

Objecting in the Domestic Market

Consultation Document

March 2003

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Summary

Domestic customers should be able to change their gas and electricity supplier easily and with confidence.

This document proposes changes to the circumstances in which a gas supplier may prevent a domestic customer's transfer to a new supplier. These proposals aim to reduce the complexity of the transfer process for customers.

Specifically it is proposed that suppliers should not be able to prevent a customer transferring their supply to a new supplier simply because the customer has not given sufficient notice of contract termination.

The proposals also seek to give suppliers the ability to prevent an erroneous transfer from taking place. Erroneous transfers can cause considerable inconvenience to customers and are expensive for suppliers to resolve. Under this proposal, erroneous transfers could be prevented by blocking the transfer either where the customer states that they have not entered into a contract with the other supplier or where both suppliers agree that the transfer will occur in error.

The circumstances under which a supplier may block a customer from transferring to another supplier are set out in the Gas Suppliers Licence for gas suppliers and in the Master Registration Agreement (MRA) for electricity suppliers. In this document Ofgem is proposing that the rules set out in the Gas Suppliers Licence for domestic suppliers are amended.

Ofgem cannot propose modifications to the MRA. Electricity suppliers have however indicated their willingness to make equivalent amendments in the electricity market to those proposed in gas.

In addition, on 16th December 2002 Ofgem consulted on amending the rights of gas suppliers to object to the transfer of industrial and commercial (I&C) customers. Under this proposed licence modification a supplier would only be able to object to the transfer of an I&C customer where this has been agreed under the terms of the relevant supply contract. It is intended that this proposal should also be mirrored in the electricity market through modification to the MRA.

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1. Rationale

Issue

- 1.1. Domestic customers should be able to change their gas and electricity supplier easily and with confidence.
- 1.2. Ofgem has received complaints from customers and suppliers in the domestic market about the use made by some suppliers of the objection mechanism. In particular, concerns have been raised regarding an incumbent supplier's ability to prevent a proposed transfer to a new supplier due to insufficient contractual termination notice.
- 1.3. Customers have a right to expect that switching suppliers should be a straightforward process with little inconvenience or fuss.
- 1.4. The ability of a supplier to block a customer's proposed transfer to a new supplier is a right granted to energy suppliers by virtue of licences and industry agreements. The circumstances in which that right can be exercised must be strictly governed for customers to benefit from it.
- 1.5. The Gas Suppliers Licence and the Master Registration Agreement (MRA)¹ govern the use of the objection mechanism in the gas and electricity markets respectively. In both markets suppliers are permitted to block a transfer where the customer has not provided sufficient contractual notice that they wish to terminate their contract.
- 1.6. Where the customer requires the transfer to proceed and their supplier raises an objection, it results in a delayed transfer that can frustrate both the customer and the new supplier. The sending and processing of termination notices is a bureaucratic process that is difficult to manage and adds significant costs to both the incoming and outgoing supplier.
- 1.7. These contractual objections have led to disputes concerning suppliers' compliance with the Gas Suppliers Licence and MRA. In some cases it is argued

¹ A legally binding, multi-lateral agreement established for the electricity industry to govern the provision and use of metering point administration services by market participants for the development, maintenance and operation of an efficient system for the supply of electricity in England, Wales and Scotland.

that termination notices had not been processed in time by the incumbent supplier or that customer instructions given during telesales were not being accepted or acted upon. These claims were backed up by Ofgem audits of some suppliers' objection processes.

- 1.8. Under the current objection rules there is a risk that a supplier will use objections to retain customers outside of the circumstances permitted either intentionally or through processing errors.
- 1.9. Complaints have resulted in Ofgem having to undertake regulatory action to enforce the current rules for the use of objections. Without modification it is unlikely that the gas and electricity objection rules will be able to deliver a satisfactory set of arrangements for either suppliers or customers. These issues have been recognised, and the majority of suppliers have, on a voluntary basis, agreed to waive their rights to object due to insufficient termination notice. These proposals therefore aim to regularise voluntary arrangements that have been operating for some time.
- 1.10. Customers should only be transferred where they have entered into a new contract with a supplier. Where a customer believes that they have not entered into a contract to transfer, suppliers have said that there would be merit in allowing the existing supplier to block the transfer. This ability to prevent erroneous transfers², without the agreement of the other supplier, is not currently supported by the existing objection rules.
- 1.11. In addition, in the electricity market domestic suppliers are permitted to object where they have the agreement of the incoming supplier (a co-operative objection). This process is considered to be of use in preventing erroneous transfers. The co-operative objection process is not currently formalised in the gas market but operates on a voluntary basis under the Domestic Gas Suppliers Code of Practice.

Objective

² An erroneous transfer occurs where a customer has been transferred to a supplier without there being a valid contract in place.

