

## Modifying the gas and electricity supply licences for the use of objections in the non-domestic market

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**Target Audience:** Gas and electricity suppliers and potential new entrants, gas shippers, consumer representatives and non-domestic customers

### Overview:

Ofgem is proposing a change to gas and electricity supply licences to address concern among business customers and suppliers over potential misuse by suppliers of the switching process. The concern is that the current arrangements allow suppliers to use the switching process to obtain new contractual rights to prevent a proposed transfer to a new supplier. The rules were not intended to be used in this way.

Having consulted on this matter earlier in the year, we propose changes that will clarify how the rules should work and which promote an orderly and predictable switching process for the benefit of customers and suppliers.

This document sets out our final proposal to modify the gas and electricity supply licences for this purpose. The modification would mean that the existing supplier cannot disrupt the switching process, and can only object on the basis of circumstances that already exist when it is informed that the customer intends to switch.

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## Context

Ofgem is proposing a change to the provisions of the gas and electricity supply licences that govern the use of objections in the non-domestic market. There has been concern amongst customers and suppliers that the current arrangements can result in a customer's existing supplier using the switching process to obtain new contractual rights to prevent a proposed transfer to a new supplier. This can cause customer confusion and disrupt the switching process.

Our view is that the customer switching process should not confer advantage to either the new or existing supplier and should operate in a neutral and orderly manner that provides certainty to suppliers and consumer.

Our proposals clarify that a supplier can only object on the basis of terms set out in the contract held at the time the supplier is notified of the proposed transfer and only according to circumstances existing at that time. The supplier cannot use the objection window to obtain new objection rights or to persuade the customer to ask for the transfer to be stopped.

Our proposals do not restrict the circumstances in which customers and suppliers can re-contract, but do more tightly define when the existing supplier may prevent the customer from switching.

## Associated Documents

- **Modifying the arrangements for the use of objections in the non-domestic market for gas and electricity supply. Ref 191/07**  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=non%20domestic%20objections.pdf&refer=Markets/RetMkts/Compl/CustTransf>
- **Modifying the arrangements for the use of objections in the non-domestic market**  
<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/CustTransf/Documents/1/Objections%20Consultation%20Letter%20170407.pdf>

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## Summary

### Our response to the July consultation

Where a customer intends to switch to a new supplier, the existing supplier has a period of time (the 'objection window'<sup>1</sup>) in which to decide whether they have grounds to object to the transfer. The rules governing the use of objections are set out in the standard conditions of the gas and electricity supply licences. These provide that a supplier may object to the proposed transfer of a non-domestic customer, among other reasons, where a provision of the contract with that customer allows for an objection to be made.

Our proposal is that the supply licence is modified<sup>2</sup> so that the supplier may only object to the transfer on the basis of terms in the contract held at the beginning of the objection window and only if the circumstances described in the contract apply at that time. Our proposals are targeted at removing the potential for existing suppliers to distort the switching process.

The switching process should be orderly and neutral and should provide a simple, predictable set of procedures for the benefit of suppliers and customers. However, there are concerns that the current rules provide existing suppliers with an opportunity to interfere with the switching process by using the objection window to gain new objection rights or to change the customer's mind about the proposed transfer.

In April of this year the Authority ruled that BGT's practice of re-contracting during the objection window, and objecting to the proposed transfer on the basis of terms set out in the new contract, did not breach the rules that govern the switching process. Since then we have consulted on whether this practice should be allowed. In July Ofgem issued a consultation letter<sup>3</sup> proposing that the rules surrounding the use of objections in the non-domestic market should be clarified to prevent a supplier from re-contracting with a customer during the objection window and relying on the new contract to provide the justification for an objection to the proposed transfer.

This would prevent the existing supplier, once it has been notified that the customer is switching, from selling a new contract to the customer and then objecting to the proposed transfer on the grounds set out in the new contract. Our proposals also mean that the existing supplier cannot raise an objection unless it has received a customer request to stop the transfer before the beginning of the objection window.

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<sup>1</sup> In electricity, under the MRA, this period is set at "five working days". For gas, under the Uniform Network Code, it is "seven business days".

<sup>2</sup> Specifically standard condition 14.2 (a) of the gas and electricity supply licences

<sup>3</sup> "Modifying the arrangements for the use of objections in the non-domestic market for gas and electricity supply"

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=non%20domestic%20objections.pdf&refer=Markets/RetMkts/Compl/CustTransf>

We received 15 responses to the July consultation<sup>4</sup>. The majority of the responses supported our proposals. They thought our proposed action was appropriate in the light of the concerns raised and that it would clarify an important issue around the use of objections in the switching process. Three respondents argued that our proposals did not go far enough in dealing with a wider range of issues. They argued that more regulation of the non-domestic market is required, in particular in relation to practices surrounding the termination of contracts and the use of objections for smaller non-domestic customers.

