

**Transfer objections: stronger rights for
industrial and commercial customers**

Decision document

August 2003

Summary

This document sets out a summary of the responses to the consultation document “Transfer Objections: stronger rights for industrial and commercial customers”¹ published in December 2002. It also includes Ofgem’s views, decisions and recommendations.

The December 2002 consultation document noted that industrial and commercial (I&C)² customers and suppliers are not a homogenous group but have a number of different requirements for the objections mechanism. It therefore proposed that the circumstances in which a supplier can raise an objection to the transfer of one of its I&C customers should be negotiated between the parties, rather than prescribed in the Gas Suppliers’ Licence or Master Registration Agreement (MRA)³.

In light of the responses received, Ofgem believes that the diverse needs of customers and suppliers in the I&C market would be best served by allowing suppliers to object to a transfer only in circumstances specified in their supply contract, thereby placing the onus on the two parties to negotiate acceptable terms. Ofgem believes that customers should have a key role in monitoring the performance of their supplier in this area to ensure that the objections process is not used in circumstances not permitted by their contract. In addition, Ofgem believes that a mechanism for co-operative objections should be introduced into the gas market.

The consultation document also considered what transitional arrangements would be appropriate for existing gas contracts. Ofgem proposes that for any contract that was entered into before the revised rules that is silent on the subject of objections, the supplier may object on the grounds currently set out in the licence until that contract is terminated or renegotiated. For any existing contract that contains provisions for objections, either contractually restricting a supplier’s ability to object under the current rules or anticipating the proposed revised rules, these specified grounds for objection will be retained under the new arrangements. For any new contract entered into after

¹ www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/1223_84transferobjections.pdf

² For a definition of I&C, see Appendix 1

³ A legally binding, multi-lateral agreement established on 1 June 1998 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.

the revised condition, the supplier will only be able to object on the grounds specified in the contract.

This document sets out the planned next steps. Following the implementation of collective licence modification arrangements, Ofgem will issue a notice under Section 23 of the Gas Act 1986 proposing the modification of Standard Condition 30 of the Gas Suppliers' Licence. Ofgem would also welcome a proposal by an MRA party to modify the MRA concurrently with the proposed gas licence modification to align the objection arrangements in both markets.

In July 2003 Ofgem published a decision document "Objecting in the domestic market"⁴, and will shortly issue a notice under section 23 of the Gas Act 1986, proposing modifications to the rules governing domestic transfer objections. The proposal will amend a condition within the Domestic Supply Obligations (Section C of the licence), setting out revised rules for domestic transfer objections. Under the proposals set out in this document, the change to the domestic market will need to be carried out before any change to the I&C objection rules so that domestic provisions are preserved in the licence after the I&C modification.

⁴ www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/4059_objecting_domestic_markets_Decision_doc.pdf

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1. Rationale

Issue

- 1.1. The circumstances in which a gas or electricity supplier is permitted to object to the transfer of one of their customers are set out in the Gas Suppliers' Licence and the MRA. Different arrangements exist in gas and electricity. In the I&C gas market, a supplier is permitted to object to a transfer where the customer has a debt that has been demanded in writing and is outstanding for at least 28 days or where the supplier has a valid supply contract with the customer that will not be terminated before the transfer date. In electricity, a supplier is only permitted to object in the I&C market where both the old and the new suppliers agree that the customer has been registered in error (a co-operative objection) or where the new supplier does not register all related metering points⁵ at the same time. These existing rules are set out in full in Appendix 2.
- 1.2. The definition of I&C customers includes a considerable variety both in the types of customer and their individual circumstances. Ofgem has heard from a number of I&C customers and suppliers that the existing rules do not provide sufficient flexibility to make objections to transfers appropriate for their individual circumstances.
- 1.3. Many customers and some suppliers believe that the ability for a supplier to object to a customer transfer hinders competition by locking in customers who wish to transfer. They feel that issues such as contract termination notice and debt are more appropriately dealt with in the I&C market through legal remedy and should not interfere with the transfer process.
- 1.4. Alternatively, some customers and suppliers wish to retain the ability for a supplier to object to a transfer on the grounds of lack of sufficient contractual

⁵ Two or more metering points that supply the same customer on the same site where the charges for the supply are mutually conditional

termination notice. They argue that this provides a useful tool in reducing erroneous transfers and enables multi-site customer portfolios to be managed more effectively by suppliers being able to prevent sites being transferred in error. The greater security enjoyed by suppliers can be reflected in lower prices offered to the customer.

- 1.5. Without modification, the needs of I&C customers in relation to the grounds for objection are unlikely to be met.

Objective

- 1.6. Ofgem considers that, by modifying the rules which set out the circumstances in which the incumbent supplier can object, suppliers and customers will be able to reflect their various requirements through negotiation of suitable terms in their contracts. This will enable the circumstances in which a supplier can object to a transfer to be tailored to suit their customers' needs.
- 1.7. This would also help to align the reasons for objections in gas and electricity.

Policy

- 1.8. The consultation document published in December 2002 "Transfer objections: stronger rights for industrial and commercial customers" recommended that the grounds for objection should properly be left to negotiation between the contracting parties rather than predetermined by regulation. The document proposed modifying the Gas Suppliers' Licence and the MRA to allow suppliers to object only in the circumstances specified in the supply contract.
- 1.9. The majority of respondents to the consultation agreed with this recommendation, arguing that it was the best way for the varying needs of customers and suppliers to be met.

