



2001

## Maximum Resale Price Provisions

Ofgem's initial proposals

## Executive summary

This consultation paper seeks views on the revision of policy concerning the maximum resale price of electricity and gas, that is the price at which these fuels may be resold after purchase from authorised suppliers. Principally, the rules affect prices charged by landlords when providing electricity and gas supplies to their tenants.

The existing maximum resale price rules derive from the separate regulatory regimes in the gas and electricity sectors. The reasons that have prompted Ofgem to carry out a review of the existing policy are:

- Changes to the Gas and Electricity Acts arising out of the Utilities Act 2000.
- The desire for policy alignment between gas and electricity with particular reference to
  - overall scope of any controls
  - exemptions
  - treatment of unit charges
  - treatment of standing charges and
  - penalties

This paper summarises the relevant legislation and the associated policy issues raised by the operation of maximum resale price. It then considers the issues involved in the mechanism for setting maximum resale price; proposals for change are set out under each area.

Key proposals are:

- that the Authority continues to issue directions on maximum resale price
- that the regime in gas no longer includes the industrial and commercial market
- that the link between domestic electricity maximum resale price and regional supplier tariffs be removed and that the rules relating to the recovery of both the unit and standing charges for electricity be aligned with those for gas
- that the Authority introduce a requirement for landlords to pass information about electricity purchase prices on to tenants, as currently happens for gas

- that stronger measures be introduced to discourage overcharging and failure to provide information to tenants
- that the exemption of self propelled vessels from electricity maximum resale price be cancelled

Comments on the proposals are invited by **26 April 2001**.

## Table of contents

<b>1</b>	<b>Introduction</b>	<b>5</b>
<b>2</b>	<b>Legal and Policy background</b>	<b>9</b>
<b>3</b>	<b>Requirement for Maximum Resale Price Controls</b>	<b>12</b>
<b>4</b>	<b>Structure of a future Maximum Resale Price scheme</b>	<b>17</b>
<b>5</b>	<b>Summary and Next Steps</b>	<b>23</b>
	<b>Appendix 1: Current electricity statute – s44 of the Electricity Act</b>	<b>26</b>
	<b>Appendix 2: Current gas statute – s37 of the Gas Act</b>	<b>27</b>
	<b>Appendix 3: Current electricity direction</b>	<b>28</b>
	<b>Appendix 4: Current gas direction</b>	<b>29</b>
	<b>Appendix 5: Revised statute – electricity</b>	<b>30</b>
	<b>Appendix 6: Revised statute – gas</b>	<b>31</b>
	<b>Appendix 7: List of consultees</b>	<b>32</b>

## Chapter 1 – Introduction

### *Background*

- 1.1 At present the Gas Act 1986 requires, and the Electricity Act 1989 allows, the Gas and Electricity Markets Authority (the Authority) to issue directions setting the maximum price for the resale of gas and electricity in Great Britain. The maximum resale price (MRP) limits the amount that can be charged for supplying gas that has already been bought from a licensed supplier, or electricity which has been bought from an authorised electricity supplier (i.e. one who is authorised to supply either by licence or exemption). It applies principally to the resale of gas and electricity by landlords to tenants.
- 1.2 The requirements placed on the Authority to set maximum resale prices will be revised once the relevant provisions of the Utilities Act 2000 come into force. The principal change is that the requirements in relation to the setting of MRP in gas and electricity are aligned. The obligation to set an MRP in gas is replaced with a power (which may or may not be exercised). This flexibility already exists in electricity. These revised requirements are expected to come into effect later this year, possibly in June 2001 subject to approval from the Secretary of State for Trade and Industry.
- 1.3 Ofgem currently sets MRP for gas and electricity. The maximum price at which gas supplied to any person may be resold – whether for domestic, industrial or commercial purposes – is the same price per therm or kilowatt hour as that paid by the person reselling it. The maximum price at which electricity may be resold to domestic customers is capped at the level of the local Public Electricity Suppliers (PES's) current standard tariff. The resale price of electricity resold to industrial and commercial customers is not capped.
- 1.4 This document explains how the MRP provisions have been implemented up to now, explains the impact of the policies, discusses the options that Ofgem has for the use its powers to set MRP in the future and sets out Ofgem's proposals.

### ***Rationale***

- 1.5 As explained above, once the relevant provisions of the Utilities Act 2000 are brought into effect, the Authority will have a power rather than an obligation to set MRP for both gas and electricity. Therefore it is necessary to consider whether and to what extent the power should be used. If it is decided that the power should be used then it will be necessary to determine what the form of the directions should be and the type and extent of the publicity that ought to be given to them.
- 1.6 Since the last major reviews of the MRP regime in 1993 (electricity) and in 1996 (gas), competition in gas and electricity supply has developed significantly, so that now all industrial, commercial and domestic gas and electricity customers can choose an alternative supplier to British Gas or the local Public Electricity Supplier. Therefore, further consideration should be given to the effect of MRP on the delivery of the benefits of a competitive retail market, and if there is a need to continue to offer this form of protection for consumers in the competitive market.
- 1.7 If Ofgem uses its power to set MRP, it will be necessary to review the existing MRP directions and, depending upon the outcome of the review, it may be necessary to revise them.

