintended consequences that perhaps weaken the cap and that he is therefore content to withdraw the amendment.

Dr Whitehead: I take the Minister's offer to give further and better particulars about green tariffs, including what they consist of, what the relationship between part-green tariffs and wholly green tariffs is, and what the cost is, as essentially a suggestion that the matter should at least partly be placed on the Table and might be revisited on Report, depending on what we see. It is an excellent suggestion and I very much welcome it.

Claire Perry: To be clear, I am not inviting further amendments to the Bill—far from it. My hope is that during the passage of the Bill, with the joint messages we are sending out with cross-party support, the requirements for more information and transparency that will accompany the Bill's passage—because they have to inform the tariff calculation—can only be helpful in this consumer market, even if they are not on the face of the Bill.

Dr Whitehead: I understand that the Minister is not inviting further amendments—it is her job not to—but I can envisage a circumstance in which we have gathered all the information together and some things scream out from it that we might consider on Report. In which case, we should properly do that. On the basis of that offer, and presuming that the information would effectively be in the form of a sort of late evidence submission to the Committee and would go to all its members—

Claire Perry: My intention is that we will write to all Committee members with the information.

Dr Whitehead: That is great. It is a very welcome suggestion and wholly constructive regarding what we are trying to achieve with the amendment. On that basis, I wholly agree that it should be withdrawn. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 3 ordered to stand part of the Bill.

Clause 4

NOTICE OF PROPOSED MODIFICATIONS

Question proposed, That the clause stand part of the Bill.

Claire Perry: I realise that, in moving swiftly through clause 2, I did not give anyone the opportunity to comment, so I feel that I should say briefly what this clause does and why it should stand part of the Bill.

The clause sets out the first part of the bespoke licence modification that must be followed by Ofgem to implement the price cap. They are the statutory steps that Ofgem will take and they will cover the final design and level of the cap. Concerns have been expressed that if organisations wanted to try to derail the implementation of the Bill, it would be by objecting to some part of that process. The process very much mirrors powers that Ofgem already has to modify the standard supply licence. The clause sets out the technical arrangements of the timing, the timings of notice of publication, and provides the steps to be taken before the Bill is passed, which I alluded to in earlier comments, so that as much of the work as possible can be done in tandem with the Bill's passage through Parliament.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

PUBLICATION AND EFFECT OF MODIFICATIONS

Question proposed, That the clause stand part of the Bill.

Claire Perry: Again, the clause outlines the final part of the licence modification process that Ofgem must undertake to impose the tariff cap—this is the actual modification of the licence conditions and implementation. It, too, sets out the statutory steps that Ofgem must go through. Ofgem must set out how it has taken account of representations made during the consultation specified under clause 4. As we heard in the evidence session this morning, it must set a date that the modifications will take effect from, which must be after a period of 56 days beginning on the day when the notifications are published.

The clause also sets out that the appeal mechanism is via judicial review, rather than through an appeal to the Competition and Markets Authority. We have had a conversation about that—certainly during the very good Second Reading debate—which is primarily because we want nothing to get in the way of implementing the temporary price cap. The CMA's powers are used exclusively where there is a permanent control mechanism, but we and the Select Committee have taken substantial evidence to suggest that judicial review gives all interested parties an adequate means of address. A court has sufficient expertise to hear an appeal. A court is likely to be able to hear a matter more quickly than the CMA, which reduces the possibility of the implementation route being delayed.

James Heappey: I am keen to ensure that I understand the measure correctly. There is a 56-day period ahead of any modification being published, but presumably there is also a 56-day period for the initial implementation of the cap. Are we clear that Ofgem is content about being able to publish its cap within the five months—actually, eight weeks ahead of that five months?

Claire Perry: My hon. Friend makes a good point. I believe a very good letter was written to the Select Committee in which the timetable was set out specifically. Perhaps we can arrange for the letter to be distributed to the Committee—although I am not sure whether I have such powers over a letter to the Select Committee. Ofgem set out the timetable clearly, including all the statutory periods, with the assurance that it felt very capable of bringing the cap in before year end.

To return to the clause, in Committee we are very much of the mindset that the judicial review route, should someone wish to appeal against Ofgem's methodology, is appropriate and would not delay implementation. That was agreed in the excellent work of the Business, Energy and Industrial Strategy Committee.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

REVIEW OF LEVEL AT WHICH CAP IS SET

Dr Whitehead: I beg to move amendment 6, in clause 6, page 4, line 31, leave out "6" and insert "3".