2. Timetable

2.1. The timetable for the key events identified in this document is as follows.

August 2003	Publish decision document
September 2003	Publish Gas Act 1986 Section 23 notice*.
October 2003	End of period for representations and objections.
November 2003	Announce decisions following any representations or objections.
November 2003	Implementation of modification to the Gas Suppliers' Licence.

* Publication of this notice will go ahead in September as planned if the proposed modification for the domestic market (referred to in the Summary above) receives the required approval. Ofgem hopes to announce the results of this domestic modification proposal in September 2003. If the modification to the domestic market is not made, Ofgem intends to progress this I&C modification, although revision will be required to the proposed amendments to Standard Licence Condition 30 set out in Appendix 3.

2.2. At the same time, Ofgem would hope to see an equivalent change to the MRA proposed by a supplier and progressed by the industry.

3. Background

March 2000 consultation

- 3.1. In March 2000 Ofgem issued a consultation document entitled “Removing a supplier’s right to object to customer transfer on the grounds of insufficient termination notice”⁶. This document proposed a modification to the Gas Suppliers’ Licence to remove the ability for domestic suppliers to object to a customer transfer where there was a valid contract in place between a domestic customer and the incumbent supplier that would not be terminated on or before the proposed transfer date.
- 3.2. The proposed modification did not receive the required number of votes necessary according to the voting arrangements in existence at the time (which required the consent of 90 percent of all domestic and I&C suppliers by number of licence holders and Meter Point Reference Numbers supplied). I&C suppliers raised concerns that removing the right to object from the Gas Suppliers’ Licence would lead to an increase in erroneous transfers and that, were the proposal to be extended to the I&C market, prices would be increased through suppliers responding to their increased contractual risk.

Proposed MRA amendment

- 3.3. MRA parties considered a proposal in March 2001 to bring parity to the gas and electricity regimes by allowing I&C electricity suppliers to object on the grounds of contract. The electricity industry recommended that this proposal be implemented. The Authority’s approval was required and, before reaching a decision, Ofgem consulted gas and electricity suppliers as well as consumers in October 2001. This consultation letter is available on the Ofgem web-site⁷. While most suppliers supported the modification,

⁶ www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/1572_tranmar.pdf

⁷ www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/50_30oct01.pdf

customers generally opposed it, arguing that the objections process could be misused by suppliers to lock in customers and that any breach of contract terms should be dealt with through legal proceedings. In view of these responses, the Authority decided not to consent to the proposal, on the basis that it would be inconsistent with the Authority's principal objective of protecting the interests of consumers, wherever appropriate by promoting effective competition. The Authority's decision letter is also available on the Ofgem web-site⁸.

December 2002 consultation

- 3.4. In December 2002 Ofgem issued a consultation document "Transfer objections: stronger rights for industrial and commercial customers." This considered the arguments for and against suppliers being permitted to object to customer transfers in the I&C market.
- 3.5. A number of options for the best way to proceed were suggested. These were:
- ◆ Option 1: Maintain current rules
 - ◆ Option 2: Introduce new rules into the Gas Suppliers' Licence. This included three aspects for consideration, namely allowing suppliers to object only in circumstances set out in the supply contract, permitting objections to be made on a co-operative basis and a requirement for the supplier to provide information to customers when an objection is made
 - ◆ Option 3: Introduce new rules in electricity only, permitting customers and suppliers to decide the grounds for objection between themselves
 - ◆ Option 4: Align the gas objection rules to replicate the electricity arrangements. This would have the effect of permitting gas suppliers only to object on a co-operative basis

⁸ www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/51_21dec01.pdf

- ◆ Option 5: Align the gas and electricity rules and allow suppliers in either market to object only on grounds specified in the supply contract and on a co-operative basis.
- 3.6. Taking into account the different requirements of I&C customers, the December 2002 consultation proposed that the circumstances in which a supplier can object to a transfer in both electricity and gas should be determined in the supply contract. This would allow the right to object to be negotiated to meet the individual needs of both customers and suppliers.
- 3.7. Views were also sought on what transitional arrangements, if any, were appropriate for existing contracts following an amendment to suppliers' rights to object in the I&C gas market. The document asked for comments on whether it would be helpful for suppliers and consumer groups to draw up standard terms detailing the grounds for a supplier to object.
- 3.8. In total Ofgem received 25 responses to the December 2002 consultation. Of these, 12 were from suppliers. The remainder consisted of a distribution company, Transco, energywatch and a number of other groups, mostly customers or consumer groups. A full list of respondents can be seen in Appendix 4 and non-confidential responses are shown on the Ofgem website.⁹
- 3.9. A summary of the responses received can be found in the following chapters.

⁹ www.ofgem.gov.uk/ofgem/work/index.jsp?section=customertransfer&levelids=

4. Objecting in circumstances specified in the contract

- 4.1. The majority of respondents supported the central proposal of the December 2002 consultation that the circumstances in which a supplier can object in the I&C electricity and gas markets should be set out and agreed in the supply contract with the customer. Of the 25 responses, 5 did not agree with the proposal. Of these, 3 preferred the right to object be removed from the gas market to match the electricity market, and 2 wanted to see the current ability for gas suppliers to object on grounds of debt and contract to continue to be specified in the licence.
- 4.2. This chapter sets out the views of respondents for and against the proposed modification together with Ofgem's comments on these views.