### ***Structure of the document***

- 1.8 Chapter 2 sets out the legal and policy background to this review in more detail. The need for and the extent to which the power to set MRP should be exercised is considered in Chapter 3. Against this background, Chapter 4 discusses the scope of potential directions, including the appropriate form of price restriction and information requirements. It also includes an analysis of the sanctions in the event of non-compliance, and how Ofgem can best publicise any MRP requirements. A summary of Ofgem's proposals, and an explanation of the next steps, is provided in Chapter 5.
- 1.9 The relevant existing provisions of the Gas Act 1986 and the Electricity Act 1989 are set out in Appendices 1 and 2, whilst the existing gas and electricity MRP directions are set out in Appendices 3 and 4. Appendices 5 and 6 set out the

new provisions of the Gas Act 1986 and the Electricity Act 1989 as amended by the Utilities Act 2000.

### ***Timetable***

1.10 The Utilities Act received Royal Assent in July 2000 and the relevant provisions for MRP are likely to come into force on 1 June 2001. The expected timetable for this consultation exercise is:

- 29 March 2001 - Ofgem issues consultation document.
- 26 April 2001 - Responses to consultation document due.
- 24 May 2001 - Ofgem issues final proposals.
- June 2001 - Commencement of relevant provisions of the Utilities Act 2000 (subject to the Secretary of State's approval).
- June 2001 - new MRP directions come into effect.

### ***Responses***

1.12 Ofgem wishes to conduct this review in as open a way as possible and to consider the views of all interested parties. If you wish to express a view on these initial proposals or any related matter, we would like to receive your response by 26 April 2001. Responses should be addressed to:

Nikki Abraham  
Head of Customer Contact and Compliance  
The Office of Gas and Electricity Markets  
9 Millbank  
London  
SW1H 3GE

e-mail: [nikki.abraham@ofgem.gov.uk](mailto:nikki.abraham@ofgem.gov.uk)

Respondents can mark all, or part, of their responses as confidential. However, we would prefer that as far as possible responses are provided in a form that can be placed in Ofgem's library.

If you have any queries concerning the issues raised in this document, please contact Nikki Abraham on 020 7901 7260 ([nikki.abraham@ofgem.gov.uk](mailto:nikki.abraham@ofgem.gov.uk)), who will be pleased to help.



## Chapter 2 – Legal and policy background

2.1 Provisions for MRP have been included in legislation for many years. This chapter explains how the legal provisions have developed and been implemented for gas and electricity in turn. The chapter then discusses how the MRP provisions have operated in practice.

### *Gas*

2.2 In gas, duties were given to area gas boards to set MRP by the Gas Act 1948. Current gas provisions derive from the Gas Act 1986, which gave the Director General of Gas Supply (DGGs) a duty to set MRP. The actual MRP has then been determined under rules set out in a direction issued by the DGGs. Responsibility for setting MRP under these provisions now rests with the Authority. The provisions also allow for the recovery of any charges in excess of the MRP.

2.2 The Gas Act 1995 amended the Gas Act 1986 to extend the provisions to require the person re-selling gas to provide the purchaser with certain information. It also introduced a penalty for failing to provide the required information and it made provision for the purchaser to recover interest on any charges made in excess of the MRP. It also excluded the re-sale of gas for use as fuel for propulsion in a motor vehicle from the MRP provisions.

2.3 The protection afforded by MRP in gas covers both domestic and industrial and commercial consumers. However, it does not include consumers whose premises are supplied by an exempt supplier.<sup>1</sup>

2.4 Up to 1996, policy for MRP in gas required that the resale price of gas paralleled the maximum tariff price set by British Gas. In 1996, following the commencement of the Gas Act 1995, this policy was deemed inappropriate in the light of developing competition in gas supply and the ability of landlords,

---

<sup>1</sup> Exemption from the requirement of a supplier to hold a licence can be obtained for certain classes of suppliers. Generally this is to enable greater opportunities for suppliers to compete by offering local cost effective choices to customers.

particularly those in the industrial and commercial sector, to reduce their purchase price. Currently the rule is that gas must not be re-sold at a price higher than has been paid for it. This allows consumers to benefit directly from the purchase of cheaper gas. Any standing charge must be apportioned between the number of people to whom the gas is re-sold, and the landlord if resident on the premises.

- 2.5 Section 102 of the Utilities Act 2000 introduces two changes to the MRP regime in gas, to align the regime with electricity. First, it gives the Authority a power rather than a duty to set MRP. This change allows the Authority to choose not to set MRP in certain circumstances. The second change extends the gas MRP regime to include gas originally supplied by an exempt supplier. Currently only gas supplied from licensed suppliers is covered.

### *Electricity*

- 2.6 In electricity powers to set MRP were given to area electricity boards by the Electricity Act 1958. These provisions were continued by legislation that restructured the industry, and section 44 of the Electricity Act 1989 provided for the rules for determining actual MRP to be set out in a direction issued by the Director General of Electricity Supply (DGES). Responsibility for the discharge of these provisions now lies with the Authority. The purchaser can recover any charges levied in excess of the MRP under the provisions. MRP in electricity only extends to resale for domestic use.<sup>2</sup>
- 2.7 The level of MRP in electricity is currently set at the highest tariff price that would be levied by the public electricity supplier for the area in which the resale occurs. A separate standing charge may be levied for each person to whom electricity is re-sold. The last major review of electricity MRP policy took place in 1993 and resulted in the introduction of the rules outlined above.