I must confess that I have been following the past several clauses assiduously by reference to the draft Bill instead of to the actual Bill, although the Government had not made any changes, so I do not feel too out of sorts. However, with this clause, the draft Bill and the final Bill part ways considerably. Fortunately, I managed to realise where I was in time, so we can talk about this relatively short clause, which is on a review of the level at which the cap is set.

The clause is important because it is the clause that decides this is a cap and not a freeze. The requirement on the authority is that it regularly review the level at which the cap is set, on the basis of all the circumstances to which the market has been subject, and whether the cap should be modified or changed as a result of its review. Indeed, the clause requires the authority to publish a statement when it has done that review, as to whether it proposes to change the level at which the cap is set.

4.30 pm

For example, let us say that we set a price cap such that it comes in at the end of November 2018. Even if the cap was terminated towards the end of 2020 upon a statement by the Minister that competition had returned to the market and everything was okay, the mechanism, internally to the price cap over its period of existence, would mean that there would be—as matters stand at the moment in this clause—something like four reviews, which would lead to the authority issuing a statement saying whether the cap should stay at its previously agreed level or be raised. As I said, that would be determined by an inevitable consideration of what was happening to wholesale prices, which we know are sometimes fairly volatile.

It might be worth seeking a little clarification on this and assurances on whether we have sufficient clarity in our legislation here, but I assume that if those reviews, or one of those reviews, looked at the wholesale market, and that market had, for whatever reason, dropped precipitously, and it was considered by the authority that that drop was not just a brief drop, but a fairly sustained drop, the authority would reasonably recommend that the cap be tightened—that is, that the top of the cap should come down, rather than go up.

We are making the assumption that that is a necessary part of the proceedings, because, as has been amply laid out, we know that wholesale prices are a factor in any price cap or price freeze. Indeed, as I recall from my conversations with my right hon. Friend the Member for Don Valley about the previous cap, which was discussed amply in this place, the question of what to do about wholesale markets, and how they tucked in to any particular cap or freeze and over what period, is central in constructing any cap in a reasonable way, and allows us to take account properly of the fact that companies subject to those wholesale price changes would necessarily have to absorb them or could have some sort of leeway given through consideration by the authority of how those changes might be passed on in a different cap.

Clearly, that cap, in principle, can work both ways. I am not sure—I would welcome an assurance from the Minister—that the authority would reasonably be required to consider tightening the cap on its review, if it turned out that the wholesale prices determined that it should do so. That is an additional reason why the amendment, which is even shorter than the previous amendment—it has one number in it, rather than a number of letters—suggests that the authority's review on the level of the cap should be at least every three months, rather than every six months. 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.

We can imagine what may happen with the wholesale market if we look back over the last year and a half to two years of wholesale prices. If the movements in wholesale prices over the last two years were to be set against the likely period of the first stage of the temporary cap, we would see movements in those wholesale prices that could not easily be accommodated in a set of four interventions in that period. That is why we have suggested the amendment in this way, particularly in the context of the fact that wholesale prices could conceivably go both ways in that period—sometimes quite decidedly so—as they have done over the last few years.

I am sure hon. Members will have different views on the amendment, but it can be seen as strengthening the reasonableness of the Bill in terms of its approach to how we offer tariffs to customers under a price cap, and to how we offer reasonable circumstances to businesses operating under a price cap in which to do their business. We have a joint duty to ensure that the market works reasonably well for companies as well as for customers.

Someone may answer that it is not technically possible to reduce the time to three months, because so much time has to be spent reviewing whether the trend is long term or short term, so reducing the time would not allow anyone to be sure that the trend was a trend. I would accept that point, but failing that, reducing the

period to three months would be a wholly beneficial part of the cap, and it would be welcomed in principle on all sides of the debate.

Claire Perry: The hon. Gentleman again puts forward a sensible probing amendment that it is a pleasure to think about and speak to, but I will chance my luck and try to persuade him to withdraw it.

The hon. Gentleman is right that the review is a crucial part of the Bill's effectiveness. Is the cap set at the right level? Is the ability to change the cap clear? Have we set out the conditions under which the cap must apply? We will get on to the conditions as to what success looks like. Is the cap dynamic enough to make a difference in the market?