Views in favour

Respondents' views

- 4.3. The majority of respondents felt that the proposal would bring benefits for both suppliers and customers by letting them determine the precise circumstances in which the supplier could raise an objection. energywatch felt that the existing arrangements do not allow customers with different requirements and suppliers to develop other commercial arrangements regarding the ability to object. One supplier felt that the proposal would bring significant benefits in both the electricity and gas market. In electricity it would allow multi-site customers to manage their contracts better and cheaper prices to be offered in fixed term contracts. In gas it would provide greater transparency of the causes of objections. Another supplier stated that objecting is a valuable service for many customers and suppliers should continue to be able to provide this for those customers that want it. One respondent felt that the proposal would not unreasonably advantage or disadvantage either the customer or the supplier but was a cost effective mechanism to ensure compliance with contract terms and a price that reflects the relative risks involved.

Ofgem's views

- 4.4. Ofgem supports these views and further believes that allowing both suppliers and customers to negotiate objection terms suitable to their differing requirements will allow greater innovation in contract terms. This would allow I&C customers who have non-standard requirements to develop appropriate terms to be included in their contracts.
- 4.5. As stated in the consultation document, Ofgem believes that, as in other markets, contract disputes could be dealt with effectively through commercial arbitration rather than impacting on the transfer process. However, Ofgem has heard from a number of customers who consider that their supplier's ability to object should be retained in certain defined circumstances. It is Ofgem's opinion that a suitable compromise would be for the circumstances in which a supplier can object to be set out in the supply contract.

Views against

- 4.6. Five respondents were opposed to the central proposal of the December 2002 consultation. Some advocated retaining the current rules and others wanted the current gas rules to be brought into line with the existing electricity rules and not permit objections on the grounds of debt or contract termination notice.

Retain current rules

Respondents' views

- 4.7. Responses from two suppliers advocated that the right to object to the transfer of a customer mid-contract in the gas market should be retained. One expressed the opinion that the current arrangements worked well and did not need to be changed. They said that the current objections rules prevented erroneous transfers which had a significant impact on larger I&C customers.
- 4.8. The other supplier expressed concerns that the proposal would lead to an increase in the number of non-standard contracts which would add an additional administrative cost, reflected in higher prices for the consumer. In

addition, the respondent felt that suppliers would begin to include objections clauses in contracts that were tighter than the rights currently conferred by the Gas Suppliers' Licence which customers would not be aware of until they were invoked by the supplier.

Ofgem's views

- 4.9. Ofgem believes that the new proposals would allow a gas supplier to continue to offer the same objection terms as before. However, under the proposed arrangements, the customer has the ability to negotiate suitable terms with their chosen supplier.
- 4.10. In electricity, the co-operative objections mechanism allows an incumbent supplier to object to a transfer of a customer where both suppliers agree that the transfer was made in error. It is Ofgem's view that introducing a similar co-operative objection process in the gas market would help to prevent erroneous transfers. Suppliers and customers could then negotiate other grounds for objection in accordance with their various requirements into the supply contract.
- 4.11. Ofgem believes that the new arrangements would allow customers to consider, in their commercial decisions about their contract, a variety of grounds in which their supplier can object and the resulting impact on the price offered.
- 4.12. Ofgem acknowledges the concerns over visibility of objection terms to customers. It is the responsibility of suppliers and customers to enter into mutually agreeable contract terms. Customers should therefore be aware of their supplier's ability to raise an objection. Many respondents to the December 2002 consultation believe that including these provisions within the contract will lead to a greater transparency of the objections process than, as at present, these rights being contained in the MRA or Gas Suppliers' Licence.
- 4.13. The issue of customer visibility and understanding of their objections terms and conditions is discussed further in Chapter 7.

Extend electricity objection rules into gas

Respondents' views

- 4.14. Responses from one supplier and two customer groups advocated aligning the gas objections rules with those existing in electricity, thereby only permitting objections in gas on a co-operative basis. The supplier expressed concerns that the ability for a supplier to object to a customer transfer is open to abuse and can be used erroneously by incumbent suppliers to retain customers. They believe that difficulties in enforcing the relevant licence condition or MRA clause mean that preventing the misuse of the ability to object can best be achieved by removing the ability to object on the grounds of insufficient contract termination or debt entirely.
- 4.15. The two customer groups preferred the ability for a supplier to object to be removed in all circumstances except on a co-operative basis, with the agreement of both suppliers. They believed that the correct course of action for a supplier, where a customer has an unpaid debt or tries to transfer mid-contract, is by direct contact with the customer to recover unpaid charges or termination fees, and ultimately by legal remedy through the courts. In addition, they felt that suppliers should not be able to require a customer to notify them when intending to change supplier and had concerns that suppliers will insert restrictive termination terms into contracts.

Ofgem's views

- 4.16. Ofgem believes that the customer will have a crucial role in monitoring their supplier's use of the objections process. Under the proposed modification, suppliers would be required to inform customers of the reasons for an objection so that the customer is able to monitor their conduct. Where a supplier is found to be raising objections contrary to the terms of their contract, the customer will be able to pursue the matter through normal legal processes. Where the situation is not resolved in this way the supplier's compliance with the Gas Suppliers' Licence or MRA can be investigated. This issue is discussed further in Chapter 7.

4.17. Ofgem agrees that issues such as debt and lack of sufficient contractual termination notice could be dealt with through legal remedy. However, as mentioned in the December 2002 consultation, many customers wish their suppliers to have the right to object to a transfer, for example as a means of managing their multi-site portfolios more effectively and enjoying lower prices. Ofgem believes that suppliers and customers should be able to negotiate terms for objections so that their individual requirements can be met.

Issues for consideration

4.18. As stated above, the majority of respondents agreed with the main proposal of the consultation that suppliers should be able to object only in circumstances specified in supply contracts. However, a number of points were raised for consideration when putting the proposal into practice.