---

<sup>2</sup> Resale for electricity industrial and commercial customers is not covered because tenants in this situation are deemed to be able to negotiate prices as part of rental property contracts and because some are able to pass costs on to the buyers of their products and services.

- 2.8 Section 73 of the Utilities Act 2000 introduces several changes to electricity MRP, to ensure alignment between the current gas and electricity regimes. There will no longer be a need to fix actual prices; instead it will be possible for the Authority to specify how maximum prices are determined. This change gives the Authority the possibility of setting prices in a way that would allow any benefits obtained by the purchase of cheaper electricity to pass through to the consumer, in the same way that currently happens in gas. The person re-selling electricity can be required to provide certain information to the purchaser and a penalty will be introduced for failing to provide that information. In addition it will be possible for the purchaser to recover interest on any charges levied in excess of the MRP.

***Operation of the MRP provisions***

- 2.9 There is no formal role for the Authority in determining individual MRP disputes, which are, if necessary, resolved in the civil courts. However, rules outlining how the level of MRP is determined, which are established under the relevant directions, form the basis of any claim in most cases.
- 2.10 Over the last two years, enquiries about MRP from electricity consumers have averaged some 200 per month. The number of enquiries from gas customers has not been monitored either by Ofgem, the Gas Consumers Council or energywatch. As there is no formal regulatory role for Ofgem in determining MRP disputes it is difficult to judge how many complaints result in further action or civil proceedings.

## Chapter 3 – Requirement for Maximum Resale Price Controls

### *The need to set MRP*

- 3.1 As stated earlier, the Utilities Act 2000 will give the Authority a power rather than a duty to set MRP for both gas and electricity. The Authority now needs to consider whether it is necessary to continue with controls on MRP and if so, to what extent it should exercise those controls. Previously gas and electricity regulatory policy has been that a tenant who does not enjoy the protection afforded him by the normal regulatory regime should not be disadvantaged financially by being unable to sign a contract with a licensed supplier and being required to purchase more expensive energy from his landlord. However it has not been, and Ofgem believes it should not be, the intention that controls over the MRP of gas and electricity should interfere with negotiations of property rental contracts.
- 3.2 Therefore in deciding whether, and how, to extend the MRP provisions, Ofgem has taken account of how competition has developed for gas and electricity customers, and the extent to which competition can be expected to protect their interests, without the need for additional regulatory provisions. In relation to tenants it is particularly important to consider how aware they are of competition in the gas and electricity supply markets so they can negotiate effectively with landlords.
- 3.3 If there is any lack of awareness or understanding of the competitive energy supply market, it is Ofgem's responsibility to address this and to ensure that all consumers can benefit from the competitive gas and electricity markets. Where tenants are unaware of the existence of competitive gas and electricity markets, it is possible that MRP controls could be useful to ensure tenants can enjoy any financial benefit that the landlord may have obtained from competitive energy.

### ***Present state of competition***

- 3.4 Ofgem has commissioned various market research exercises to establish the levels of awareness of the competitive energy market. MORI research commissioned by Ofgem and published in January 2000<sup>3</sup> showed that at least 95% of domestic customers are aware of alternative suppliers in the gas and electricity markets, although their understanding is at times somewhat limited. The research showed that domestic customers' awareness of competition was near universal.
- 3.5 The domestic retail markets have been fully open to competition since May 1998 for gas and May 1999 for electricity. It is estimated that some 6 million domestic customers in each of the two sectors have changed supplier at least once, with the total number of customer transfers being some 18 million. Recent figures suggest that some 139,000 customers change electricity supplier each week, together with some 57,000 gas customers. These customers can achieve savings of up to 20% compared to the incumbent supplier. There are 16 active gas suppliers and 13 active electricity suppliers in the domestic markets.<sup>4</sup>
- 3.6 In the industrial and commercial sector competition has been open for all customers since the mid-1990s and there are 15 active electricity suppliers in England and Wales, 12 in Scotland. 49% (by premises) of the above 100 kW market in electricity is now in the hands of suppliers other than the original Regional Electricity Companies.<sup>5</sup> In gas competition has also been open to all customers since the mid-1990s and there are now 34 active suppliers in the industrial and commercial sector. Suppliers other than British Gas Trading account for 41% (by premises) of the market.<sup>6</sup>

---

<sup>3</sup> "Electricity and Gas Competition Review – Research Study conducted for Ofgem" MORI, January 2000

<sup>4</sup> "A review of the development of competition in domestic gas and electricity supply", Ofgem, December 2000.

<sup>5</sup> "A review of the development of competition in the industrial and commercial gas supply market" Ofgem, August 2000

<sup>6</sup> "A Review of the Development of Competition in the Industrial and Commercial Gas Supply Market", Ofgem, August 2000.