- 1.12. Ofgem considers that the right of gas and electricity suppliers to prevent customer transfers by raising objections for lack of contractual termination notice is not necessary or desirable in the domestic market. The existence of these rights and the way they are used are likely to impede the development of competition. This ability to object is not compatible with the interests of customers and the operation of a flexible, competitive market and should no longer be permitted.
- 1.13. Ofgem considers that where a customer states that they have not entered into a contract to transfer to another supplier then the current supplier should be empowered to raise an objection and prevent that transfer from taking place (a customer requested objection). Ofgem notes the concern about potential abuse of the objection process, in particular the right of suppliers to make customer requested objections, and considers that appropriate safeguards should be put in place. These will include the transparency of the objection reason to the customer and the other supplier and maintaining evidence on the reason for the objection to allow audit.
- 1.14. Ofgem also considers that the right for a supplier to object on a co-operative basis to prevent a transfer taking place with the agreement of the other supplier is valuable in preventing an otherwise erroneous transfer of a customer.
- 1.15. Ofgem considers that the arrangements governing the use of objections should as far as possible be aligned for both gas and electricity, and customer experience in both markets should be the same.

Proposal

- 1.16. Ofgem is proposing the following licence amendment to Standard Licence Condition 46:
- ◆ Remove a domestic gas supplier's right to object on grounds of lack of sufficient contractual termination notice.
 - ◆ Allow the old supplier to object to a proposed transfer taking place where its customer has clearly stated that they have not entered into a contract with the new supplier and that such a transfer would be

erroneous. Where such an objection is made the objecting supplier shall:

- ◆ keep evidence of the customer's request and reasons for the request for at least 12 months, and
- ◆ inform the new supplier that the objection has been raised at the customer's request and the reason given by the customer.
- ◆ Include the ability for the new supplier to agree with the old supplier that the proposed transfer has been initiated in error and that a co-operative objection should be made by the old supplier.
- ◆ Ensure that the old supplier informs the customer that it has prevented the proposed transfer, the grounds for preventing the transfer and how the customer may dispute or resolve such grounds.

1.17. This proposal does not impact on the ability of domestic gas suppliers to object on grounds of debt.

2. Timetable

- 2.1. The timetable for the key events identified in this document is as follows. The timetable is dependent on there being in place a mechanism for collective licence modification. These rules are currently being established by the DTI.

19 th March 2003	Publish Consultation Document
25 th April 2003	Responses to be sent to Ofgem
May 2003	Publish provisional decision document
May 2003*	Publish Gas Act 1986 Section 23 notice
June 2003*	End of period for representations and objections
June 2003*	Final announcement

* These dates are dependant on the DTI putting in place a revised mechanism for collective licence modifications and may therefore change.

Views Invited

- 2.2. Comments are invited on the issues raised in this document. It would be helpful to receive these by 25th April 2003. Responses should be sent to:

Nigel Nash
Head of Market Infrastructure
Ofgem
9 Millbank
London
SW1P 3GE
Tel: 020 7901 7065
Fax: 020 7901 7084
Email: nigel.nash@ofgem.gov.uk

Contact

- 2.3. If there are any questions regarding this document please contact either Joanne Taylor (Tel: 020 7901 7254, email: Joanne.taylor@ofgem.gov.uk) or Andrew Wallace (Tel: 020 7901 7067, email: andrew.wallace@ofgem.gov.uk).

Confidentiality

- 2.4. All responses will normally be published on the Ofgem website and held electronically in the Ofgem Research and Information Centre unless there are good reasons why they must remain confidential. Where possible any confidential material should be placed in appendices in responses. Ofgem prefers to receive responses in an electronic form so they can easily be placed on the Ofgem website.

3. Transfer Objections: Process and Performance

- 3.1. When a new gas or electricity supplier attempts to take over the supply of a customer the existing supplier is notified and is able to block the transfer in certain defined circumstances. This chapter sets out the circumstances under which suppliers may prevent a customer from transferring to another supplier. It then reviews supplier performance in objecting to customer transfers.
- 3.2. In the gas market, the objection rules are set out in Standard Licence Conditions 30 and 46. In the electricity market they are set out in Clause 16 of the MRA. Under Standard Licence Condition 20 of the Electricity Supply Licence, suppliers are required to become a party to and comply with the MRA.

Contract Termination Notice

- 3.3. All domestic gas and electricity suppliers may object to the transfer of one of their domestic customers where they are bound by a contract which to the knowledge of the supplier will neither expire nor be terminated on or before the proposed transfer date. Under the terms of the Gas Supply Licence and Electricity Supply Licence a notice of termination is valid where it is given at least 28 days in advance of the date on which it is to take effect.
- 3.4. Contract termination notice is usually provided to suppliers through one of three routes:
- ◆ The customer telephones their current supplier.
 - ◆ The new supplier asks a customer to sign a proforma termination notice at the time that the customer enters into a contract with them. The new supplier submits this notice of termination to the incumbent supplier (usually by post) on the customer's behalf.
 - ◆ The customer writes to their current supplier and informs them that they are terminating their contract.

Debt Objections

- 3.5. All domestic gas and electricity suppliers may object to the transfer of one of their domestic customers in certain circumstances relating to the customer's outstanding debt. These are:
- ◆ where the supplier has made a written demand for the charges due to it, and
 - ◆ these charges have remained unpaid for 28 days after the making of the demand.

Co-operative Objection Process

- 3.6. Under the provisions of the MRA, electricity suppliers may object to the transfer of a customer where they have agreed with the supplier who is attempting to take over the supply that the registration had been made in error.
- 3.7. Co-operative objections also take place in the gas market as a measure to prevent erroneous transfers. However, this practice is not set out in the Gas Suppliers Licence but is defined under the voluntary Domestic Gas Suppliers Code of Practice.