If I read clause 6 carefully, two words precede the hon. Gentleman's one-number intervention. In terms of reviewing the cap, the clause uses the phrase:

"The Authority must, at least once every 6 months".

When we had this conversation on Second Reading, I said, correctly, that the opportunity is there for Ofgem to review this cap more frequently than that, should it choose to do so. It can review it on a weekly basis or a three-monthly basis, but it must review the cap every six months. That is consistent with the reviews of the prepayment meter cap, which is already delivering savings of up to £120 a year, as we talked about, and which is what the excellent Business, Energy and Industrial Strategy Committee report recommended. I think that the flexibility the hon. Gentleman is seeking is covered by the words "at least".

Yet the hon. Gentleman raises an important point: what happens if there are suddenly wild fluctuations in the energy market, which we want consumers to benefit from, and particularly if there is a sustained price fall? I have looked at this a bit. It is a bit like the mortgage market: unless someone is on a tracker rate, changes in the wholesale prices do not always feed into the retail prices. Indeed, these companies make an art, or a science, of hedging their supplies so that they bake in what their margins look like on a future basis. Any sustained price fall would take its time to feed through to those companies' overall cost of energy provision.

Indeed, companies change their SVTs only once or twice a year, even though those are standard variable tariffs. We had a very interesting conversation this morning in Committee about whether that was a rather benign description—maybe we should be looking to tighten up the language a bit. These variable tariffs vary only once or twice a year. There is an argument that giving Ofgem a statutory duty to review this at least every six months provides an opportunity for the market movement to be greater than it is under the SVTs. 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.

As always, the hon. Gentleman has thought about these things carefully. As he alluded to, there is a risk that by specifying every three months, given that this is a short-term cap—it will apply for a minimum of just over two years and a maximum of just over five years—we would perhaps create an unnecessary process burden. We want Ofgem to continue to regulate this market well; we want it to continue to bring forward initiatives such as the cancellation of billing backwards for more than 12 months and the work it has announced it wants to do in the wholesale energy markets to ensure that returns are proportionate. I am persuaded that by changing the period to three months, we would create a potentially unnecessary burden that does not deliver anything more than we have already allowed for with the wording of clause 6(1).

James Heappey: I got there in the nick of time. While the Minister has been speaking, I have been looking at Ofgem's tracker for wholesale energy prices. It is clear to me that in the first quarter of each calendar year, prices are particularly volatile and disproportionately higher than in the remainder of the year. In his evidence, Dermot Nolan said that, over six months, those midwinter peaks are ridden out. That means we should defer to his judgment that six months is the right unit, not quarterly.

Claire Perry: My hon. Friend again brings assiduous online research, which is marvellous, and his knowledge of this market, to support the point that Ofgem believes that six months is a proportionate time. The Bill does allow Ofgem—should it be required to do so by market movements, and that volatility persists over a period of time—to make the necessary adjustments. I know that I am on a winning trend, which may not last, but on that basis, I hope the hon. Gentleman is persuaded once again to withdraw the amendment.

Dr Whitehead: The intervention of the hon. Member for Wells demonstrates why I should not only have been looking at the right Bill in the last 10 minutes, but have brought my iPad with me.

Claire Perry: You are sat in front of the iPad queen.

Kerry McCarthy: Mine has died.

Dr Whitehead: There you are—I am on my own now.

At the heart of this proposal is the rocket and feathers issue that my right hon. Friend the Member for Don Valley is famed for in her past interventions in this area, which is about the extent to which, when wholesale prices go up, energy companies put prices up pretty assiduously to compensate for the additional costs, but when wholesale prices come down, the same picture is not quite so much in evidence. For various reasons—buying along the curve, hedging in the medium term and various other things—the energy companies all say, "Oh no, we can't possibly put our prices down, because of the positions we have taken." It seems to work one way rather than the other.

4.45 pm

Being able to reflect reasonably accurately what is happening and to direct a cap accordingly is potentially a very good thing. I did not entirely catch the Minister saying that Ofgem would clearly have the ability and the authority to tighten the cap if necessary under those circumstances.