### ***The impact of competition on resale price***

- 3.7 The vast majority of customers are aware of the existence of the competitive energy supply market. The principle of competitive supply has been established for many years to the industrial and commercial sector. Industrial and commercial consumers are more familiar with and confident in negotiating energy contracts and contracts more generally, and are therefore more likely to be able to ensure that they benefit from any savings associated with lower fuel costs.
- 3.8 In the domestic sector, consumers' confidence in negotiating contracts is less well developed but increasing. Even where there is awareness of competition, there is evidence that domestic customers find it difficult to compare prices and to understand what is the best deal available. Therefore, although it may be open to domestic landlords to change supplier, a lack of understanding of the deals available may prevent this, and may prevent tenants challenging prices quoted by landlords.

### ***Existing exemptions from MRP provisions***

There are two existing exemptions from the MRP provisions that are discussed in turn below. These are:

- ◆ gas used as a means of propulsion; and
- ◆ houseboats.

### ***Gas used as a means of propulsion***

- 3.9 Gas used as a means of propulsion, e.g. natural gas vehicles, is exempted from the MRP rules. This is because the price of vehicle fuel is affected by other legislation and was never intended to be within the remit of the Authority. There is no equivalent statutory provision in the electricity sector, although electricity can be used as a means of propulsion.

### ***Houseboats***

- 3.10 The reasons for the existing policy that supplies of electricity to certain houseboats be excluded from the MRP control are:

- the cost of supply to houseboats (i.e. the cost of supply in kVAh units rather than kWh);
- the distinction between houseboats used for leisure and those used as permanent accommodation; and
- the VAT position, which bears upon the mobility of the boat.

3.11 Information that Ofgem has suggests that the price differential between kVAh and kWh units is not particularly significant. Furthermore, where electricity is supplied for use in domestic appliances, the number of units consumed is likely to be similar whether measured in kVAh or kWh.

3.12 The exemption in the existing direction depends upon the use to which the boat is put, i.e. the MRP rule does not apply unless it is used as a place of permanent habitation, and does not have the means of and is not readily capable of being adapted for self-propulsion. This particular facet of the exemption is derived from VAT rules – specifically VAT Information Sheet 2/89 that has now been superseded by VAT Notice 701/20 (see Customs & Excise website [www.hmce.gov.uk](http://www.hmce.gov.uk)). The Notice deals with both houseboats and caravans. OFFER, in its consideration of the original exemption, leant heavily upon the rule relating to houseboats (fuel supplies to temporarily occupied or self-propelled boats being liable to full-rate VAT). However, it did not consider leisure / touring caravans in the same light, notwithstanding that supplies to them might be considered to be similar in type.

3.13 Supplies of electricity to whatever type of structure or premises, at a rate not exceeding 1000 kWh per month, are VAT exempt – this point is not reflected in the MRP exemption.

3.14 It should be noted that, in gas, there are no exemptions of this type. If there is a need to introduce a degree of consistency to the rules, that consistency could be achieved by removing the exemption and bringing electricity supplies to mobile houseboats onto the same footing as supplies to leisure caravans (and gas supplies to both). Alternatively it could be achieved by introducing an exemption to cover gas and electricity supplies to leisure caravans.

### *Ofgem's initial proposals*

- 3.15 It is Ofgem's view that the development of competition in the domestic sector is not as well developed as in the industrial and commercial sector. In particular, it is not clear that customers in the domestic sector have as much understanding and experience of negotiating contracts for energy supply as those in the industrial and commercial sector. We are proposing therefore that maximum resale price rules continue to apply in the domestic sector, for the next twelve months, and that they are reviewed as part of Ofgem's deregulation project.<sup>7</sup>
- 3.16 The licences which will in future be issued pursuant to the Gas and Electricity Acts will define domestic premises by reference to use, rather than the volume of supply. Consequently Ofgem proposes that in revising the MRP regime, the same principle is followed.
- 3.17 In gas, competition is fully established in the industrial and commercial sectors and customers are experienced in negotiating energy contracts. We propose therefore to remove the current protection that applies to industrial and commercial resale in the gas sector. For the same reason, no new MRP provisions will be introduced for the industrial and commercial electricity sector.
- 3.18 Ofgem proposes also to amend the existing direction to remove the exemption of houseboats. This would equalise the position of MRP for similar leisure/touring vehicles such as caravans and with the position in gas. Ofgem believes that only a very tiny number of houseboats use electricity as a means of propulsion and that it would be inappropriate at this point in time to introduce a new exemption from the MRP rules in gas. The new rules would cover domestic accommodation used for holiday lettings.

Ofgem would welcome comments on these proposals.

---

<sup>7</sup> Over the next year Ofgem will be reviewing all regulation applying to retail supply markets, with a view to determining whether any regulation can be removed or amended as a result of the development of competition.



## Chapter 4 – Structure of a future MRP scheme

4.1 In chapter 3 it was proposed that MRP controls continue to apply in the domestic sector, for the next twelve months. This chapter goes on to discuss what form these controls ought to take, to what extent they should be publicised, and by whom.

4.2 As has already been explained, existing controls in gas involve a straight pass-through of the landlord's purchase costs, whilst those in electricity affect only domestic customers and reflect the standard tariffs charged by the local PES.