Information Transfer

- 3.8. When raising an objection, electricity suppliers are required to inform the customer of the grounds for objection and how the customer may dispute or resolve such grounds.
- 3.9. In the gas market the objecting supplier is not precluded from informing the customer that they have raised an objection to their transfer. However, it is recommended under the voluntary Domestic Gas Suppliers Code of Practice that it is the new supplier's responsibility to inform the customer that their proposed transfer has been blocked.

Supplier Performance

- 3.10. Following the introduction of competition into the domestic gas and electricity markets, Ofgem (previously Ofgas and OFFER) has monitored the number of objections raised by suppliers. This information was used to understand the percentage of proposed transfers being objected to, differences between suppliers' performance and the impact on customers being prevented from transferring to a new supplier.
- 3.11. A detailed summary of the performance of suppliers in raising objections is shown in Appendix 1.
- 3.12. By October 1999 the objection rate in the gas market had risen to around 30% of all attempted transfers. Ofgem believed that of these around two thirds related to objections on grounds of insufficient contractual termination notice. It was anticipated that the electricity market, which had more recently opened to domestic competition would follow the same pattern. Ofgem considered that this level of supplier activity in blocking customer transfers was having a significant impact on competition and customer perception of the energy supply market.
- 3.13. Due to concerns about the impact of objections on customers and domestic competition, Ofgem worked with the industry to introduce the Termination Notice Trial (the Trial) in October 1999. The purpose of the Trial is described in detail in Chapter 4.
- 3.14. The immediate impact of the Trial was that the objection rate fell to 15% in the gas market and 5% in the electricity market. However, since then the objection rate has risen in the gas market to 24% (Oct – Dec 02) and to 16% (Oct – Dec 02) in the electricity market. Ofgem remains concerned about the large number of customers that are being prevented from transferring. In particular there is a significant difference in the rate at which different suppliers block customer transfers as some suppliers have not participated in the Trial.

4. Termination Notice Trial

- 4.1. As noted in the previous chapter, Ofgem monitored the objection rate since market start up and became increasingly concerned about the proportion of customer transfers that were being blocked. In addition, customers and suppliers expressed concern that substantial numbers of customer transfers were objected due to insufficient contractual termination notice in cases where it was believed these notices had been sent.
- 4.2. Therefore in October 1999 Ofgem initiated the Termination Notice Trial (Trial) in the domestic gas and electricity markets. Under the terms of the Trial the majority of suppliers agreed not to object on grounds of lack of sufficient termination notice. The vast majority of suppliers continue to participate in the Trial today.
- 4.3. Three suppliers initially elected not to participate in the Trial and were audited by Ofgem to ensure that they were in compliance with the related requirements of their licences and the MRA.
- 4.4. Following the audits, Ofgem reported a number of concerns that were felt to be inherent in the use of the objection process for lack of sufficient termination notice. These included both operational issues and concerns about the impact of objections on the development of competition.
- 4.5. The audits showed there to be considerable risk that suppliers would fail to manage adequately the procedures that support the processing of termination notices. Where this led to a customer being incorrectly prevented from transferring to another supplier then this frustrates the customer's intention to move to a new supplier.
- 4.6. The audits identified that the receipt of a termination notice presented the incumbent supplier with an early opportunity to re-market to a customer who had entered into a contract with another supplier and offered a mechanism for subsequently preventing the transfer from taking place. Concern was expressed that this increased the potential for customers to be misled and misinformed during the resulting contacts with their current supplier.

- 4.7. Since the introduction of the Trial several additional suppliers have agreed to abide by its terms. Two suppliers, Atlantic Electricity and Gas and Powergen³, have remained outside the Trial and have continued to object where they believe that they have not received sufficient termination notice from the customer.
- 4.8. Some suppliers have expressed concern that this has left them at a commercial disadvantage. In such instances some suppliers have operated a “tit for tat” objections policy. Where one of their customers was transferring to another supplier who was in the Trial then they would not object due to lack of sufficient contractual termination notice. However, if the other supplier was not in the Trial then they would raise an objection if they had not received sufficient termination notice. Ofgem considers that the use of tit for tat objections has contributed to the increase in the objection rate over the last year.
- 4.9. One of the key concerns expressed by suppliers about the Trial was that it would lead to an increased number of erroneous transfers. This is discussed further in Chapter 6. However, in the March 2000 consultation on amending suppliers’ rights to object, Ofgem concluded that there was no evidence to suggest that the rate of erroneous transfers had risen as a result of the objection Trial.

³ Powergen Retail object on grounds of lack of termination notice where the customer informs them that they do not want to transfer. In addition, the Norweb Gas and Amerada Hess customer portfolios which are owned by Powergen, object where a customer has not provided sufficient contractual termination notice, (Powergen have advised that this is under review and likely to change shortly.)