Claire Perry: That is an excellent point, and I was thinking of exactly the same things when the hon. Gentleman was speaking. The rocket and feathers, by the way, sounds like a marvellous pub in the Don Valley

[Claire Perry]

that I would love to come and visit one day. That is an excellent description for what happens and, thinking it through, the existence of the cap protects against the feathers, because there will be a hard stop in the market that might accelerate the fall of the feathers or create something a little more weighty, on the same duration, or a more accelerated duration, than the current SVTs. It would be a prod to the market, to make sure that those downward prices are reflected in the price cap. On that basis, it could be very helpful to overcoming the problem.

Dr Whitehead: Indeed. As the hon. Member for Wells points out, over the recent period, there has been a pattern of volatility in the wholesale market, but not necessarily a pattern of predictability. The market tends to be rather more volatile at the beginning of the year; the level of volatility differs, but we know it is more volatile. There is the question of looking at that effect over the entire period of intervention of the cap, and how that volatility is factored into Ofgem's duties.

I take the point that the phrase in the Bill is

"at least once every 6 months".

After what has been said this afternoon, I hope that Ofgem will consider fairly carefully how its interventions take place. It may well be that—after close consultation with the hon. Member for Wells—Ofgem comes along and says it will review the cap more frequently at certain parts of the year and rather less frequently at other parts of the year.

Claire Perry: I hope that the hon. Gentleman will agree that the wording of the Bill allows Ofgem to effect exactly those decisions, should it think it necessary.

Dr Whitehead: I take that point. Although I prefer to legislate with absolute certainty rather than hope, in this instance we can reasonably expect that Ofgem would look at that properly, as far as the market is concerned. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Claire Perry: We have had an excellent debate, where we have been genuinely probing and testing the Bill, and we have come to a good outcome. I commend the clause to the Committee.

Question put and agreed to.

Question 6 accordingly ordered to stand part of the Bill.

Clause 7

Review of competition for domestic supply contracts

Alan Brown: I beg to move amendment 1, in clause 7, page 4, line 38, at end insert—

"(1A) The Secretary of State shall within six months of the passing of this Act publish a statement outlining the criteria that is to be used by the Authority in the review to assess whether conditions are in place for effective competition for domestic supply contracts."

This amendment would require the Secretary of State to outline the criteria that shall be used by Ofgem when assessing whether conditions are in place for effective competition for domestic supply contracts.

I do not know if it is my upbringing in the west of Scotland, but compared to the hon. Member for Southampton, Test, I am a man of few words, so I will be really brief.

Amendment 1 and its explanatory notes lay out the case. I have prepared a timeframe for the Secretary of State to set out the criteria by which Ofgem will assess the operation of the energy market for effective competition in the marketplace, and such effective competition clearly will allow the cap to be lifted.

The amendment is important for a couple of reasons. Clearly, if we want the suppliers to change their behaviour, it is important that they know what they will be measured on. Hopefully, that will give them further incentives to change their behaviour and to make the market much more competitive and effective for consumers.

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. The amendment is quite simple and speaks for itself.

Claire Perry: The hon. Gentleman is a man of few words, but what a very pleasant accent, if I might say so, and what a joy it is to welcome so many colleagues from north of the border with similar burrs on our side of the House. I will now try to speak exclusively about the amendment and take his example of brevity in doing so.

The hon. Gentleman is absolutely right to raise the question of the conditions for effective competition so that we can all understand when the recommendation to remove the cap is the right one, as he said, considering how the market evolves over the next few years. We all have a hope and expectation that the market will evolve rapidly; indeed, the whole principle behind the Bill is about an intelligent intervention that will help the market to reset to a more competitive environment.

We have set out these general conditions, but I feel very strongly that with an independent regulator that we all believe has the powers and knowledge to both set the cap and confirm whether competition has been restored, it is right that we do not hold it to a specific set of weightings for what competition looks like. Again, I refer to the BEIS Committee, which 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."

The hon. Member for Nottingham North made the point about unintended consequences; we had conversations in pre-Bill meetings about whether we would want there to be a formula that said, "It is 20% switching times and 50% price cap reduction". All that constrains Ofgem's ability to review and set an opinion on competition, particularly as the market evolves. We are all expecting the energy market to evolve quickly. The amendment would constrain Ofgem's job unnecessarily. There is nothing to be gained from seeking to pre-empt Ofgem

in its work. In raising this issue, the hon. Member for Kilmarnock and Loudoun is absolutely right to say that that scrutiny of what effective competition looks like will form an extremely active test of whether we can all sit around in a couple of years' time and say that this Bill on which we have all worked so hard has been effective.