### *The form of future control*

4.3 There has been substantial development in the competitive gas and electricity retail markets since some tenants last had an opportunity to exercise any choice that would (directly or indirectly) reduce the cost of fuel sold to them by landlords. If it is decided that controls on MRP will continue, consideration needs to be given as to whether it is appropriate to continue the existing methods of control, or whether there are better ways of achieving this objective.

### *Electricity unit price – the link to PES tariffs*

4.4 The current link between MRP and PES tariffs has meant that resale purchasers should, at the least, be charged no more than they would otherwise pay to the PES in whose area they live. This may have given landlords an incentive to purchase efficiently since they can attempt to purchase electricity at a lower price in the competitive market and thereby make some profit on resale.

4.5 The Utilities Act will have the effect of abolishing the concept of public electricity supply. As price regulation is removed and the ex - PESs introduce new pricing structures, the traditional yardstick of the PES published tariff may also to some extent disappear. This means that the way in which MRP is set for electricity will have to change.

- 4.6 If a fixed price ceiling linked to ex - PES prices were maintained, purchasers of resale electricity would not benefit from lower prices available from other suppliers. Alternatively, a fixed price ceiling could be based on averaged price data. However if prices in the market fluctuate significantly or change frequently this could require Ofgem to conduct repeated reviews of the price ceiling. Recent experience of gas prices gives an indication of how difficult this could be. In Ofgem's view this would be an unwieldy and time-consuming exercise and inappropriately burdensome in view of the number of consumers that are likely to benefit.

***Electricity unit price: pass-through of purchase costs***

- 4.7 To the extent that landlords are prepared to purchase fuel in the competitive market, a pass-through rule means that tenants receive a direct benefit from that market. Conversely, a pass-through rule means that whatever the landlord's purchasing strategy may be, he can only pass on his direct expenditure to his tenants and is therefore not strongly incentivised to reduce these costs. Landlord's incentives will also depend on the extent of competition in the property rental market.
- 4.8 The pass-through method will transfer to tenants, who are the end consumers, the benefit of the overall downward trend in prices which landlords are likely to pay. As Ofgem's intention is to bring the benefits of the competitive market to all consumers, where appropriate, a pass-through of costs from landlords to tenants would deliver this directly. This form of control is already used in the gas sector and appears to work successfully.
- 4.9 Ofgem proposes that the existing electricity MRP regime, which depends upon a fixed price ceiling corresponding to PES tariffs, should be replaced with a regime in which electricity is resold at the same price as that paid by the landlord. The regime in gas would be continued on the same basis. Comments are invited on this proposal.

***Standing charges***

- 4.10 At present for electricity MRP a landlord is permitted to levy a separate daily charge, equivalent to that which he pays to the primary supplier, upon each of

his tenants. The declared intention is that any resulting excess income should be regarded as being available to meet the landlord's ancillary costs, e.g. those of preparing bills and maintaining internal wiring and meters. However this cannot be regarded as an accurate method of dealing with ancillary costs and indeed it is debatable whether the MRP provision was ever intended to deal with this type of cost.

- 4.11 In gas, the landlord is merely permitted to apportion any standing charges that he pays between his tenants, thus recovering no more than the amount that he himself has paid. Any additional costs of the kind referred to above must be recovered separately and are outside the scope of the MRP direction.
- 4.12 Ofgem proposes that the rule for the recovery of electricity standing charges be aligned with that which applies to gas and that the latter be continued. Comments are sought on this proposal.

#### ***VAT implications***

- 4.13 Ofgem has no responsibility for the determination of VAT liability, nor can it offer advice upon the ability of landlords to pass on the cost of VAT in the resale process. However, a decision needs to be made as to whether or not VAT should be included when setting rates for MRP. If the proposals set out above are followed there will of course be no published rates for resale, and at best we will be able to tell landlords that they may recover the "appropriate rate" of VAT.
- 4.14 If any query arises as to the correct VAT rate (e.g. because the landlord has been charged at the full rate but is re-supplying in circumstances where the exempt rate might apply), landlords should contact HM Customs and Excise (HMCE) for advice.

#### ***Sanctions for non-compliance***

- 4.15 The Utilities Act amends legislation to allow the tenant to recover the amount of any excess payment made for electricity or gas, and also allows for the recovery of interest on that excess payment, providing that the Authority's direction permits this.

- 4.16 Recovery is a civil matter and would normally be pursued through the Small Claims Court. Ofgem would have no direct involvement in the proceedings. However, it needs to be decided whether, and to what extent, the Authority should provide for the payment of interest in its directions.
- 4.17 If interest provisions were not to be included in MRP directions, Ofgem believes there would be no incentive upon landlords to make prompt repayment of any excess charges. We therefore propose that any future directions issued by the Authority provide for the payment of interest on excess charges. Ofgem would welcome comments on this proposal.

### ***The level of interest***

- 4.18 A higher interest rate, by definition, would be intended not only to compensate the consumer for having made excess payments, but also to provide some incentive for the landlord not to repeat the breach of the MRP rule. Such a penal interest rate would need to be at a level well above those normally available for investment purposes; a figure that merely equated to banking rates of interest would simply compensate the consumer for not earning interest on the sum that has been overpaid.
- 4.19 As stated in the previous paragraph, non-penal interest, set at a normal bank rate, would merely compensate the tenant for the amount of interest that he might have earned on the excess charges that he paid. This may not be seen as a strong incentive for the landlord to comply. However, such an approach would be consistent with that currently applied in gas, which is in turn consistent with the interest payable on sums retained as security deposits by suppliers. Ofgem proposes that in future the interest rate should be set at twice the prevailing base rate for both gas and electricity. Comments are invited on this proposal.