5. Proposed Licence Modification: March 2000

- 5.1. Following the Trial and consideration of the issues raised in the audit of supplier performance, Ofgem concluded that the right of gas and electricity suppliers to prevent customer transfers by raising objections for lack of sufficient termination notice was not necessary or desirable in either the domestic or industrial and commercial (I&C) gas market or the domestic electricity market.
- 5.2. In March 2000 Ofgem published a consultation document⁴ setting out proposals for the removal of the right of domestic gas and electricity suppliers and of I&C gas suppliers to prevent a transfer on the basis that the customer had not provided sufficient notice of contract termination. This document can be found on Ofgem's web site at http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/1572_tranmar.pdf.
- 5.3. Having considered the responses to the document, Ofgem revised the proposed modification only to affect domestic customers as further consideration of proposals in respect of I&C customers was needed. In July 2000 a formal Notice of the Director General's proposal to modify the Gas Suppliers Licence was issued. The key features of the revised proposal included:
- ◆ Removing domestic suppliers' right to object due to insufficient termination notice.
 - ◆ Permitting an objection where the customer has specifically requested that the proposed transfer should not proceed.
 - ◆ Formalising current gas industry practice to allow the right to object on a co-operative basis.
- 5.4. A significant number of I&C gas suppliers voted against the modification even though the change only impacted domestic suppliers. The impact of I&C supplier voting meant that the proposed modification did not receive the level of support needed to amend the Gas Suppliers Licence.
- 5.5. Ofgem publicly stated its intention to seek again a formal change to the Gas Suppliers Licence with regard to objections as soon as reasonably practical after

the new collective licence modification rules come into effect. The Gas Act 1986 (as amended by the Utilities Act 2000) set the framework for the new collective licence modification rules. This provides that only domestic suppliers may make a statutory objection to amendments to standard licence conditions that apply to the supply of domestic customers. These rules also require the Secretary of State to set the percentage thresholds required to block a proposed licence amendment.

6. Contract Termination Notice

- 6.1. This document proposes that a domestic supplier's right to object on grounds that the customer has provided insufficient termination notice should be removed. This seeks to formalise the regulatory arrangements for the vast majority of suppliers who are operating under the terms of the Trial referred to in Chapter 4.
- 6.2. This chapter sets out the arguments for and against removing a supplier's right to object on grounds of insufficient termination notice.

Incorrect Objections

- 6.3. Suppliers and customers have complained to Ofgem that transfers have often been incorrectly blocked by incumbent suppliers on the grounds that the customer had not provided sufficient termination notice.
- 6.4. Suppliers are not required to object. The power to do so is granted under the Gas Suppliers Licence and the MRA. Ofgem has audited suppliers, in particular those who did not agree to participate in the Trial. Despite the intentions of suppliers, evidence has shown that the bureaucratic nature of the process for dealing with termination notices means that on occasions it is likely that breaches of the gas licence or the MRA will occur. Efforts to ensure compliance are costly for a supplier to manage.

Barriers to Switching

- 6.5. Many customers find the requirement to provide sufficient termination notice to their existing supplier confusing and different to their experiences in purchasing goods and services in other markets. The additional burden for customers in providing termination notices may deter some customers from switching.
- 6.6. Customers who have been prevented from transferring or who have been delayed are more likely to form the view that moving to a new supplier is not a simple and easy process and would be less likely to undertake the process again or recommend it to others.

Erroneous Transfers

- 6.7. At the start of the Trial several suppliers said they believed that raising objections where they had not received a termination notice was a useful method of preventing erroneous transfers.
- 6.8. Because of customer confusion over the requirement to provide notice of termination the new supplier has taken on the role of facilitating this communication transfer on behalf of the customer. For example, where a contract is entered into on the doorstep then the customer will also be asked to sign a termination notice which will be forwarded onto the customer's existing supplier. Ofgem holds the view that termination notices do not provide additional customer safeguards or improve the quality of the sales process but simply increases the complexity of the customer transfer process and the likelihood that the customer's transfer will be delayed or ultimately prevented.
- 6.9. Ofgem agrees that, in certain cases, objections could prevent erroneous transfers. Erroneous transfers are of serious concern to Ofgem, energywatch, suppliers and customers. Ofgem considers that there is a role for the current supplier in blocking a transfer when the customer states that they have not entered into a contract with an alternative supplier. This is discussed in the next chapter. In addition, the co-operative objection process could be used to prevent a transfer that had been identified as being potentially erroneous.
- 6.10. The root causes of erroneous transfers are being tackled through initiatives to improve the sales and marketing of suppliers such as EnergySure⁵ to improve access to and quality of industry data such as through MPAS Online⁶, and the implementation of standard address formats in the electricity industry and for independent Gas Transporters.

⁵ EnergySure is a new initiative developed by the Electricity Association which seeks to promote best practice in energy selling by introducing a nationally accepted recognition and accreditation scheme for energy sales agents.

⁶ MPAS Online provides a self-service MPAS enquiry service via the Internet for the electricity industry.