Contract negotiation

Respondents' views

4.19. A concern raised by some customers and consumer groups related to the level of negotiation that is possible between suppliers and customers. They suggested that the right for the supplier to object will become a standard term for all supply contracts. Limited response to supply tenders, it was argued, means that customers have little leverage to negotiate terms with suppliers and are invariably forced to accept terms and conditions through lack of a realistic alternative. One customer group recommended that the licence condition should permit an objection clause in supply contracts, allowing a supplier to object on the grounds of there being an existing contract, only at the request of the customer.

Ofgem's views

- 4.20. Ofgem has been conducting a review of competition in the I&C sector, the results of which were published in July 2003¹⁰. Ofgem has found that, in a number of respects, transactions between customers and suppliers may be structured in a way that makes it harder for customers to achieve their objectives. For example, a tendering process may compress into a short time frame discussion of terms and conditions and of price, and mean that more attention is given to issues of price than of contract clauses. However, Ofgem is not currently aware of pressures that oblige customers to conduct their purchasing in this way, and if customers wish to place greater emphasis on non-price factors (including how objections are to be handled), we would expect new transaction processes to emerge.
- 4.21. That said, should terms and conditions relating to grounds for objection develop in a manner that was uniform among suppliers and unacceptable to customers, this may raise issues which Ofgem would be in a position to review. The extent to which customer choice was unreasonably restricted would be a material consideration, while recognition by customers of the risks faced by suppliers is also a relevant factor.

Incorrect objections

Respondents' views

- 4.22. Some suppliers expressed a concern that the variety in objections provisions that could be included in supply contracts would make it difficult for the new supplier to see if an objection is valid. This may lead to abuse of the objections mechanism. It was suggested in one supplier's response that, as part of the registration process, a supplier raising an objection could be required to produce evidence of the grounds for objection, such as a copy of the terms contained in the supply contract. As the response acknowledges,

¹⁰ www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/4057_non-domestic_review_final%20paper.pdf

this could be complicated in practice but could help prevent the potential misuse of objections caused by lack of visibility of the grounds permitted.

Ofgem's views

- 4.23. As stated in the consultation, Ofgem believes that suppliers must be required to inform customers of the reason for an objection being made in order to provide transparency. Where an objection was raised contrary to the terms of the supply contract, the customer could seek recourse through the normal commercial or legal routes. If appropriate, and once the contractual position is clear, an investigation into compliance with the Gas Suppliers' Licence or MRA may be carried out. This is discussed in Chapter 7.
- 4.24. It is likely that the new arrangements would result in a variety of circumstances in which suppliers can object, depending on the needs of the customer. This would make it more difficult for a new supplier to see if an objection had been raised legitimately. While it would be possible, as the above response suggests, for an objecting supplier to produce evidence of the grounds of the objection, Ofgem believes that this would be a cumbersome process. As stated in Chapter 7 below, it is Ofgem's view that customers should be able to monitor their supplier's use of objections by being informed of the reason for any objection.

Price

Respondents' views

- 4.25. It was acknowledged in the December 2002 consultation, and was stated in the responses of some suppliers, that prices for consumers may rise in circumstances where a supplier is not permitted to object to a customer transfer by the terms of the supply contract. This results from the increased risk to suppliers of customers transferring mid-contract. A concern was raised by one respondent that any additional cost from increased risk should be passed only to those customers who choose contractual terms that expose the supplier to that added risk. Those customers that had the right to object written into their contracts should be able to enjoy the lower prices resulting from this.

Ofgem's views

- 4.26. It is likely that, where customers negotiate supply contracts without the ability for the supplier to object to them transferring, suppliers will take into account any increased contractual risk in the price that is offered.

Termination fees

Respondents' views

- 4.27. Some respondents raised specific concerns about contract termination fees which, they feel, will become more common should the proposal be implemented. One respondent recommended that termination fees should only be payable to the customer's actual supplier, the supplier that is exposed to risks of supply. They argued that, at present, a customer can attempt to transfer to another supplier without being fully aware they are liable to pay a termination fee to their old supplier. On discovery of this, should they decide to remain with the old supplier, the customer may be obliged to pay a termination fee to the new supplier, despite never having been supplied by them.

Ofgem's view

- 4.28. Ofgem considers that termination fees may become more commonplace where suppliers are not permitted to object under contract to the transfer of one of their customers. Under such circumstances, suppliers may attempt to compensate for this increased risk of losing the customer mid-contract by introducing termination fees. The inclusion of termination fees, like the ability for the supplier to object, can be negotiated between the two parties.
- 4.29. The details of such fees are a matter for customers and suppliers to agree within their supply contracts or resolve through dispute resolution mechanisms such as arbitration or the courts.

Debt objections

Respondents' views

- 4.30. In the December 2002 consultation, Ofgem gave consideration to whether the right to object on the grounds of existing debt should be maintained in the licence condition or whether this should also be subject to negotiation between suppliers and customers. None of the respondents that addressed this issue directly were in favour of retaining the current provisions for debt objections in the Gas Suppliers' Licence. Some responses favoured removing the ability to object for outstanding debt altogether. Others felt that this should be one of the terms that could be included in supply contracts following negotiation between the customer and supplier.
- 4.31. One customer group, who preferred there to be no objections except those made on a co-operative basis, felt that the correct recourse for a supplier to recover debt was through contact with the customer or commercial legal remedies. They were of the opinion that suppliers should not be permitted to object to a customer transfer on the grounds of debt in any circumstance. Another respondent, who was in favour of putting objections provisions within the supply contract, felt that such provisions should not include terms allowing a supplier to object on the grounds of debt. They considered that there are already sufficient remedies in place for dealing with debt. Similarly, another response recommended that debt should be dealt with through normal legal processes and should not restrict competitive trade. A supplier, who was in favour of maintaining the grounds for objection within the supply licence, nevertheless felt that the right to object for outstanding debt should be removed. They believed that this was not in the interests of customers and favoured those suppliers with inefficient cash collection procedures.
- 4.32. The response from one supplier however considered that debt should be included as a negotiable term within supply contracts. They felt that including debt as grounds for objection in the licence was contrary to the rationale of allowing customers and suppliers to negotiate suitable objections terms.