We do not think that the case has been demonstrated for further regulatory measures beyond our proposals. There is scope for suppliers to improve their communications with customers and better explain their contracts, for example by making contract terms and termination arrangements clearer. But they have strong commercial incentives to do this, and we have seen initiatives by some suppliers to differentiate themselves by adopting simpler contracts. Similarly customers also have a part to play by making sure they understand the contracts they enter into. In a competitive market where suppliers are competing vigorously to win market share, we think that relying on suppliers' and customers' own incentives to provide and receive good customer service is a better solution than more regulation, which may limit choice and risk unintended consequences.

### **Deemed contracts**

The July consultation letter set out our position that objections should not be made in respect of customers being supplied on a deemed contract. Only a few respondents took a different view and no new evidence was provided by regarding the cost of collecting debt from customers on deemed contracts. We still think therefore that there is no case to propose a change to permit suppliers to have a right to object in these circumstances.

### **Next Steps**

Appendix 2 and 3 of this document set out the statutory notices proposing a modification to the supply licences<sup>5</sup>. Supply licence holders may submit representations or objections by 22 November 2007 to any of the proposals set out in the notices. If we receive objections from less than 20% of the relevant licence holders; or less than 20% of the relevant licence holders weighted according to their market share we intend to implement our modification proposals. If sufficient objections are made to block a proposal then, if the Authority still considers that a modification should proceed, it will consider whether to make a reference to Competition Commission. If our proposals are accepted and subject to any representations made, we will issue a notice directing that the conditions be modified. We anticipate that the modified conditions will come into operation as soon as we issue this notice.

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<sup>4</sup>

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=141&refer=Markets/RetMkts/Compl/CustTransf>

<sup>5</sup> These notices are made under Section 23 of the Gas Act and Section 11A of the Electricity Act.

## 1. Use of objections in the non-domestic market

### Chapter Summary

This Chapter reviews the background to the proposals and considers some of the wider issues raised by respondents to the consultation.

### Background to the proposals

1.1. The rules surrounding the use of objections by gas and electricity suppliers were modified following consultation in 2003<sup>6</sup>. The effect of the changes was to permit suppliers to prevent a proposed transfer from proceeding where there was a term in the contract between the customer and the supplier that provided grounds for an objection to be made.

1.2. At that time, we said that the circumstances in which a supplier could object to a transfer should be a matter for the supplier and customer to agree as part of the contract terms. In doing so, the customer would have visibility of the reasons why an objection could be made. This would not necessarily be the case if the objection reason were set out in the supplier's standard licence conditions. This lack of visibility had proved to be problematic for gas customers.

1.3. To enable the transfer to take place, the new supplier must first register the supply point on the database maintained by the distributor. The existing supplier will consequently receive a loss notification from the distributor.

1.4. The existing supplier then has a period of time (the 'objection window') in which to raise an objection that prevents the proposed supply transfer from taking place. This allows the supplier time to assess whether it is able to object to a transfer, in particular if the provisions of the contract (excluding a Deemed Contract) between the customer and the existing supplier permit an objection to be made.<sup>7</sup>

1.5. In practice, there is an opportunity within the objection window for the existing supplier to contact the customer and offer to enter into a new contract. If the customer accepts that contract, the new contract typically gives the existing supplier permission to object to the proposed switch; consequently, the supplier then will raise an objection based on the new contract and the customer will stay with them.

1.6. However, since these rules were implemented, an issue has arisen with regard to the industry processes that enable customers to switch supplier. Following a decision by the Authority in April 2007 in respect of an appeal made by BGT concerning an alleged breach of the MRA, an issue remained to be clarified about

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<sup>6</sup> Transfer objections: stronger rights for industrial and commercial customers (Decision document August 2003)

[http://www.ofgem.gov.uk/Markets/RetMkts/Compl/CustTransf/Documents1/4217-1C%20Objections\\_decision\\_document\\_Aug03.pdf](http://www.ofgem.gov.uk/Markets/RetMkts/Compl/CustTransf/Documents1/4217-1C%20Objections_decision_document_Aug03.pdf)

<sup>7</sup> Standard Condition 14.2 of the supply licences.

whether the use of the loss notification data flow by a supplier in re-contracting with a business customer is an appropriate market arrangement. The Authority decided that BGT's practice of re-contracting after receipt of the loss notification, and objecting to the proposed transfer on the basis of terms set out in the new contract, did not breach the MRA. However, we consulted on whether the questions raised by the appeal, in particular whether the arrangements governing the use of objections were appropriate and the effect on the switching process.

1.7. In the July consultation we explained our view that a supplier should not take any action during the objection window that would unduly distort the transfer of a customer to a new supplier. In particular, it is not appropriate for a supplier to use the objection window to obtain and then rely on new rights to object, whether these new rights are obtained via a new contract or, where the current contract contains broad objection rights, by persuading the customer to request the supplier to stop the transfer. We suggested that this was a distortion of the switching process, which was intended to enable transfers to take place. As competing suppliers have no choice but to use this industry process, it needs to be a neutral and orderly process that provides certainty to all industry participants (customers and suppliers alike).