On the basis that the amendment would constrain what Ofgem want to do, I hope that the hon. Gentleman feels content with my explanation and will consider withdrawing it.

Alan Brown: Listening to the Minister, on one level I think that constraining Ofgem might not be such a bad thing if it constrains it in a way that we are happy with, because then we can have criteria that we as politicians, and consumers and suppliers, understand. On the other hand, I understand what the Minister says, in that the regulator has its own job to do. I am conscious that some of the submissions we received as part of this process express concern about the fact that nobody knows what these effective competition criteria will look like. I still have some slight concerns, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 7, in clause 7, page 4, line 39, leave out from "must" to end of line 40 and insert

"have regard to the extent to which—

(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,

(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."

I am afraid this may be the end of the Mr Nice Guy bit. Hon. Members must find that incredible, but it is true. This amendment is potentially very important for the integrity of the whole process of how the price cap is set up, how it works and the circumstances under which it can be brought to a close. There is no real difference between the amendment of the hon. Member for Kilmarnock and Loudoun and mine, except that his requires the Secretary of State to produce a statement to outline the criteria that shall be used by the authority in a review to assess whether conditions are in place for effective competition.

Our amendment seeks to identify what the conditions might look like. That is particularly important, because for this price cap to work clearly both ends of the cap have to be reasonably synchronised. As hon. Members will have observed when we debated an earlier clause, a number of conditions are put forward for the authority to digest when we move from the point of legislation to the point of actually putting the cap in place. There are a number of conditions in clause 1(6) to which the authority needs to have regard when it is putting the cap in place.

That is not so when the authority is considering whether to lift the cap. It is worthwhile considering for a moment what the mechanism for lifting the cap in the Bill actually is. The authority has to carry out a review—in the first instance, in 2020—to look at whether it considers that conditions are in place for effective competition for domestic supply contracts. Therefore, in principle, it can consider whether to bring the cap to an end. Once that review is carried out, roughly before halfway through 2020, the authority must produce a report on the outcome, which must include a recommendation about whether the authority considers that the tariff cap conditions should be extended and should have effect for the following year. When the report is produced, before 31 August 2020, we would expect to see a view from the authority about whether the cap should be continued. Obviously, subject to the sunset clause in the next clause, what the authority says effectively has a one-way view on what the Secretary of State should subsequently say about the cap. As laid out in clause 7(5), the Secretary of State, having received a report,

"must publish a statement setting out whether the Secretary of State considers that conditions are in place for effective competition for domestic supply contracts."

5 pm

There is a double-belt, as it were, on the process. The authority comes along and produces a report, as required by the legislation, saying whether or not the cap conditions should be extended. Presumably, any recommendation that the authority makes that does not include a recommendation to extend the cap will be taken as a report saying that the cap should not be extended. On the contrary, the Secretary of State must then read that report and publish his or her own statement setting out whether he or she positively considers, at that point, that the conditions are in place for effective competition, and therefore that the cap can come off.

The procedure in the clause means that it looks like the Secretary of State will be fairly paralysed in what he or she can do about the statement that conditions are in place for effective competition by what the authority says to the Secretary of State in the first place. The question that then arises is about what circumstances surround the report that the authority has to produce for the Secretary of State. The Bill does not actually give us much enlightenment as to what those circumstances are. Rather oddly, there is only one circumstance in the Bill that the authority is required to review:

"the extent to which progress has been made in installing smart meters for use by domestic customers."

My fear about the roll-out of smart meters, based on my experiences in a previous brief, is that if that is the only thing that the authority has to consider, so far as its review is concerned, it is quite possible that the authority will systematically say that conditions are not yet ready for competition to resume, and will repeatedly produce reports for the Minister saying that conditions are not yet ready because of its particular regard to the

installation of smart meters. Under those circumstances, the Minister would find it difficult to produce his or her statement saying that the cap should come to an end.

We may be in a position, effectively by default, in which whatever the views of the Minister we will be in for a cap going up to the end of 2023. One can of course hope that smart meter installation is absolutely on time and that all smart meters are in place by the end of 2020, as they should be, but if that is the prime consideration in the Bill for the authority's review—the clause does say "among other things"—I should have thought that that would skew the review substantially in the direction of considering that particular concern against others when producing the report for the Minister.