7. Customer Requested Objections

- 7.1. Ofgem considers that the systems and processes in place which support competition between suppliers should minimise the number of customers who are erroneously transferred. Erroneous transfers are a source of inconvenience, frustration and in some cases distress for customers. Erroneous transfers also impact on the supplier who has lost the customer in that it is required to undertake work to bring that customer back on supply.
- 7.2. Ofgem proposes that, where a customer states that they have not entered into a contract with a supplier who is attempting to transfer them, then they should be able to ask their current supplier to block that transfer. Ofgem considers that this proposal is a positive step to prevent customers from being erroneously transferred.
- 7.3. The role of Customer Requested Objections (CROs) in the domestic market has been debated by an industry-working group. The group concluded that whilst it was important to put in place effective mechanisms to prevent customers being transferred erroneously, there were potential problems with suppliers' interpretation of the customer's desire to have their transfer blocked.
- 7.4. In particular, concern was expressed that the current supplier would contact the customer when it became aware of an impending transfer and attempt to dissuade them from transferring. The group felt that where a customer had changed their mind about transferring to a new supplier then this was not grounds for the current supplier to raise an objection without the prior and explicit agreement of the new supplier (a co-operative objection). Alternatively, in such instances it would be acceptable for the customer to enter into a new contract with their new preferred supplier.
- 7.5. Where a supplier raises a CRO then Ofgem proposes that the supplier should maintain an adequate audit trail, for example, by recorded telephone call or customer signed correspondence, to provide evidence of the customer's request for the objection to be raised. Ofgem proposes that this evidence should be retained for at least 12 months.

- 7.6. As additional safeguards on the use of the CRO process Ofgem proposes that the incumbent supplier should be required to inform the other supplier that it has raised a CRO and provide the reason given to it by the customer for this action.
- 7.7. In all cases where the current supplier objects, not just for CROs, Ofgem proposes that the supplier should inform the customer of the reason for the objection and tell them how they can dispute or resolve that reason. It is important that the reason for the objection is fully transparent to the customer so that they are aware of what has occurred. This, alongside the requirement to inform the new supplier, will assist in identifying any possible cases where suppliers are incorrectly using the objection process.
- 7.8. Suppliers provide Ofgem with a monthly proforma detailing their performance against key indicators in transferring customers. Should the proposals set out in this document be accepted then it is Ofgem's intention to amend the monitoring requirement so that information is collected on the number and reason for objections raised by suppliers including CROs.
- 7.9. Ofgem will take action against suppliers who incorrectly use their ability to block customer transfers. Ofgem will investigate related complaints raised by customers and suppliers. In addition, Ofgem may undertake audits of supplier objection activity and of the evidence that they are required to keep on the reason for the CRO.

8. Summary of Proposals

- 8.1. Ofgem is now seeking to formalise the practices adopted by the majority of suppliers under the Trial by removing a gas supplier's right to object where it has not received sufficient termination notice. Ofgem is also seeking to allow gas suppliers to respond to customer requests to prevent erroneous transfers where the customer states that they have not entered into a contract with an alternative supplier (with appropriate safeguards). In addition, Ofgem is seeking to formalise current practices to allow a gas supplier to raise an objection where it has the agreement of the other supplier.
- 8.2. Ofgem is therefore proposing to amend Standard Licence Condition 46 of the Gas Suppliers Licence for domestic suppliers as set out in Table 1. It is intended that the amendments to the gas licence, where they do not already exist, are replicated in the domestic electricity market. An equivalent set of changes have been proposed to the MRA and supporting documentation for consideration at March's MDB⁷ meeting. These changes have a proposed implementation date of 1st June 2003. Table 1 also sets out the MRA amendments that are being proposed for domestic electricity suppliers for comparison. Ofgem is not able to propose amendments to the MRA although Ofgem is required to consent to any amendments to Clause 16 of the MRA relating to the objection process.
- 8.3. In a consultation paper published on 16th December 2002 Ofgem proposed that the rights of I&C suppliers to object due to insufficient termination notice and debt as set out in Standard Licence Condition 30 be amended only to allow I&C suppliers to object where this has been agreed with the customer under the terms of their supply contract. This proposed amendment removes the reference to a domestic supplier's ability to object on grounds of debt. Therefore to accommodate this potential change the provisions relating to a domestic supplier's ability to object on grounds of debt are proposed to be replicated in Standard Licence Condition 46. This does not change the ability of domestic gas suppliers to raise objections on grounds of outstanding debt.

⁷ The MRA Development Board (MDB) is the electricity industry forum which, amongst other things, has delegated authority from the MRA Executive Committee to consider and vote on operational amendments to the MRA.

Proposed Change	Gas	Electricity
Contract Termination Notice: Remove the right to object based on lack of sufficient termination notice.	Amend SLC 46 of the Gas Suppliers Standard Licence Conditions	Amend Clause 16 of the MRA
Customer Requested Objections Allow the current supplier to raise an objection where the customer clearly states not to have entered into a contract with the new supplier.	Amend SLC 46 of the Gas Suppliers Standard Licence Conditions (to be supported by industry agreed guidelines)	Amend Clause 16 of the MRA and the introduce of a new MRA Agreed procedure (MAP 12)
Retention of information: Maintain an adequate audit trail for CROs e.g. by recorded call or customer signed correspondence of all such customer contact. Keep evidence of the customer's request and reasons for the request for at least 12 months.	Amend SLC 46 of the Gas Suppliers Standard Licence Conditions	Introduction of MAP 12
Customer contact: Old supplier to inform the customer that it has prevented their proposed transfer, the grounds for preventing the transfer and how the customer may dispute or resolve such grounds.	Amend SLC 46 of the Gas Suppliers Standard Licence Conditions	No change to existing provisions
Inter- supplier communication: Old supplier to inform the new supplier that it has made a CRO and of the reason given by the customer.	Amend SLC 46 of the Gas Suppliers Standard Licence Conditions (to be supported by industry agreed guidelines)	Introduction of MAP 12
Co-operative Objections: Allows the new supplier to agree with the old supplier that the proposed transfer has been initiated in error and that a co-operative objection should be made by the old supplier.	Amend SLC 46 of the Gas Suppliers Standard Licence Conditions	No Change
Debt Objections: Maintain existing ability for domestic suppliers to object on grounds of debt in anticipation of changes to SLC 30 for I&C suppliers.	Replicate SLC 30 debt objection provisions in SLC 46	No Change