### ***Information requirements***

- 4.20 In a system where resale prices follow the price actually paid by the landlord, it is only the landlord who can provide pricing information to the tenant. Should the tenant find himself in dispute with the landlord he is likely to need to know the landlord's purchase price. There may be a limited incentive on the landlord to provide this, and therefore, some means of compulsion may need to be

available to support this requirement. MRP rules in gas already provide for the Authority to impose directions regarding the provision of information to tenants, and include a provision (via directions) for sanctions for failure to provide it.

These sanctions are:

- the imposition of a maximum price determined by the Authority, or
- a reduction in the resale price currently being charged by the landlord.

4.21 The first option might in practice entail a judgement as to what an appropriate price for supply might be, having considered the range of prices that might be available within the market. With the large number of tariffs now available, this could be complex and also act in a way that unduly disadvantages the landlord. The second option appears easier to operate since the price paid by the tenant will be known, and is likely to act as a sufficient incentive for the landlord to reveal his purchase price.

4.22 As to the level of reduction, the arguments are similar to those expressed in paragraphs 4.18 and 4.19 above.

4.23 Ofgem's proposal is that if an MRP regime based on the pass-through of costs is implemented in electricity and/or gas, the Authority directs that the landlord provides information about purchase price to his tenants. We further propose that where a landlord does not provide the required information, a sanction is imposed. Ofgem proposes that the sanction be a reduction of the charges being levied by the landlord at rate that is twice the prevailing Barclays Bank base rate for the period for which the information was not provided.

### ***Directions***

4.24 Currently, MRP directions in gas and electricity are published separately. Previous paragraphs have set out the differences between the two regimes, but we have also indicated a desire to carry out a process of alignment. The extent to which alignment is possible will depend to some degree upon the responses to this consultation.

4.25 This means in turn that the decision as to whether to perpetuate the system of publishing two separate directions, or whether to issue a single direction covering both fuels, will need to be deferred until future policy is determined. If the proposals Ofgem has set out in this document are introduced it is expected that one direction covering both gas and electricity will be introduced.

***Publicity***

4.26 In the past, where either OFGAS or OFFER has set maximum prices, the tenant has been able to obtain details from them or from the Gas Consumers Council, the Electricity Consumers Committees (both now replaced by energywatch) or other advice agencies. Should the Authority conclude, as result of this consultation, that it should continue to set MRP, this system would continue to operate. Ofgem will need to consider, with energywatch, the appropriate extent of publicity for the new arrangements.

## Chapter 5 – Summary of initial proposals

This chapter summarises Ofgem’s proposals and sets out the next steps.

### **The need to set MRP**

- 5.1 Ofgem believes that competition in domestic gas and electricity retail markets is less well developed compared to the industrial and commercial (I&C) markets. Given the lack of understanding and experience of negotiating energy contracts and operating in a competitive energy market amongst some domestic customers, Ofgem believes that it should continue to set MRP for domestic gas and electricity customers. The continuation of this provision will be reviewed as part of the Ofgem deregulation project. Ofgem invites views on this proposal.
- 5.2 Ofgem proposes that the definition of domestic customer for MRP be brought into line with the proposed definition in the new standard licence conditions. Comments are invited.

### **MRP for industrial and commercial customers**

- 5.3 Ofgem believes that competition is sufficiently developed in the I&C markets and that I&C customers have significant experience of energy contract negotiations and operating in a competitive energy market. Therefore, Ofgem proposes to remove MRP protection for I&C gas customers and not to introduce any new provisions for industrial and commercial electricity customers. Views on this are invited.

### **The exemption in respect of houseboats**

- 5.4 Although there has been a distinction between houseboats used for permanent accommodation and those used for leisure, Ofgem intends to remove the exemption of houseboats from the electricity MRP rules. It is felt that the current reasons for exemption do not in practice justify the distinction between houseboats and similar vehicles such as leisure caravans. Views on this proposal are invited.

### **Pricing requirements**

- 5.5 Ofgem proposes to remove the link between the MRP in electricity and the PES tariffs. Instead it is proposed that a pass-through rule is introduced, as currently applies in gas. That is the re-sale unit price for electricity will be the same as that paid by the landlord. Comments on this proposal are invited.
- 5.6 Currently landlords can levy a separate daily charge for each tenant for electricity re-sale, in order that the landlord can recover administration costs. Ofgem believes that the recovery of administration costs in this way is outside the scope of the MRP direction and therefore proposes that the standing charge be apportioned equally among all tenants, thus aligning electricity with gas MRP. Views on this proposal are invited.
- 5.7 If it is decided that a fixed price MRP regime should continue, then it is proposed that these prices should be VAT inclusive. Alternatively, if a pass-through rule is to be applied then it is proposed that Ofgem will advise that VAT is collected at the appropriate rate. In either case, all disputes about VAT will be dealt with by HMCE. Views on this proposal are invited.

