



*Bringing choice and value  
to customers*

Gas Suppliers, Electricity Suppliers  
and energywatch

Direct Dial: 020 7901 7176  
Email: [nicholas.rubin@ofgem.gov.uk](mailto:nicholas.rubin@ofgem.gov.uk)

02 August 2005

Dear Sir,

### **Non-domestic transfer objections - request for information**

Ofgem has been asked by some suppliers to consider permitting objections for outstanding debt where a non-domestic customer is being supplied on a deemed contract. To be able to assess whether this change would offer benefits to customers, Ofgem is inviting suppliers to submit the data asked for on the attached questionnaire. Should you not wish to submit the data but do wish to comment on the proposal, please do so. Responses should be clearly marked as to whether they are to be treated as confidential or not.

Ofgem is also asking for views on whether there should be more detailed rules as to when an objection can be raised that would restrict old suppliers from seeking to re-contract with their customer following a loss notification.

### **Background**

#### *Deemed contract objections*

New rules relating to transfer objections in the non-domestic gas and electricity markets were implemented in January 2004. In September 2004, Ofgem requested views from electricity and gas suppliers, as well as customer groups and energywatch, on the implications of these new arrangements for customers supplied under deemed contracts. Ofgem is now seeking additional specific information from suppliers to help further develop its thinking in this area

On 3 September 2004, Ofgem issued a consultation letter 'Consultation regarding transfer objections under deemed contracts for non-domestic customers'. This letter followed changes made to the rules that govern the use of the transfer objections mechanism<sup>1</sup> in January 2004 and further consideration by the industry of the effect of these changes on customers supplied under a deemed contract.

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<sup>1</sup> These rules are set out in the gas supply licence and Master Registration Agreement (MRA)

A full background on the changes made in January 2004 and the issue of deemed contract objections is contained in the consultation letter<sup>2</sup>.

In this letter, Ofgem requested views on whether suppliers should have the ability to prevent customers supplied under a deemed contract from switching to another supplier in circumstances defined in that contract. The aim of this was to help inform Ofgem's consideration of a proposed change to the MRA<sup>3</sup> that would prevent objections being made in the electricity market in respect of deemed contract customers. In addition, Ofgem undertook to consider, in the light of the responses received, whether further changes to the arrangements in electricity and gas were required.

The changes in January 2004 to the gas supply licence explicitly precluded objections being raised in circumstances set out in deemed contracts.

However, in electricity, Ofgem was concerned that the MRA, as drafted before MCP 144 was raised, could have permitted suppliers to include terms for objection into deemed contracts which the customer would have been unlikely to have seen or agreed. In Ofgem's view, this had the potential for misuse of the objections mechanism and grounds for objection that were not transparent or reasonable. Ofgem considered that this could restrict competition and therefore not be consistent with its statutory duties. Ofgem therefore approved MCP 144 in November 2004<sup>4</sup>.

The effect of this decision is that objections are now permitted in the following circumstances:

<b>Electricity</b> (set out in the MRA)	<b>Gas</b> (set out in the gas supply licence)
<ul style="list-style-type: none"> <li>• In circumstances specified in a contract (<u>excluding</u> a deemed contract) with a customer</li> <li>• Where both suppliers agree that a customer transfer had been attempted in error (all contracts)</li> <li>• Where related meter points<sup>5</sup> are not registered at the same time (all contracts)</li> </ul>	<ul style="list-style-type: none"> <li>• In circumstances specified in a contract (<u>excluding</u> a deemed contract) with a customer</li> <li>• Where both suppliers agree that a customer transfer had been attempted in error (all contracts)</li> </ul>

In response to the consultation letter, some suppliers expressed views that there were circumstances in which the ability to object under deemed contracts could be beneficial for the supplier and the customer. In particular, the view was expressed that the ability to object was a cost effective way of ensuring payment for energy used was received. This, it was considered,

<sup>2</sup> Available on the Ofgem web-site ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)) and attached as Appendix 1

<sup>3</sup> MRA Change Proposal (MCP) 144.

<sup>4</sup> A copy of the decision letter is available on the Ofgem web-site.

<sup>5</sup> The MRA defines meter points as related if they supply the same customer on the same site where charges for the supply are mutually conditional.

would lead to a reduction in the costs of unsuccessful debt recovery that are typically smeared across a supplier's customers through higher prices.

#### *Use of the objection raising period*

Under the current arrangements in both gas and electricity, the losing supplier has a number of days after receiving the loss notice in which to submit an objection. In electricity this has caused some controversy, as the losing supplier has used this time to re-contract with the customer on new terms that introduce the right to raise an objection and then object to the proposed transfer.

