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| To | Chris Muspratt, Office of Andrew Rosindell MP | | |
| From | Ed Potton  Science and Environment Section  1665  pottone@parliament.uk | Ref  Date | 74-SES |
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A constituent asked about the powers of Ofgem, particularly in respect of any price cap. I have not covered the others issues raised by your constituent around carbon monoxide poisoning.

The Government have indicated that they believe Ofgem has the required powers to implement a price cap, and have indicated this would be done via supplier licence modifications. I have not identified any detail about the changes that could be made to the licences.

A Library Briefing Paper sets out recent debate on energy prices: [Energy bills and proposals for reform](http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8081)

### Energy Market Regulation

The [*Gas Act 1986*](https://www.legislation.gov.uk/ukpga/1986/44/contents) and the [*Electricity Act 1989*](https://www.legislation.gov.uk/ukpga/1989/29/contents)privatised the energy sectors in Great Britain and also created the Director General of Gas Supply and the Director General of Electricity Supply and led to the formation of Ofgas, the Office of Gas Supply, and OFFER, the Office of Electricity Regulation as regulators independent from Government but accountable to Parliament.

The current regulator Ofgem was created by the *Utilities Act 2000*, which merged the functions of DGs Gas and Electricity Supply.  Ofgem, the Office of Gas and Electricity Markets, is the ‘practical arm’ supporting GEMA, the Gas and Electricity Markets Authority, which is the actual regulatory authority.   It is the Authority or GEMA Board which takes decisions on price controls and enforcement for example.

Price controls for domestic energy consumers were introduced during privatisation of the electricity and gas companies from the mid-1980s and early-1990s. Supply price controls were removed in the market in Britain several years after the introduction of competition for domestic consumers in the late 1990’s.

Energy prices are therefore no longer capped and suppliers operate in a competitive market where they set their own prices and consumers can make a choice of supplier based on price and also service.

While Ofgem does not currently impose market-wide price controls, it supervises the structure of the market. For example, it is responsible for issuing energy market licences; a supplier licence is required to operate in the supply market and the licences, and changes to them, can control the way companies operate and obligations they must meet. They set out on their website how they aim to influence the market.[[1]](#footnote-1)

### Recent Government request to Ofgem

On 21 June 2017 the Secretary of State wrote to Ofgem asking for them to take action in three areas: [[2]](#footnote-2)

1. • Safeguarding customers on the poorest value tariffs
2. • Ensuring that micro businesses are fairly treated
3. • Considering the future of standard variable tariffs

Ofgem gave an initial response on 3 July with a letter outlining their current action and a series of proposed measures, including a ‘safeguard tariff for vulnerable consumers which would protect them from overpaying for their energy’.[[3]](#footnote-3) Some have been concerned that the proposed action does not have wide enough scope.

The Secretary of State responded to two oral questions on 12 September 2017 about Ofgem’s potential power to impose a price cap by saying that:[[4]](#footnote-4)

1. Ofgem has extensive powers that would allow it to establish a cap on household energy prices that cause consumer detriment. The Competition and Markets Authority identified a consumer detriment averaging £1.4 billion a year, which I expect Ofgem to take measures to eradicate.

And that:

1. Ofgem has yet to respond to my request. I have the power to oblige Ofgem to put a cap in place. Doing that would seem excessive, and it would require primary legislation. Ofgem has those powers, so there is no need for that. That is why, faced with this huge detriment of £1.4 billion on average, I believe it is essential that Ofgem uses the powers that Parliament has given it to eradicate the detriment.

A PQ answered in July stated that a price cap could be implemented by modifying the licence conditions of gas and electricity suppliers:

1. **Energy: Prices**
2. To ask the Secretary of State for Business, Energy and Industrial Strategy, what scope Ofgem has to implement a domestic energy market price cap without the need for further primary legislation.
3. **Answered by: Margot James Answered on: 12 July 2017**
4. Holding answer received on 11 July 2017
5. Ofgem has wide powers under the Gas Act 1986 and the Electricity Act 1989 to modify the conditions of gas and electricity supply licences, which would allow for the introduction of a domestic energy price cap.[[5]](#footnote-5)

The two relevant Acts set out the ability of the regulator to make and modify licence conditions. The [*Electricity and Gas (Internal Markets) Regulations 2011*](https://www.legislation.gov.uk/uksi/2011/2704/regulation/43/made)modified the process for making licence amendments and gives the regulator the power to make amendments, although they are subject to a consultation and appeal process.

1. Ofgem website, [*The GB electricity retail market*](https://www.ofgem.gov.uk/electricity/retail-market/gb-electricity-retail-market) [↑](#footnote-ref-1)
2. [Letter from Secretary of State to Ofgem, 21 June 2017](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/620993/greg-clark-ofgem-letter-21-06-17.pdf) [↑](#footnote-ref-2)
3. [Letter from Ofgem to Secretary of State, 3 July 2017](https://www.ofgem.gov.uk/system/files/docs/2017/07/20170703_-_letter_from_dermot_nolan_to_the_secretary_of_state.pdf), see also [Ofgem press release, 3 July 2017](https://www.ofgem.gov.uk/publications-and-updates/ofgem-announces-plans-deliver-fairer-more-competitive-market-all-consumers) [↑](#footnote-ref-3)
4. [HC Deb 12 September 2017 c633](https://hansard.parliament.uk/Commons/2017-09-12/debates/DC138912-18ED-4C5E-AFF3-91707867E9A8/DomesticEnergyPriceCap#contribution-B20F1787-AE36-4F20-A2AF-CFB670A12E17) [↑](#footnote-ref-4)
5. [PQ 3338 [on Energy: Prices] 12 July 2017](http://www.parliament.uk/written-questions-answers-statements/written-question/commons/2017-07-06/3338) [↑](#footnote-ref-5)