Table 1: Changes proposed to the Gas Suppliers Licence and MRA

9. Conclusions

- 9.1. **Ofgem requests views on the proposed modification to Standard Licence Condition 46 of the Gas Suppliers Licence as set out in Appendix 2 and on the issues raised in this document.**
- 9.2. The bureaucratic nature of processing termination notices mean that it is likely that in some instances customers will be unjustly prevented from moving to their chosen supplier. It is intended that this licence modification will formalise the behaviour of the majority of domestic suppliers in not objecting to proposed customer transfers on grounds of lack of sufficient contractual termination notice.
- 9.3. Erroneous transfers are a source of inconvenience, frustration and in some cases distress for customers. To protect customers from being transferred erroneously where they state not to have entered into a new supply contract then it is proposed that the supplier can raise an objection at the customer's request. Evidence such as taped telephone calls or written correspondence from customers confirming their intent should be kept by the objecting supplier for at least 12 months to allow easy audit of the supplier's actions.
- 9.4. In other instances where the customer does not want the transfer to occur then suppliers can agree with each other that the transfer should not take place and can raise a co-operative objection.
- 9.5. To safeguard against misuses of the objection process, in particular relating to customer requested objections, a customer should be informed by their current supplier of the reason for the objection and how they may resolve or dispute this reason.
- 9.6. Where a supplier has raised a customer requested objection then, to provide transparency to this process and further confidence that it is not being abused, the new supplier should be informed by the objecting supplier that it has raised a customer requested objection and, where possible, will provide any additional information to facilitate the new supplier's investigation.
- 9.7. Equivalent changes are being proposed in the electricity market through amendments to the MRA and supporting documentation. Ofgem considers that,

in a market where suppliers are providing customers with dual fuel opportunities to change both their gas and electricity suppliers, it is desirable that the objection practices operated in both markets are harmonised.

- 9.8. The objection process is a powerful right given to suppliers that must not be misused. Ofgem is committed to ensuring that the objection process is used correctly and to this end will investigate complaints about its misuse and will audit suppliers as appropriate.

Appendix 1 – Objection Statistics

- 1.1 Since the start of domestic competition, Ofgem has monitored the level of objections in the domestic gas and electricity markets. The rate of objections is a key indicator of industry performance. For each domestic supplier Ofgem monitors the number of objections raised, the rate of objections, ie the percentage of attempted transfers that are objected to and the reason for objections being raised.
- 1.2 The objection rate shows the number of attempted transfers that were blocked and did not take place. Throughout Phase 1 and Phase II of domestic gas competition the industry objection rate was relatively low at approximately 10%. However, following the completion of Phase III and full competition in May 1998 the objection rate began to increase (see Figure 1). In June 1998 it was 11.6% and by October 1999 the objection rate had risen to over 30%.