Ofgem has not simply been left to decide for itself what circumstances are in place when it produces its report—and there is something in the Bill that shows that that is not the case. Perhaps I would have understood matters rather better if there was no clause 7(2) and the authority was simply left to its own devices to carry out a review of whether conditions were in place, with the authority deciding what those conditions were. I do not think that would be terribly satisfactory in terms of how we proceed through to the Minister's statement, but it would nevertheless be consistent.

We have not done that. We have put an effective condition down, but we have been silent about all the other conditions that might exist and guide Ofgem in its review. 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.

As I have mentioned, it is necessary to legislate for the worst circumstances, not the best. We can hope that the best circumstances will happen, but at least then we would have the legislation there to proof us should the worst happen. The worst could be that Ofgem, in its wisdom, decides only to consider the progress of smart meters or to make up its own concerns as to what the market does or does not look like and then reports to the Minister that it does not think the cap should be lifted, even though at that point the Minister is jumping up and down, thinking it should be. If we get into that position, Parliament and the Minister will have lost control of the cap. Since we think that the cap should be temporary, I imagine that, if the circumstances are right, we will want to see it as a more temporary cap rather than a less temporary one. I suggest that adopting these guidance notes, as it were, for Ofgem would put us precisely in that position.

I hope to receive an explanation as to why everything is all right in the world of the Bill as far as Ofgem is concerned and to hear that my fears are entirely imaginary and that the out arrangements for the cap are in perfectly good hands, so I need not worry myself at all. However, I fear I may not. I hope the Minister will have a very good attempt at persuading me. This matter is really important, and we ought to take it seriously.

James Heappey: I rise to speak briefly. I know exactly what the shadow Minister is trying to achieve with the amendment, and I agree with him that the cap must be a temporary measure. On Second Reading, I answered an intervention by saying that this should be a raid into the market, not an occupation. It is very necessary indeed to set out clearly the terms on which the cap will come to an end.

Having said that, my concern with the amendment is that whereas the Bill as drafted refers explicitly simply to progress with smart meter deployment—it quite reasonably leaves the regulator and the Minister to work out what progress is being made on the remainder—the hon. Gentleman's list is so lengthy as to be overly prescriptive. Some measures in his list, such as improving efficiency in suppliers' business models, are not the business of the regulator at all. I rather think that suppliers will be driven to find efficiency by the creation of competition, rather than needing to have it required of them. That is what the market does.

The hon. Gentleman is an enthusiastic fellow traveller on the route to a decentralised, digitised, dynamic energy system, so I wonder why his list does not include half-hourly settlement or the universal application of demand-side response, why he does not require the market to be electric vehicle-ready, why he is not concerned about transmission costs as well as distribution costs, why he does not seek signals from the regulator about the readiness of the market to manage a decentralised energy system given all the price advantages that might bring, and why he is not enthusiastic about a code review or embedded benefits, or about looking at what energy-efficiency measures have been made or at whether we are ready for a data-heavy digitised market.

As well as all those things, there is the unknown scale of the renewable deployment that might come our way, alongside the flexibility that storage and demand-side response will bring with them, and what impact that might have on price variability over the course of a year. There are so many unknowns, and the pace of change in the energy system is such that being as prescriptive as the hon. Gentleman desires at this stage would risk hindering progress in the system. It would shape the way the market worked towards achieving the end of the price cap, rather than allowing it to be disrupted in the way that I know he and I genuinely hope it will be.

Alan Brown: Will the hon. Gentleman give way?

James Heappey: I was done, but I am happy to give way.

Alan Brown: I understand the hon. Gentleman's point about other factors that may ultimately influence the retail energy market, but why should progress with smart meter installation be the one thing we tell Ofgem it must measure in its review? It seems to me a bit strange to specify that criterion but say that we do not want all the other important criteria that the hon. Member for Southampton, Test laid out.

James Heappey: I suspect that the Minister is much better placed to answer that than I am, but I guess—I would support this wholly if it were the case—that we have done a lot of work with carrots when it comes to smart meters and we are starting to get into stick territory. If we want the new digitised market to really work—I know that almost everyone here is passionate about achieving that—smart meters are no longer optional: they are a necessity. To use that as a metric of success seems very reasonable to me.