### **Sanctions for non-compliance**

- 5.8 As an incentive for landlords to make prompt payment of any excess charges, it is proposed that MRP directions include that interest on any late re-payment is also recoverable. Views on this point are invited.
- 5.9 It is clearly important that tenants should not suffer financially through overcharging by landlords. Even though a landlord may ultimately refund any excess charges to a tenant, a simple refund would not recompense the tenant for loss of income which might have accrued from the overpaid sum had he been able to invest it. We must therefore consider whether or not it would be appropriate to require the payment of compensatory interest on the sum overcharged. Further, we must consider whether interest should be paid at a rate somewhat higher than that currently available for normal investment. Ofgem believes that setting such a level of interest will act as an appropriate incentive for landlords to re-pay excess charges. In our view a figure of twice the



prevailing bank base rate would be justified. Comments on these proposals are invited.

### **Information requirements**

- 5.10 If there is a dispute about MRP, the most basic information that the tenant will require is the price that the landlord has actually paid for gas or electricity. Therefore Ofgem proposes that it is directed that the landlord must provide information about purchase price to tenants on request. Views on this proposal are invited.
- 5.11 In order to incentivise landlords to provide this information Ofgem proposes that where information is not provided, a reduction of the re-sale price currently being charged is applied. It is further proposed that this reduction be twice prevailing bank base rate, the arguments regarding the strength of the incentive being similar to those mentioned in para 5.9 above. Comments on these two proposals are invited.

### **Publicity**

- 5.12 Ofgem will be debating appropriate publicity measures with energywatch.

### **Next steps**

- 5.13 Ofgem is consulting on the questions raised in this document and invites responses to the approach suggested and comments on the proposals by **26 April 2001**. It is intended that a document giving Ofgem's final proposals will be issued by 24 May so that implementation of any new direction/s can be made as soon as the relevant sections of the Utilities Act are commenced.

Ofgem will be issuing an interim direction for electricity MRP to apply from 1 April 2001 to the commencement date – this direction will extend the existing method of control up to the point where the Utilities Act 2000 assumes force.

## Appendix 1

### Wording of current electricity statute – section 44 of the Electricity Act 1989

#### Fixing of maximum charges for reselling electricity.

**44.**-(1) This section applies to electricity supplied to a consumer's premises by an authorised electricity supplier, that is to say, a person who is authorised by a licence or exemption to supply electricity.

(2) The Director may from time to time fix maximum prices at which electricity to which this section applies may be resold, and shall publish any prices so fixed in such manner as in his opinion will secure adequate publicity for them.

(3) Different prices may be fixed under this section in different classes of cases, which may be defined by reference to areas, tariffs applicable to electricity supplied by the authorised electricity suppliers or any other relevant circumstances.

(4) If any person resells electricity to which this section applies at a price exceeding the maximum price fixed under this section and applicable thereto, the amount of the excess shall be recoverable by the person to whom the electricity was resold.

## Appendix 2

### Wording of current gas statute – section 37 of the Gas Act 1986

#### Maximum prices for reselling gas

37<sup>8</sup>.–(1) The Director shall from time to time direct that the maximum prices at which gas supplied by gas suppliers may be resold–

- (a) shall be such as may be specified in the direction; or
- (b) shall be calculated by such method and by reference to such matters as may be so specified,

and shall publish directions under this section in such manner as in his opinion will secure adequate publicity for them.

(2) A direction under this section may–

- (a) require any person who resells gas supplied by a gas supplier to furnish the purchaser with such information as may be specified or described in the direction; and
- (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction, or shall be reduced by such amount or such percentage as may be so specified.

(3) Different directions may be given under this section as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances.

(4) If any person resells any gas supplied by a gas supplier at a price exceeding the maximum price determined by or under a direction under this section and applicable to the resale–

- (a) the amount of the excess; and
- (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,

shall be recoverable by the purchaser.

5) Nothing in this section shall apply in relation to the resale of gas for use in a motor vehicle which is constructed or adapted to use gas as fuel for its propulsion.

## Appendix 3

### Wording of current MRP direction – electricity

#### Maximum Resale Price of Electricity

Under section 44 of the Electricity Act 1989, I may from time to time fix maximum resale prices at which electricity may be resold (“maximum resale prices”). I hereby fix maximum resale prices from 1 July 2000 at the levels indicated in the Schedule attached.

A maximum resale price shall apply where electricity is resold for use for domestic purposes to consumers’ premises by persons who obtain their supply from any authorised electricity supplier. A maximum resale price shall not apply to the supply of electricity to a boat unless the boat is used as a place of permanent habitation and does not have the means of, and is not capable of being readily adapted for, self-propulsion.

The maximum resale price shall comprise a charge per unit and a daily availability charge. These charges shall be:-

- a) for each unit resold the unit charge set out in column 2 of the Schedule;
- b) for each day on which electricity is available for resale, the daily availability charge set out in column 3 of the Schedule,

in each case as set against the public electricity supplier named in column 1 of the Schedule in whose authorised area the electricity is resold. These charges are applicable, within the authorised area of the relevant public electricity supplier, regardless of the supplier. Since 1 September 1997 the unit price and daily availability charge has taken full account of VAT at a rate of 5%.