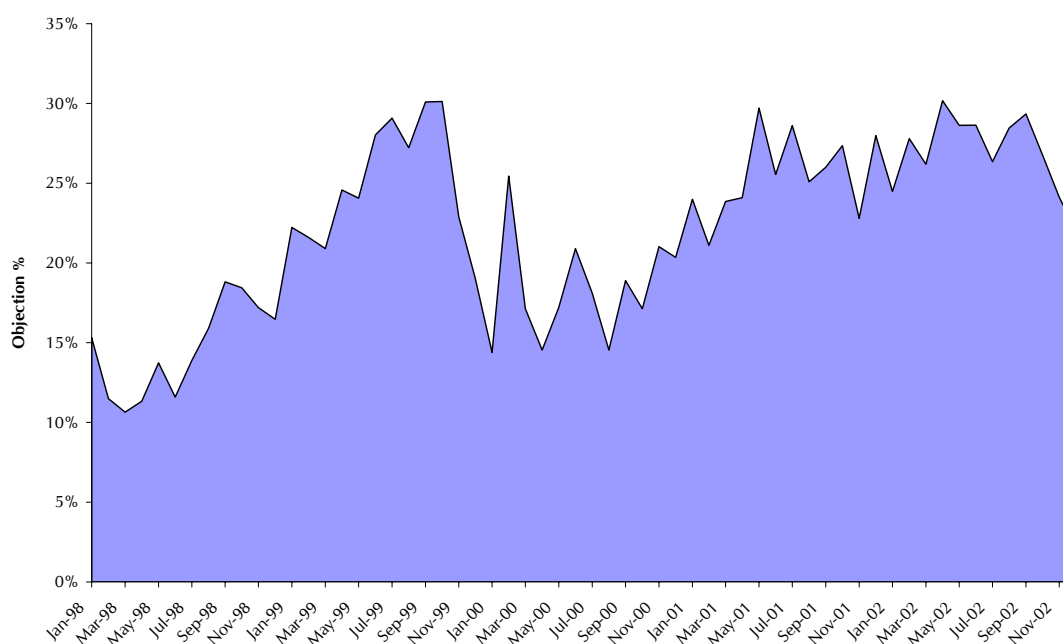


Figure 1: Objection Rate – Domestic Gas Market

- 1.3 Towards the end of 1999, around 20,000 to 25,000 customer transfers each week were being objected to in the domestic gas market. Based on industry monitoring data, it was Ofgem’s view that since the opening of the domestic market the level of objections relating to debt had remained fairly constant at

around 10 – 13% of all attempted transfers, and that it was the rise in the level of objections relating to insufficient termination notice that has brought the overall rate up to over 30% in October 1999.

1.4 The gas objection rate fell substantially at the start of the Trial. From 2001 the objection rate started to increase. This was caused by a number of factors. Whilst some companies have joined the trial others have left. Some companies have also instigated tit for tat objections so that they raise objections on grounds of a lack of termination notice where the other supplier is not participating in the Trial. The gas objection rate was 24% for the period Oct to Dec 02.

1.5 Figure 2 shows that in the Non-Half Hourly (NHH) electricity market the objection rate has always remained a lot lower than the gas rate. This is due to the inability of the ex PES suppliers to object on the basis of lack of termination notice to customers that they are still supplying under their former tariff customer scheme. In addition it is also believed that the number of customers in debt is lower in the electricity industry.

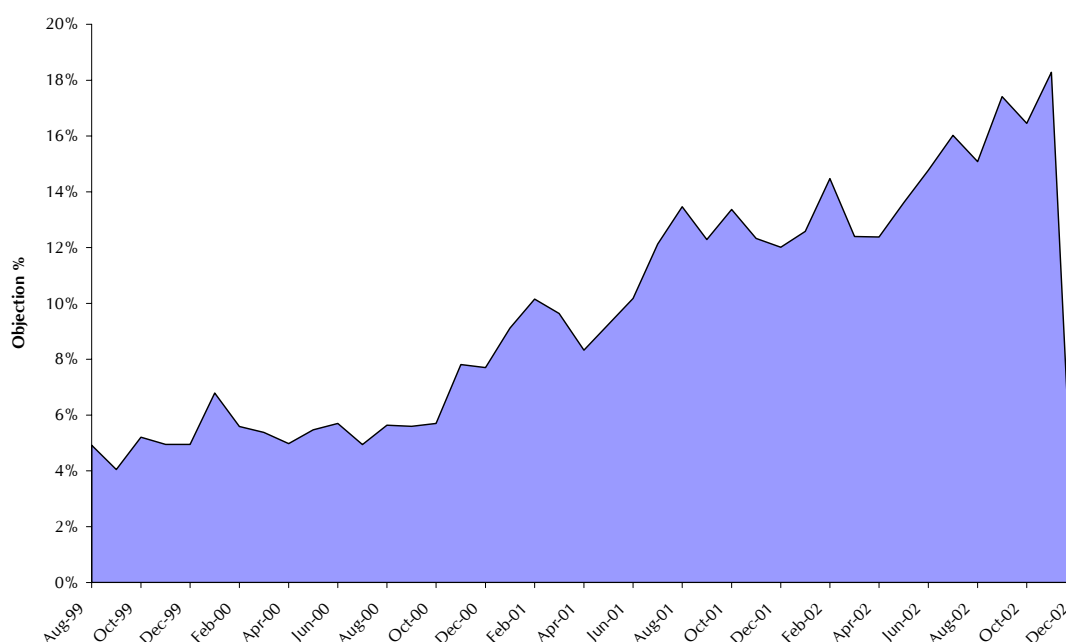


Figure 2: Total Objection Rate – NHH Electricity Market

1.6 Since 2001 the electricity objection rate has also shown a substantial rate of increase. It is likely that this rise is due to the same reason for the rise in the objection rate in the gas market. The electricity objection rate was 16% for the period Oct to Dec 02.

1.7 Ofgem collects information from suppliers on the reasons why they are raising objections. Figure 3 shows that around a third of all transfers blocked during Oct to Dec 2002 in both the gas and the electricity markets were made by the incumbent supplier on the grounds that they had not received termination notice from the customer. Therefore of the approximately 180,000 attempted transfers each week around 30,000 were blocked and approximately 10,000 transfers a week of these were due to lack of termination notice.