Ofgem's views

- 4.33. Ofgem considers that objections on the grounds of debt could be included in the terms of the supply contract. Suppliers and customers would then be able to negotiate terms for debt objections appropriate to them.

System Implications

Respondents' views

- 4.34. Some suppliers felt that the proposed changes, including allowing for objections to be made on a co-operative basis in the gas market, may require modifications to existing industry processes, lengthening the required time for implementation and potentially disadvantaging customers if the process changes are not considered carefully. One supplier recommended setting up an industry group to look into the changes required in the industry processes in more detail.

Ofgem's views

- 4.35. Ofgem anticipates that some minor changes will be required to existing systems, in particular the objection reason codes contained in the Transco file formats. Where any such changes are required, these should be progressed through the standard industry change control processes. Ofgem does not believe that major system changes will be required and the process, in Ofgem's view, should not impact on the implementation of the new objections rules.
- 4.36. Ofgem considers it would be appropriate for suppliers and customers to develop standard procedures and principles for raising objections. This would provide a greater degree of clarity and consistency in the objection making process. This issue is discussed further in Chapter 7.

5. Co-operative objections

Respondents' views

- 5.1. One of the options for consideration presented in the December 2002 consultation related to allowing co-operative objections in the gas market. This facility already exists in electricity and is used to prevent erroneous transfers.
- 5.2. Some customer groups were opposed to this change, arguing that the process did not work effectively in electricity due to suppliers lacking the functionality in their processes to accommodate this.
- 5.3. Those suppliers that commented on co-operative objections were generally in favour of allowing them in the gas market. It was noted that some re-design of processes may be required for this to operate more effectively in the electricity market. One respondent felt that further consideration and discussion should be carried out in developing a co-operative objections process to meet the needs of all parties.

Ofgem's views

- 5.4. As stated in the December 2002 consultation, gas suppliers are able to withdraw transfers that are not yet fully completed although many have not implemented the required functionality to support this. Ofgem believes this would be the most effective way of preventing erroneous transfers. However, as not all suppliers have this functionality, and in some instances the new supplier may want to initiate the co-operative objection process, it is Ofgem's view that it would be beneficial to introduce a co-operative objection process in the gas market. Ofgem therefore proposes to include the ability for objections to be made on a co-operative basis into the Gas Suppliers' Licence.
- 5.5. Other than the requirement to have the agreement of the new supplier, the mechanics for the old supplier submitting a co-operative objection in electricity and gas are virtually identical to processing objections on other

grounds¹¹. Substantial changes to central systems are therefore not required for suppliers to make co-operative objections.

- 5.6. In electricity, the MRA states that the new supplier is required to contact the old supplier to agree that their registration has been made in error. The new rules for domestic co-operative objections in the gas market proposed by Ofgem do not specify which supplier initiates the contact. Either supplier would be able to make the initial contact to agree that an erroneous registration had been made. Ofgem believes that either supplier should be able to raise a co-operative objection to prevent a transfer that would otherwise occur in error in both I&C and domestic gas markets.
- 5.7. Ofgem notes that there are concerns as to how suppliers reach agreement as to whether a co-operative objection is made at present in the electricity market. In the light of this, Ofgem considers that it would be prudent for the gas and electricity industries to develop standardised procedures for processing co-operative objections to ensure that they are used in a way beneficial to all parties. Ofgem notes that similar work is currently being undertaken in the domestic gas and electricity markets.

¹¹ Currently an objecting gas supplier provides the transporter with a reason code for the objection. This would need to be amended in the light of these proposals.

6. Transitional arrangements

- 6.1. The December 2002 consultation proposed that all new contracts made or renewed after the date of the modification to the Gas Suppliers' Licence would be subject to the revised licence condition. Views were invited on appropriate transitional arrangements for existing contracts. Ofgem stated its wish not unduly to disrupt supply contracts drawn up and agreed under the existing regulations.

Respondents' views

- 6.2. The majority of suppliers that responded were of the opinion that the new rules, whereby objections could only be made in circumstances specified in supply contracts, should only apply to new contracts. Some felt that existing supply contracts should be allowed to continue under the existing objections rules until the termination date or renewal date. Others suggested a cut-off date by which these existing supply contracts should either have expired, been renewed or been renegotiated to take into account the new process. Some suggested a period of five years for this cut-off, others two and a half years.
- 6.3. One supplier suggested that the new rules should come into force on 1st October 2003 and all supply contracts should be compliant with them by this date. This would, it was argued, be simple and give time for supply contracts to be renegotiated.
- 6.4. One supplier thought that all supply contracts should default to allow objections for insufficient contract termination notice, in both gas and electricity, until renewed.
- 6.5. A small number of responses from customer groups commented on proposed transitional arrangements. One customer group suggested that existing contracts remain in force for a period of up to 2 years, after which they should be renegotiated.
- 6.6. Another customer representative group felt that the proposal contained in the consultation, whereby any supply contract entered into or renewed after the

implementation date would be subject to the revised licence condition, was appropriate.