Some suppliers have argued that this is an improper use of the objection raising period and that the rules in the MRA and gas supplier's licence should be clarified to state that for non-domestic customers, the circumstances in the customer's contract at the time the losing supplier receives the loss notification should be relevant. Ofgem is asking for views as to whether clarification through further regulation in the use of objections is required.

#### **Ofgem's current thinking**

Ofgem does not currently consider that a strong case has been made for suppliers to be permitted to object to transfers where the customer is supplied under a deemed contract. It is therefore requesting data from suppliers in order to provide an opportunity for this case to be demonstrated.

If such a case could be made, it is Ofgem's current view that the grounds for objection under deemed contracts should be prescribed centrally and should be limited to cases where there is a valid debt. The definition of what constitutes this valid debt should also be centrally prescribed. Central prescription could ensure greater transparency over the use of the objections mechanism while addressing the concerns of suppliers about the ability to recover debt.

With regard to an old supplier's use of the objection raising period to re-negotiate a contract, Ofgem considers that it is the responsibility of the customer to determine whether or not a contract offered to them is worth signing. Consequently, it is currently Ofgem's view that restricting a customer's choice and ability to sign a contract with whomever it chooses is inappropriate. Furthermore, the contractual terms that existed at the point when an objection was raised are likely to be difficult for the industry to monitor.

#### **Request for information**

Ofgem is inviting suppliers to submit data on a number of aspects of the objections mechanism. It is interested to determine whether a case for permitting objections for debt in certain centrally prescribed circumstances can be demonstrated, in particular whether there is a case that permitting debt objections leads to benefits for customers. It also invites suppliers to comment on the timing of objections.

This data request therefore has two distinct purposes.

- First, Appendices 2 (for electricity suppliers) and 3 (for gas suppliers) provide suppliers with an opportunity to submit evidence with regard to objecting for reasons of debt whilst a customer is on a deemed contract. They seek information regarding the proportion of customers supplied on deemed contracts, the number of these that attempt

to change supplier, details of any objections raised, and the cost of bad debt and its effect on deemed contract prices. If suppliers are not able to submit data, they have an opportunity to provide more general comment in Q 17 in each Appendix.

Nb. Ofgem is aware that some I&C gas suppliers already submit monthly statistics relating to their use of the objections facility. However, completion of this request for information, in addition to the submission of monthly statistics, would be greatly appreciated.

- Second, Ofgem invites comments on the timing of the objections window. In particular, Ofgem is interested in whether it is beneficial to customers for the old supplier to be able to negotiate new terms with them, including the ability to object, on receipt of a withdrawal notification and thereby prevent a transfer.

Responses should be submitted to me at the postal address at the foot of the page or electronically to [nicholas.rubin@ofgem.gov.uk](mailto:nicholas.rubin@ofgem.gov.uk) by 30 August 2005.

If you have any queries about this data request, please contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'N. Rubin', with a long horizontal flourish extending to the right.

Nicholas Rubin  
**Market Infrastructure Assistant Manager**

## Appendix 1 – previous Ofgem consultation letter



Electricity and Gas Suppliers  
Energywatch  
Large User Groups  
Small Medium User Groups  
Scottish Business User Groups

*Bringing choice and value  
to customers*

Direct Dial: 020 7901 7254  
Email: [joanne.taylor@ofgem.gov.uk](mailto:joanne.taylor@ofgem.gov.uk)

3 September 2004

Dear Sir,

### **Consultation regarding transfer objections under deemed contracts for non-domestic customers**

In August 2003, following consultation with the industry and customer groups, Ofgem published a decision document entitled 'Transfer objections: stronger rights for industrial and commercial customers'. This proposed that the circumstances in which suppliers in the non-domestic electricity and gas markets are permitted to object to the proposed transfer of one of their customers should be set out in supply contracts rather than prescribed by regulation. This would permit suppliers and customers to determine grounds for objection that suit their individual circumstances. The decision document was followed by a modification to the gas supply licence and the MRA to give effect to relevant changes in the objections rules which were intended to have consistent effect across the gas and electricity markets. These new arrangements were implemented on 5 January 2004.

Subsequently, Ofgem has been informed that the changes have not been interpreted or applied consistently across the gas and electricity markets. Under the gas supply licence it is clear that transfer objections may not be made under deemed contracts<sup>6</sup> for non-domestic customers whereas the position under the MRA is less clear. Consequently, one supplier has raised an MRA Change Proposal<sup>7</sup> ('the Change Proposal') which, if successful, would have the effect that transfer objections could not be made under deemed contracts for non-domestic electricity customers.