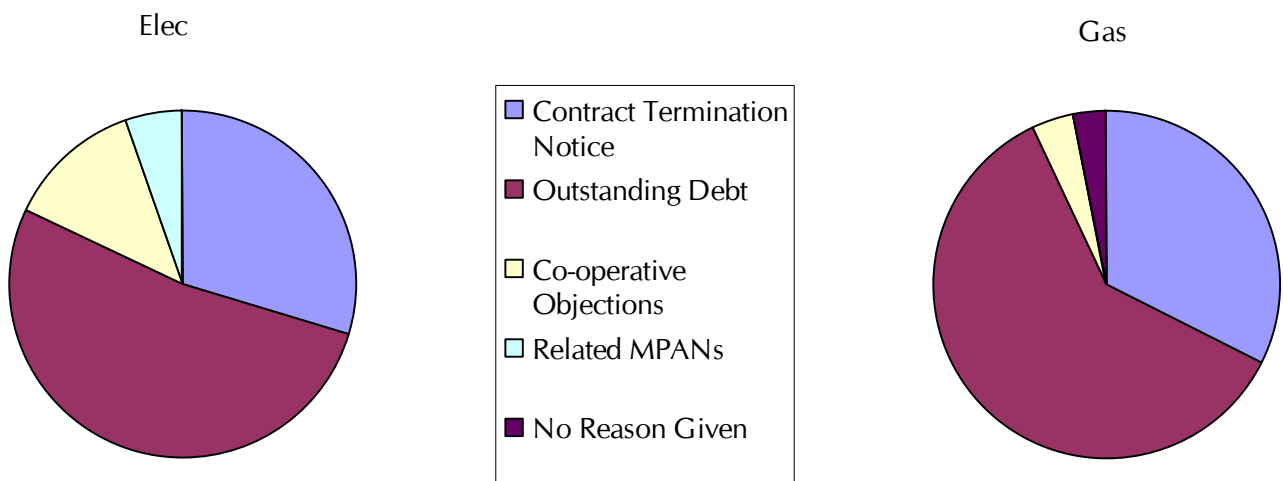


Figure 3: Reason for objection for Electricity and Gas Suppliers Oct – Dec 2002
(source: old supplier)

Appendix 2 – Licence modification

Condition 46. Termination of Contracts on Notice and Domestic Transfer Blocking

1. The licensee shall not enter into a domestic supply contract unless the domestic supply contract contains a term allowing the domestic customer to terminate the domestic supply contract at any time by-
 - a) giving to the licensee valid notice of termination; and
 - b) subject to paragraphs 5 and 6, paying to the licensee on demand a termination fee.
2. A notice of termination is valid where it is given at least 28 days in advance of the date on which it is to take effect and where, not later than that date, the requirement of paragraph 3 is satisfied.
3. The requirement of this paragraph is that either-
 - a) another gas supplier commences a supply of gas to the premises; or
 - b) the premises are disconnected or the supply of gas there is cut off because the domestic customer at those premises has ceased to require a supply.
4. Each domestic supply contract shall provide that a notice of termination which is not valid shall not be effective to terminate such domestic supply contract.
5. A termination fee shall not be demanded of a domestic customer where-
 - a) the domestic supply contract was terminated under any provision of standard condition 47 (Termination of Contracts in Specified Circumstances);

- b) the domestic supply contract was one of indefinite length, and was terminated other than during a fixed term period;
 - c) the licensee notified the domestic customer, under paragraph 6 of standard condition 44 (Notification of Terms), of a unilateral variation of the domestic supply contract and the domestic customer gave notice of termination in accordance with paragraph 7 of that condition; or
 - d) the domestic supply contract was one to which paragraph 3 of standard condition 47 (Termination of Contracts in Specified Circumstances) applied and the licensee did not, before entering into it, take all reasonable steps to draw the attention of the customer to the effect of the term set out at that paragraph.
6. Where a termination fee is payable, it shall be of an amount not greater than that which the licensee may in all the circumstances reasonably require.
7. Standard condition 30 (Debt Blocking) shall not apply in relation to the supply of domestic customers.
8. The licensee shall not procure or permit the relevant shipper, in pursuance of any contract with that shipper, or otherwise request it, to prevent a proposed supplier transfer in relation to any premises at which the licensee supplies gas to a domestic customer other than in the following circumstances –
- a) for so long as the customer fails to pay charges for the supply of gas to those premises or any premises previously owned or occupied by him in respect of which such charges are payable which -
 - (i) are due to the licensee and have been demanded in writing; and
 - (ii) have remained unpaid for 28 days after the making of the demand; or

- b) the proposed new supplier who has initiated the proposed supplier transfer has agreed with the licensee that the proposed supplier transfer has been initiated in error; or
 - c) the customer states not to have entered into a contract with the proposed new supplier and has requested the licensee to prevent the proposed supplier transfer from taking place.
9. Where any of the circumstances referred to in paragraph 8 of this standard condition apply and the licensee makes a request to its shipper to prevent a proposed supplier transfer, the licensee shall at the same time as making that request to its shipper, send notification to the customer that it has made a request to prevent the proposed supplier transfer, the grounds for the request and how the customer may dispute or resolve such grounds.
10. Where the circumstances referred to in paragraph 8 (c) of this standard condition apply and the licensee has agreed to prevent a proposed supplier transfer at the request of a customer, the licensee shall –
- a) keep evidence of the customer’s request and reasons for the request for at least 12 months, and
 - b) at the same time as making the request to its shipper to prevent the proposed supplier transfer, inform the proposed new supplier that the objection has been raised at the customer’s request and of the reason given by the customer.