Claire Perry: I want to try to address two of the main points that came up: what "good" looks like, the conditions for success and how far we should specify them in the Bill, and why progress with installing smart meters is the only explicit condition. Ultimately, this is the nub of the whole Bill. We are all here because we believe that the conditions for effective competition are not in place and that the Bill will assist the market towards that evolution. I suspect that we all believe in well regulated, competitive markets delivering the best value and service for consumers, and if we see a regulatory gap—a place where the regulator needs new powers to deliver that—it is only right that we fill it. That is what we are doing.

Once again, I have great sympathy with what the hon. Member for Southampton, Test set out. I feel sometimes that we are a bit like Eeyore and Tigger: he is always looking for the very worst outcome and I am always very optimistic about the future. Perhaps it is good that we often meet in the middle. The challenge, as my hon. Friend the Member for Wells set out, is that the list that the hon. Gentleman has put forward is very sensible. I am sure that we could all come up with further factors that we thought would indicate that the market was acting more competitively.

5.15 pm

One thing gives me comfort. If we believe that the independent regulator has the skills and powers to do this job, it is right that the regulator should do it. When it makes its report it will be completely transparent as to what conditions it has considered.

The Select Committee said, in its excellent summary, that

"We believe that setting a definition of 'the conditions for effective competition' before setting the cap could create incentives for suppliers to game the system"—

back to that problem—

"or treat the cap as a box-checking exercise rather than going above and beyond their obligations."

That also gets us back to the unwelcome but possible prospect of legal challenges. 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. What if, after the legislation was lifted properly with the sunset clause, Ofgem determined that that condition was not taken into account? There will be an opportunity for a legal challenge to say, "Aha! You didn't take into account that particular condition".

One of the reasons why I love this job so much is that this is such a rapidly evolving market. If we look at what has happened to the price of offshore wind and of renewables, we have seen precipitous changes in pricing and the structure of the market. I believe we had two new entrants to the market in 2010; almost 70 companies are now competing, in a matter of seven years. There is this really rapid change. 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.

For me, this is very much a job for the expert regulator. I take comfort from the fact that the process will be very transparent; the regulator will have to set out why it considers this market to be more competitive.

Alan Brown: Why would it be a box-ticking exercise if we as parliamentarians set out criteria that we think can be used, but not if Ofgem sets out the criteria?

Claire Perry: That is a valid point. I guess that by setting the criteria in the Bill we would effectively constrain the opportunities that Ofgem has. Ofgem, as a regulator, should be able to sit closer to the market and observe its evolution, and amend its processes accordingly. All of us know how even the most tortuous, tiny change to a Bill, even if it is done through a statutory instrument, can chew up an awful lot of time and reopen a debate that did not actually need to be reopened.

The hon. Member for Southampton, Test is right that we absolutely have legal powers to protect our constituents, and that is what we are doing, but what we are also doing is empowering the regulator to be perhaps more nimble and agile than politicians and even my fine civil servants might be.

I turn to the Smart Meters Bill, because it is right to say, "Why is that the only thing in the Bill?" Frankly, the reason is that we are rolling out this massive Government programme. We are talking about £11 billion of investment and £17 billion of benefit to consumers. It is now a licence condition for Ofgem. We have had the first roll-out and we are working hard on the data integration, so that the upgrades to a SMETS2 meter happen seamlessly and remotely. I fully intend to work with industry very closely this summer to start to turbocharge that process. There is huge benefit there; the conditions are in place and we want to accelerate.

We want to make sure that the obligations to be part of the evolution of a competitive market and to roll out smart meters are inextricably linked in the minds of industry. On that basis, although we have an important role to play in talking about the terms of effective competition, we expect the market to continue to evolve. It would not be helpful to constrain Ofgem's definition now by setting out what could be perfectly sensible ideas.

Of course, there will be an opportunity to review Ofgem's report and say what the conditions are. We have not yet talked about what the transparency of publication is for that report, but that is certainly something we can address when we discuss that part of the Bill. There is a question as to how transparent that report is made and how widely it should be circulated. As the Committee knows, I am open to ideas of transparency, because it is the way to drive the best forms of competitive behaviour. I fear I may be chancing my luck this late in the day, but I invite the hon. Member for Southampton, Test to withdraw his amendment.