By virtue of section 44 of the Act, if any person resells electricity, where a maximum resale price applies, at a price exceeding the maximum resale price, the amount of the excess shall be recoverable by the person to whom the electricity was resold.

**JOHN NEILSON**  
**DEPUTY DIRECTOR GENERAL, CUSTOMERS AND SUPPLY**  
for and on behalf of  
**C McCARTHY**  
**DIRECTOR GENERAL OF ELECTRICITY SUPPLY**

25 September 2000

## Appendix 4

### Wording of current MRP direction – gas

#### Direction made under section 37 of the Gas Act 1986 as to the maximum price for reselling gas

The Director General of Gas Supply, pursuant to section 37(1) to (4) of the Gas Act 1986, hereby gives the following direction:-

1. (1) Subject to sub-paragraph 92) below, the maximum price at which gas supplied by a gas supplier to any person may be resold shall be –
  - (a) in respect of each therm or kilowatt hour resold to any person, the same price per therm or kilowatt hour as that paid for that gas by the person reselling the gas to the gas supplier; and
  - (b) where a standing charge is payable to the gas supplier in respect of any premises in addition to the charge for the actual gas supplied in respect of any period, such daily sum in respect of each secondary meter installed at the premises for the purpose of registering the quantity of the gas resold as is given by -
    - (i) dividing the standing charge by the number of days in that period; and
    - (ii) dividing the resulting sum by the number of secondary meters so installed.
- (2) Where a person reselling gas supplied to him at any premises occupies any part of the premises in which appliances are installed for the consumption of gas, an additional secondary meter shall, for the purposes of sub-paragraph (1)(b)(ii) above, be deemed to have been installed at the premises for the purpose of registering the quantity of gas resold by him.
2. Any person who resells gas supplied by a gas supplier shall furnish the purchaser with particulars of the prices payable under the contract for the supply of that gas between the gas supplier and the person reselling the gas.
3. If any person resells any gas supplied by a gas supplier at a price exceeding the maximum price determined by or under this direction, interest on the amount of the excess shall, in addition to that excess, be recoverable by the purchaser at the rate which is from time to time 1% less than the base rate of Barclays Bank plc.
4. This direction shall come into force on 1<sup>st</sup> March 1996.

(C Spottiswoode)  
Director General of Gas Supply  
15 th February 1996.

## Appendix 5

### Text of section 44 of the Electricity Act 1989 as amended by the Utilities Act 2000 (*Note: these amendments are expected to come into force later in 2001*).

#### Maximum prices for reselling electricity

**44** –(1) The Authority may from time to time direct that the maximum prices at which electricity supplied by authorised suppliers may be resold–

- (a) shall be such as may be specified in the direction; or
- (b) shall be calculated by such method and by reference to such matters as may be so specified,

and shall publish directions under this section in such manner as in its opinion will secure adequate publicity for them.

(2) A direction under this section may–

- (a) require any person who resells electricity supplied by an authorised supplier to furnish the purchaser with such information as may be specified or described in the direction; and
- (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction, or shall be reduced by such amount or such percentage as may be so specified.

(3) Different directions may be given under this section as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances.

(4) If any person resells electricity supplied by an authorised supplier at a price exceeding the maximum price determined by or under a direction under this section and applicable to the resale

- (a) the amount of the excess; and
- (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,

shall be recoverable by the person to whom the electricity was resold.

## Appendix 6

### Text of section 37 of the Gas Act 1986 as amended by the Utilities Act 2000 (*Note: these amendments will come into force later in 2001*).

#### Maximum prices for reselling gas

37 –(1) The Authority may from time to time direct that the maximum prices at which gas supplied by authorised suppliers may be resold –

- (a) shall be such as may be specified in the direction; or
- (b) shall be calculated by such method and by reference to such matters as may be so specified,

and shall publish directions under this section in such manner as in his opinion will secure adequate publicity for them.

(2) A direction under this section may –

- (a) require any person who resells gas supplied by an authorised supplier to furnish the purchaser with such information as may be specified or described in the direction; and
- (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction, or shall be reduced by such amount or such percentage as may be so specified.

(3) Different directions may be given under this section as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances.

(4) If any person resells any gas supplied by an authorised supplier at a price exceeding the maximum price determined by or under a direction under this section and applicable to the resale –

- (a) the amount of the excess; and
- (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,

shall be recoverable by the purchaser.

(5) Nothing in this section shall apply in relation to the resale of gas for use in a motor vehicle which is constructed or adapted to use gas as fuel for its propulsion.

(6) In this section “authorised supplier” means a person who is authorised by a licence or exemption to supply gas.

## Appendix 7

### List of consultees

**This document is being sent to the following organisations, but responses are invited from all parties with an interest.**

BHHPA

Citizens Advice Scotland

The Consumer Association

DETR

Energy Action Scotland

energywatch

English Tourism Council

Federation of Private Residents Associations

Federation of Small Businesses

The Electricity Association

The Gas Forum

LACOTS

London Housing Unit

Marina Developments Ltd

NCAB

National Consumer Council

National Energy Action

National Energy Action Wales

National Housing Federation

Scottish Consumer Council

Scottish Tourist Board

Welsh Tourist Board