Ofgem's views

- 6.7. Existing supply contracts were drawn up with terms that reflected the current objection arrangements, factoring in the appropriate considerations for supplying gas or electricity customers. In particular, the price may have been agreed assuming the supplier can object in the circumstances specified in the Gas Suppliers' Licence or MRA. Ofgem acknowledges that introducing a cut-off date by which all supply contracts must comply with the new rules, whether this is the date the rules are implemented or some later time, would require a process for suppliers to renegotiate existing contracts with the implication of consequent costs. Ofgem therefore proposes that the new I&C gas arrangements should apply to all new supply contracts made after the implementation date only. Any existing I&C gas supply contracts would continue unaltered until they are terminated or renegotiated, and the supplier will have objection rights as at present with regard to meter points served under such contracts.
- 6.8. Ofgem notes that some existing supply contracts may already contain provisions for objections, either contractually restricting the supplier's ability to object under the current rules or anticipating these revised rules. It is Ofgem's view that the grounds for objection set out in these contracts should be retained after the licence modification. For contracts that are silent on the subject of objections, the grounds for the supplier to object will continue to be those currently set out in the supply licence until such contracts are terminated or renegotiated.
- 6.9. It is Ofgem's view that co-operative objections (discussed in Chapter 5) should be permitted in the gas market as soon as the revised licence condition is implemented. This should apply in the case of both customers supplied under existing supply contracts and those under new supply contracts.
- 6.10. Similarly, Ofgem believes that the requirement to inform gas customers of the reason for any objection (see Chapter 7) should apply to all customers

following the licence modification, including those supplied through existing supply contracts. This will allow the customer to understand clearly any objections raised by their supplier, whether under the existing rules or the new rules, during any transitional period.

7. Customer information

- 7.1. In the December 2002 consultation document, consideration was given as to whether gas suppliers should be obliged by their licence to inform their customers of the reason for any objection made, as is currently required by the MRA for the electricity market.

Respondents' views

- 7.2. The majority of responses from suppliers and customers were in favour of requiring suppliers to inform their customers of the cause of an objection. This, it was argued, would provide clarity and transparency. Some respondents advocated a defined period in which this notification should be raised.
- 7.3. One supplier however felt that the obligation for a supplier to inform the customer of the reasons for an objection should also be a matter for negotiation and inclusion into supply contracts and should not be mandated by inclusion in the Gas Suppliers' Licence. It was argued that such an obligation would be considered by many customers as unnecessary and an additional cost as they would already be aware of the precise grounds for objection permitted in their contracts.

Ofgem's views

- 7.4. Ofgem believes it is important that all customers are informed of the reasons for any objection made. The variety of possible circumstances for objections, and the lack of transparency of them to third parties, means that customers have a crucial role in ensuring that suppliers do not incorrectly use the objections process. Where a supplier is found to be raising objections in circumstances contrary to the terms of the supply contract, the customer will have full visibility of this and, in the first instance, will be able to challenge the supplier. If they consider the outcome to be unsatisfactory, the customer will be able to pursue the issue through legal processes for a breach of the supply contract.

- 7.5. Ofgem believes that customers and suppliers should be able to resolve a potential misuse of the objections process through normal commercial arbitration or the courts. In cases where customers are unable to resolve the matter with the supplier, they, or their intended new supplier on their behalf, could raise a complaint with energywatch.
- 7.6. Under the proposed transitional arrangements (see Chapter 6), gas suppliers will be permitted to raise objections under the grounds currently set out in the licence to the transfer of customers with existing supply contracts that are silent on the subject of objections. For customers with new supply contracts, or existing contracts that already contain provisions for objections, suppliers will be permitted to raise an objection in the circumstances specified in the contract. It is Ofgem's view that the requirement for suppliers to inform customers of the reasons for any objection should apply to all customers, including those supplied under the existing rules during this transitional period, so that customers have visibility of their supplier's use of the objections process.
- 7.7. In gas, any supplier objecting in circumstances that contravene the terms of their contract could be found to be in breach of Standard Condition 30 of the Gas Suppliers' Licence. Ofgem will investigate such cases referred to it to determine compliance with this licence condition.
- 7.8. In electricity, a supplier objecting on grounds not included in their contract could potentially be in breach of the MRA. Should a party to the MRA, for example a new supplier attempting to transfer the customer, raise a formal dispute with the MRA Executive Committee, this may be investigated by an MRA disputes committee and processed under the rules set out in the MRA. An alleged breach of the MRA could also be investigated by Ofgem (for example, in response to a complaint from a customer) for compliance with the Electricity Supply Licence, which obliges suppliers to comply with the terms of the MRA.

8. Standard contract terms and other issues raised

Standard contract terms

- 8.1. Ofgem suggested in the December 2002 consultation that it may be useful for suppliers and customer groups to draw up standard contract terms, in order to provide greater clarity for both customers and suppliers.

Respondents' views

- 8.2. The majority of responses from customers addressing this issue were in favour of drawing up such terms, stating that it would be helpful for them when it comes to negotiating contracts with suppliers. Most offered to contribute to this work.
- 8.3. However, while some suppliers were in favour of this proposal, many felt that this would stifle innovation. One supplier argued that suppliers should be sufficiently flexible to take account of I&C customers' diverse needs and situations and this could be diminished by the existence of standard terms.
- 8.4. One supplier, while not supporting the drawing up of agreed standard terms, felt that the question of visibility of contractual terms for customers could be helped by customers and suppliers drawing up a simple guide to provide customers with points to look for in a contract. This would allow customers to have a checklist of terms to note in any contract, without stifling innovation or the freedom to negotiate the details of those terms.