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<sup>6</sup> A contract that is deemed to be in place where a customer takes a supply of electricity and gas otherwise than under a contract that has been expressly entered into with a supplier, for example where a customer moves into a property and begins consumption without a contract in place. For a full definition, see the Electricity Act (Schedule 6) and the Gas Act (Schedule 2B).

<sup>7</sup> MCP 144

The Change Proposal was approved by the MRA Development Board (MDB) on 27 May 2004 and that decision was appealed by a supplier. This appeal was considered at the MRA Forum on 29 July 2004 where the MDB decision to accept the Change Proposal was upheld.

This decision of the MRA Forum was subsequently appealed for determination by the Gas and Electricity Markets Authority ('the Authority'). In a separate letter, Ofgem is currently seeking views on this appeal from MRA parties and customer groups in accordance with its appeal process.

Ofgem did not request views on the specific issue of deemed contract objections in the non-domestic market during its previous consultation. It is therefore, irrespective of the outcome of the decision on the appeal, seeking views from customer groups and gas and electricity suppliers to determine whether it is appropriate for suppliers to be able to object under deemed contracts in both the electricity and gas markets and, if so, under what circumstances.

In addition, if the Authority were to reject the appeal mentioned above, the Change Proposal would require the consent of the Authority before it could be implemented. Views expressed in response to this consultation may also be considered by Ofgem in its determination as to whether to grant its consent to the Change Proposal (if required).

## **Background**

Before 5 January 2004, the circumstances in which a non-domestic supplier was able to prevent its customers switching to other suppliers were governed by rules prescribed by regulation. In the gas market these were set out in the gas supply licence, in the electricity market they were defined in the MRA.

In the gas market, a supplier was able to raise an objection to a transfer where the customer had a debt outstanding for more than 28 days, or where the customer had not given the required notice to terminate their existing contract before the transfer. In the electricity market, objections were only permitted where both suppliers agreed that a meter point had been registered in error, or where a supplier had registered a metering point that was related to another, without also registering all related metering points.

Some customers and suppliers preferred their supplier to be able to object, while others preferred them not to have that right. As a consequence of these varying views and in order to harmonise the processes between the two markets, Ofgem proposed that the customer and supplier should be able to determine the grounds for objection between them through the supply contract and consulted the industry and customers in December 2002. With the majority of views in favour of this proposal, Ofgem published a decision document in August 2003 and a statutory consultation in October 2003 to modify the gas supply licence standard conditions. At the same time, the electricity industry approved, and the Authority granted consent to, a change to Clause 16 of the MRA<sup>8</sup>.

The new rules for non-domestic objections in both markets were implemented on 5 January 2004. Their effect was to permit objections in circumstances specified in the supply contract between the customer and supplier. In addition, the ability to object where both suppliers agree that the meter point has been registered in error and the requirement to notify the customer of

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<sup>8</sup> MCP 135

the reasons for any objections were replicated from the electricity market into the gas supply licence. In the gas market, as a transitional arrangement, contracts that had been entered into before 5 January 2004 and that made no reference to circumstances for objection were permitted to continue with their original grounds for objection unchanged for the life of the contract.

### **Objections under a deemed contract**

Concerns over the interpretation of the new wording in Clause 16 of the MRA and the intention of the change described above have focused on whether an electricity supplier may object where a non-domestic customer is supplied under a deemed contract.

In the gas market, the original grounds for objection in standard licence condition 30 permitted objections to be made where the customer was supplied under a deemed contract only in circumstances where there was a debt demanded in writing and outstanding for 28 days.

Under the revised wording for standard licence condition 30, a supplier is permitted to object in circumstances specified in the contract. The definition of the term 'contract' contained within the licence explicitly excludes a deemed contract and therefore standard licence condition 30 no longer permits objections to be raised for any reason where a customer is being supplied under a deemed contract.

As described above, before 5 January 2004 the MRA did not permit objections in the non-domestic market, including where the customer was being supplied under a deemed contract, except where both suppliers agreed that a mistake in the registration had been made or where related meter points were not registered on the same day. However, the absence of a definition of the term 'contract' in the MRA has given rise to an interpretation of the new wording of clause 16, adopted by some suppliers, which has the effect that objections may be made in circumstances specified in deemed contracts for non-domestic customers. At least one supplier has therefore included circumstances for objections within their standard deemed contract terms.