Dr Whitehead: May I say something first about Tigger and Eeyore? I can see the analogy, but we have to remember that Tigger got Pooh and Piglet completely lost in their quest for the North Pole, and also consumed all Roo's medicine in a very unhealthy way.

Claire Perry: But surely the hon. Gentleman would accept that that was a fine and wonderful adventure, and Tigger did it with great gusto?

The Chair: This might be slightly outside the scope of the Bill.

Dr Whitehead: I was just going to say briefly that Eeyore stopped people standing on each other and falling over while trying to get Piglet out of a tree. He was very wise in certain circumstances. What I am trying to say, I hope without any further reference at all to Pooh and Piglet, is that under these circumstances we need to be a little more—I will refer to it again—Eeyoreish than Tiggerish. It is essential that we are careful about the going out of the cap, just as we are careful about its going in.

I heard what the hon. Member for Wells had to say—indeed, it would have been possible to put out a list as long as your arm of possible concerns. He is quite right. I heartily endorse a number of the concerns he raised. I am grateful to him for describing me as a fellow traveller; as he will know, in our party, being described as a fellow traveller is not always meant in the most complimentary of ways. He has set the record straight as far as that is concerned.

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 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.

What I do know, however, is that among the flakier conditions is ensuring that Ofgem has due consideration for the roll-out of smart meters. I could see circumstances where the smart meter roll-out has gone completely down the Swanee, yet market conditions are effectively there for the removal of the cap. Indeed, from what I know about the circumstances around the smart meter roll-out, partly as a result of my involvement in the Smart Meters Bill recently, it is quite possible that the smart meter roll-out will go seriously down the Swanee.

Claire Perry: I now feel a T-shirt coming on saying, "What would Eeyore do?" I wanted to try to give the hon. Gentleman some comfort on this matter. Clause 7(1) refers back to something set out in clause 1(6)(b):

"whether conditions are in place for effective competition for domestic supply contracts."

That means that in consulting on the cap structure, what Ofgem believes to be important will have to be explicit upfront. Also on smart meters, it says that the review "must, among other things", so it is not the exclusive thing. In fact, I have just reassured myself, because clause 7(5) states that the Secretary of State will have to publish the statement about whether they consider the conditions to be in place. It will be very explicit about which conditions have been taken into account in establishing whether the market competitive conditions have been restored.

Dr Whitehead: I thank the Minister for her concordance-like examination of the Bill to look at those conditions, but I stand by the point that there is, with the anomalous imposition of smart meter roll-out, nothing there effectively. I would have hoped that the Minister would be able to say, "Yes, you are quite right. There is nothing there effectively and we can put something there—perhaps not exactly this—on Report". That would have caused my worries about the out as well as the in of the price cap to recede, but apparently that is not going to happen.

I, of course, wish the Minister the best of luck with her Tiggerish wish to get smart meters absolutely right. I am sure she will give that her full attention and ensure that it works as well as it possibly can, but I am afraid that under the circumstances I will have to press the amendment to a vote on the principle of what it is about.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 1]

AYES

Brown, Alan	McCarthy, Kerry
Charalambous, Bambos	Norris, Alex
Flint, rh Caroline	Smith, Nick
Gaffney, Hugh	Whitehead, Dr Alan

NOES

Afolami, Bim	Heappey, James
Donelan, Michelle	Kerr, Stephen
Ford, Vicky	Perry, rh Claire
Grant, Bill	Robinson, Mary
Harris, Rebecca	

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Claire Perry: I rise simply to say that I think that was a useful conversation about what competition looks like. We have made excellent progress today, and I propose that clause 7 stand part of the Bill.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Rebecca Harris.)*

5.30 pm

Adjourned till Thursday 15 March at half-past Eleven o'clock.

Written evidence to be reported to the House

DGEB01 Scope
DGEB02 Energy UK
DGEB03 OVO Energy
DGEB04 Centrica plc
DGEB05 E.ON UK
DGEB06 Octopus Energy
DGEB07 npower
DGEB08 Energy Networks Association
DGEB09 SSE
DGEB10 Bulb
DGEB11 uSwitch
DGEB12 Citizens Advice
DGEB13 Utilita Energy Ltd
DGEB14 Green Gas Certification Scheme (GGCS)
DGEB15 Ecotricity