Ofgem's views

- 8.5. Ofgem notes the concern expressed by some parties that drawing up a list of potential standard terms would stifle innovation. The purpose of allowing suppliers and customers to negotiate objections terms is to provide the opportunity for the requirements of both parties to be met. This may require the development of innovative contract terms. However, Ofgem also notes that some customers are concerned about the visibility and clarity of

objection terms and considers that standard terms would provide a degree of comfort for customers, particularly those not experienced in the market, when signing supply contracts. Even with standard terms drawn up, those customers with different requirements regarding objections would be free to negotiate their own terms if they wish.

- 8.6. Ofgem considers that drawing up guidance of what to look for in contracts would similarly address concerns over visibility of objections terms and raise customer awareness. energywatch currently provides on its web-site introductory information for customers on supply contracts. This information could be updated and expanded for I&C customers to reflect new arrangements for objections in order to provide customers with a greater degree of confidence and understanding about contractual concerns.

Other issues

- 8.7. One distribution company suggested that it may be possible to enable an electricity supplier to withdraw a registration, effectively objecting to their own transfer. It was noted that this would require changing existing data flows so that other parties were notified of the withdrawal.
- 8.8. Ofgem notes that this functionality exists in gas. Such a change has been considered at various times by the electricity industry but was deemed to be difficult to implement due to the costs associated with changes necessary to MPAS systems. Ofgem suggests that consideration of this issue should form part of the current industry review of the customer transfer process in electricity and gas¹².
- 8.9. Some of the responses suggested renaming Standard Licence Condition 30 as the current title would have little relevance following adoption of the consultation proposal. Ofgem agrees that, in altering the licence condition,

¹² In response to the concerns raised by both customers and suppliers about the transfer process, Ofgem and energywatch jointly called a switching summit on 11 June 2003. At this summit Ofgem and energywatch challenged the industry to take decisive action to tackle transfer problems. Commitment was received from suppliers to identify and implement improvements.

the title should be updated so that it is more relevant to the intent of the condition.

- 8.10. Ofgem notes that consequential changes will be required to other Standard Licence Conditions when the title of this condition is changed. In particular, the revised wording for Standard Licence Condition 46, currently being proposed by Ofgem to alter the grounds for transfer objections in the domestic market, will need to be modified. Clarification of what consequential changes will be required will be given when the notice under Section 23 of the Gas Act 1986 is published in September 2003.

9. Decision

- 9.1. This chapter summarises Ofgem's decisions following consideration of the responses to the December 2002 consultation.

Grounds for objection

Gas

- 9.2. Ofgem proposes to modify Standard Licence Condition 30 of the Gas Suppliers' Licence to permit gas suppliers to object to the transfer of an I&C customer in circumstances permitted in their supply contract. This will enable suppliers and customers to negotiate terms that suit their individual requirements. Proposed wording for Standard Licence Condition 30 of the Gas Suppliers' Licence is included in Appendix 3.
- 9.3. Ofgem also proposes to include in this licence condition the ability for gas suppliers to object to a transfer where they agree with the new supplier that the customer has been registered in error. Introducing such co-operative objections in the gas market will help to reduce the number of erroneous transfers and bring the gas and electricity rules into line.
- 9.4. Finally, Ofgem proposes that a requirement be placed on suppliers to inform customers of the reason for any objection made, together with details of how they may dispute or resolve this reason.

Electricity

- 9.5. It is Ofgem's view that equivalent amendments to Clause 16 of the MRA should be made to allow an electricity supplier to raise an objection in circumstances permitted in the electricity supply contract. Ofgem considers that the ability to object where both suppliers agree that the customer has been registered in error (a co-operative objection) and where all related meter points have not been registered on the same day, be retained.

Transitional Arrangements

Gas

- 9.6. The proposed wording set out in Appendix 3 states that for any supply contract that was entered into before the revised licence condition which is silent on the subject of objections, the supplier may object on the grounds of debt or lack of termination notice as currently set out in the licence until the supply contract is terminated or renegotiated. For any existing supply contract that contains provisions for objections, either contractually restricting a supplier's ability to object under the current rules or anticipating these revised rules, these grounds for objection will be retained under the new arrangements. For any new supply contract entered into after the revised condition, the supplier will only be able to object on the grounds specified in the supply contract.

Electricity

- 9.7. In electricity, no objections are permitted on the grounds of debt or insufficient contract termination notice. All electricity contracts will therefore have been negotiated and priced on the basis that the supplier is only permitted to object on a co-operative basis or where there are related meter points not registered at the same time.
- 9.8. Ofgem therefore does not consider specific transitional provisions are required in the electricity market. Following the anticipated change to the MRA, objections will also be permitted in circumstances that are set out in any new or renegotiated supply contract.

Customer Information

- 9.9. Ofgem believes it is vital that customers are informed of the reasons for any objection made by their supplier. The lack of visibility of contractual terms to other parties will mean that the customer has a crucial role in ensuring that suppliers do not abuse the objections mechanism. A requirement to inform the customer of the grounds of any objection should therefore be included in

the Gas Suppliers' Licence. This would mirror the current arrangements under the MRA.

Standard contract terms

- 9.10. Ofgem believes that consideration should be given to providing appropriate guidance for customers on contractual concerns. This could take the form of standard agreed objection terms that customers will know have been approved by customers and suppliers. Alternatively, guidance could be provided to highlight to customers key parts of supply contracts that they should consider. Ofgem considers that customer groups and energywatch, in consultation with customers and suppliers, could consider how best to advise and provide guidance to customers.