This issue was discussed in respect of both the gas and electricity markets by suppliers at the Non-Domestic 'Objections & Erroneous Transfer' Working Group on 22 April 2004. At this meeting, arguments for and against the ability to object under deemed contracts were expressed. One supplier felt that objections should be permitted under deemed contracts only in the case of an outstanding debt as had originally been permitted under the gas supply licence. They stated that the ability to object was an important tool in enabling a supplier to recover money owed to them when a customer is supplied pursuant to a deemed contract, for example on a change of tenancy, but has failed to pay. Without this ability, they believed the only method of enforcing payment is through court action which is likely to be uneconomical in most cases.

Other suppliers have expressed the view that objections should only be permitted in circumstances where the customer and supplier have agreed the terms for inclusion in their contracts and that therefore objections under deemed contracts, which are not expressly agreed by customers, should not be allowed. They considered that transfer objections under deemed contracts could have the effect of locking in customers to deemed contracts, which are only intended to be a temporary measure to enable supply, and preventing them from entering into a full supply contract with the supplier of their choice. There would also be a weaker incentive on suppliers to negotiate suitable terms and enter into a full supply contract with the customer. In

addition, some suppliers held the view that there was a danger that there could be a negative impact on customers and their ability to switch supplier if suppliers were able to decide the precise circumstances in which they could object and include them in a contract that the customer had not expressly entered into.

The group however agreed that clarity was needed and that it was preferable to harmonise the rules in electricity and gas as far as possible.

#### **MCP 144**

MRA Change Proposal 144 was raised by Opus Energy on 29 April 2004 and seeks an amendment to clause 16 of the MRA with the effect of not permitting transfer objections to be made under deemed contracts for non-domestic customers.

At the meeting of the MDB on 27 May 2004, four suppliers voted in favour and three suppliers voted against the Change Proposal. The Distribution Businesses declared no interest. Of the Settlement Bodies, Elexon voted in favour, while SESL gave a 'neutral' vote. Consequently, the MDB accepted the Change Proposal.

On 18 June 2004, Ofgem received notification of an appeal raised by British Gas Trading in relation to the decision of the MDB. The grounds for this appeal were debated at the MRA Forum on 29 July 2004. At that meeting, five suppliers voted in favour of the appeal and five suppliers voted against the appeal. After weighting this vote by taking account of the number of metering points supplied by each supplier, 73% of the votes were in favour of the appeal. One distributor declared an interest and voted against the appeal. Therefore, the MRA Forum's resolution was to uphold the decision of the MDB to accept the Change Proposal.

Changes to Clause 16 of the MRA may not take effect without the prior written consent of the Authority. Accordingly, Ofgem may consider views received in response to this consultation to determine whether there is merit in transfer objections under deemed contracts being permitted in both the gas and electricity markets for non-domestic customers and therefore whether to grant its consent to the Change Proposal (if required).

If the Authority upholds the appeal or decides not to give consent to the Change Proposal on the grounds that there is a valid requirement for transfer objections to be made under a deemed contract for non-domestic customers, Ofgem considers that a change to the gas supply licence would be required to mirror these arrangements. A further change to the MRA may also be required to clarify this position.

If objections should be allowed in particular circumstances, such circumstances would need to be specified in the gas supply licence and in the MRA. The nature of any such circumstances may be subject to further consultation. If this were the case, Ofgem considers that such circumstances should be specified, for example in the gas supply licence and the MRA or electricity supply licence, as a precursor to objections being permitted under deemed contracts.

Conversely, if the Authority determined that objections should not be permitted under deemed contracts and granted its consent to Change Proposal, no such further change would be necessary to the gas supply licence or the MRA.



## Way forward

Ofgem is seeking views from customer representatives and industry participants on the suitability of the following options:

1. suppliers in the non-domestic market, in both gas and electricity, should be permitted to object under any circumstances specified by the supplier in deemed contracts; or
2. objections where customers are being supplied under deemed contracts should be permitted only in defined circumstances specified by regulation; or
3. objections should not be permitted in any circumstance where a customer is being supplied under a deemed contract.

Comments are invited on the issues raised above.

**Ofgem is currently seeking views from MRA parties and customer groups as part of its appeal process and will not consider comments made under this consultation until the appeal decision has been made. In order to keep responses separate, respondents to this consultation should clearly mark their comments '*Consultation Response*'. These should be submitted, separately to any responses to Ofgem's appeal process, by 1 October 2004 to me at the above postal or e-mail address.**

Please contact me if you have any questions about the consultation set out above.

Yours faithfully,

Joanne Taylor  
Project Manager