Next steps

Implementation date

- 9.11. Ofgem will publish a notice under Section 23 of the Gas Act 1986 setting out the proposed change to the Gas Suppliers' Licence. Suppliers will be permitted to raise a statutory objection to the proposed collective licence modification. Under the mechanism for collective licence modifications, where statutory objections are raised by at least 20 per cent of supply licensees or by suppliers with a total market share of at least 20 per cent, the proposed modification will not be made.
- 9.12. Ofgem anticipates that the Section 23 notice will be published in September, with a proposed implementation date in November.
- 9.13. Ofgem is also planning to implement a change to the domestic objections rules by modifying Standard Licence Condition 46 of the Gas Suppliers' Licence. Under the proposed modification to Standard Licence Condition 30, the domestic amendment will need to be implemented in advance of making the change to the I&C market or this will have the effect of removing a domestic gas supplier's right to object from the licence. It is anticipated that

the modification to the gas licence relating to domestic objections will be made by early October 2003.

- 9.14. Ofgem would welcome a change to the MRA to be processed for implementation at the same time.

Appendix 1 Defined terms

- 1.1 Before the introduction of the Utilities Act 2000, in electricity premises that were domestic or that consumed less than 12,000 kWh per annum were termed 'designated premises'. All other premises were known as 'non-designated'. In gas, premises consuming less than 2,500 therms (73,200 kWh) of gas per year were termed 'domestic' while all other premises were categorised as 'industrial and commercial (I&C)'.
- 1.2 Following the introduction of the Utilities Act the definitions of premises were altered in revised Standard Licence Conditions. These state that, in electricity and gas, premises 'at which a supply is taken wholly or mainly for domestic purposes' are classed as 'domestic premises'. All other premises are termed 'non-domestic'.
- 1.3 Any non-domestic premises supplied under an existing supply contract made before the introduction of the Utilities Act at a rate reasonably expected not to exceed 12,000 kWh (in electricity) or 2,500 therms (in gas) were treated as domestic until the contract expired or was terminated or until 31 March 2003.
- 1.4 For the purpose of this document, the term 'I&C' is used to describe non-domestic premises.

Appendix 2 Existing objection rules

- 2.1 The circumstances in which a gas supplier is permitted to raise an objection are set out in the Gas Suppliers' Licence while the rules governing an electricity supplier's right to object are contained in the MRA.

Gas

- 2.2 Standard Licence Condition 30 permits a gas supplier to object to the proposed transfer of one of its customers under two circumstances. These are:
- ◆ Where the customer has failed to pay charges for the supply of gas which have been demanded in writing and have remained unpaid for at least 28 days, and
 - ◆ Where a valid supply contract still exists between the incumbent supplier and the customer that will not terminate before the proposed transfer date.

Electricity

- 2.3 Clause 16 of the MRA provides different rules for raising an objection depending on whether the site is domestic or I&C. For I&C customers, a supplier is only permitted to raise an objection where:
- ◆ Both suppliers agree that the customer has been registered in error. In this case the incumbent supplier can raise an objection on behalf of the new supplier (a co-operative objection), or
 - ◆ A supplier registers a metering point that is related to another (for example, where there are two meters on the same premises that supply the same customer where the charges for supply are mutually conditional), without also submitting a registration at the same time for all other related metering points for the same supply start date.

Appendix 3 Proposed wording for Standard Licence Condition 30

Condition 30. ~~Debt Blocking~~ Non-domestic Transfer Blocking

1. 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 non-domestic customer except for so long as -

- (a) the licensee is permitted by the provisions of a contract with the customer for the supply of gas at those premises; or
- (b) the supplier which has initiated the proposed transfer has agreed with the licensee that the proposed transfer has been initiated in error; or
- (c) in relation to a contract entered into between the licensee and the customer prior to [x] November 2003 which does not contain provisions that permit the licensee to prevent a proposed supplier transfer;

~~(a)~~(i) the customer fails to pay charges for the supply of gas to those premises or any premises previously occupied by him in respect of which such charges are payable which -

~~+~~a) are due to the licensee and have been demanded in writing; and

~~+~~b) have remained unpaid for 28 days after the making of the demand; or

~~(b)~~(ii) the customer is bound by the provisions of a ~~that~~ contract with the licensee for the supply of gas at those premises which will neither expire nor, to the knowledge of the licensee, be terminated on or before the date of the proposed transfer.

2. Where the licensee prevents a proposed transfer, the licensee will inform the non-domestic customer of the grounds for preventing the transfer and how the customer may dispute or resolve such grounds.

Appendix 4 List of respondents

Atlantic Electric and Gas Ltd
Bournemouth Local Authority
British Gas Trading Ltd
Chartered Institute of Purchasing & Supply
Consortium for Higher Education Energy Purchasing (CHEEP)
Corus UK Ltd
East Midlands Electricity Distribution plc
Eastern Shires Purchasing Organisation (ESPO)
Economy Power Ltd
energywatch
Innogy plc
LE Group
Local Authority and Government Utilities Resource (LAGUR)
M.H. Gammie & Associates
Major Energy Users Council (MEUC)
NHS Purchasing and Supply Agency
Powergen Retail
Scottish and Southern Energy plc
Scottish Power Energy Retail Ltd
Shell Gas Direct Ltd
Statoil (U.K) Ltd
TotalFinaElf Gas & Power Ltd
Transco plc
Utility Auditing
V-is-on Gas