1.8. The use of the objection window to secure new contractual rights to prevent the switch would provide the existing supplier with an advantage over the incoming supplier in the switching process. We noted that the process means that the existing supplier:

- (a) gets systematic notification that its customer is switching away;
- (b) has time to contact that customer and offer the customer a new contract or seek to persuade the customer to ask the supplier to object to the transfer; and
- (c) can prevent the proposed transfer either on the basis of the new contract or by virtue of a broadly drafted right in the existing contract which confers the right to object because of activity undertaken during the objection window.

1.9. We also questioned whether the practice of re-contracting in the objection window can be detrimental to customers through a higher risk of confusion and potential exposure to termination fees for exiting the new supplier's contract if they choose to re-contract with the existing supplier. Although customers need to be aware of the commitments they are entering into when they agree to a new supply arrangement, the concern does highlight the need for clarity and simplicity in the rules governing switching and it is with this in mind that we are proposing licence modifications.

## **Respondents' views**

1.10. Our proposals are targeted at removing the potential for distortion of the switching process through clarifying the use suppliers may make of the objection window. They are not intended to restrict the agreements that customers and

suppliers may enter into; or the circumstances in which the supplier is permitted by those agreements to object to a proposed switch; or to limit when a supplier may market their products to their customer.

1.11. Appendix 1 sets out a summary of the responses we received to the July consultation. There was broad support for our proposed change to the supply licences. Respondents agreed that the objection window was not originally designed to support re-contracting and that its use in this way distorted the switching process and potentially damaged competition. A few respondents suggested that our proposals do not go far enough. energywatch and Haven Power argued that there were wider problems with the use of objections that would not be addressed by our proposal. energywatch suggested that suppliers would introduce innovative contract terms to tie customers to existing contracts. Haven Power argued that the licence should specify the circumstances in which an objection may be made, rather than allowing the contract to determine the terms. The UIA expressed similar concerns, noting that some customers may not see the contract until after they have accepted it, for example through telesales.

1.12. We recognise that some stakeholders have these wider concerns. However, our focus is on correcting the rules applying to the switching process, to ensure that the objection window does not provide the existing supplier with an unfair advantage through securing new objection rights that were not available at the start of the objection window. To achieve this, it is not necessary for the licence to specify the circumstances in which an objection may be made. Nor is it generally in consumers' interests for regulation to prescribe contract terms which would otherwise be the outcome of competition, innovation and negotiation.



## 2. The proposed licence amendment

### Chapter Summary

This Chapter consider the text of the proposed licence modification.

2.1. As discussed in the July consultation, the effect of the proposals would be to restrict the existing supplier's ability to object to the proposed switch so that it could only do so where the basis for an objection exists in the circumstances arising at the time the loss notification is received. Therefore, the existing supplier would not be able to secure new rights to object to a transfer during the objection window.

2.2. For example, if the contract permitted the supplier to object at the request of the customer and such a request had not been made prior to the receipt of the loss notification, then an objection on that basis could not be made.

2.3. The objection window is intended to provide sufficient time for the existing supplier to check their records and establish whether they have a legitimate reason to prevent the proposed switch from proceeding. It should not be used by the existing supplier to open up new contract negotiations or in any other way alter their commercial position towards the customer in order to prevent a switch that would otherwise have gone ahead. However, our proposal does not impact on a supplier's right to re-contract during the objection window where that supplier has the right to object at the time that the loss notification is received. We do not think that it would be in customers' interests to prevent a supplier from offering a customer a better deal in circumstances where the supplier is entitled to object to the transfer.

2.4. The July consultation set out proposed drafting for standard licence condition. One respondent to the consultation suggested revised drafting with the aim of making the intention of the condition clearer. We have considered that and made changes to more accurately reflect the process of the new supplier applying under the Master Registration Agreement or relevant Network Code to supply the premises.

2.5. Our proposal is to delete Standard Licence Condition 14. 2 (a) of the gas and electricity supply licences and to replace it with the following text.

2.6. In the case of the gas supply licence:

“at the time the licensee receives Notice under the Network Code by way of the Relevant Gas Shipper that another Gas Supplier has applied under the requirements of the Network Code to supply the premises, the licensee's Contract with that customer for the supply of gas to the premises includes a term which:

- (i) allows the licensee to prevent the Proposed Supplier Transfer; and

(ii) may be relied upon in the circumstances arising at that time;".

2.7. In the case of the electricity supply licence:

"at the time the licensee receives Notice under the Master Registration Agreement that another Electricity Supplier has applied under the requirements of the Master Registration Agreement to supply the premises, the licensee's Contract with that customer for the supply of electricity to the premises includes a term which:

(i) allows the licensee to prevent the Proposed Supplier Transfer; and

(ii) may be relied upon in the circumstances arising at that time;".

2.8. The statutory modification notices for these proposals may be found in Appendices 2 and 3 of this document.

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## Appendix 1 - Consultation questions

1.1. In the July consultation document (**Modifying the arrangements for the use of objections in the non-domestic market for gas and electricity supply. Ref 191/07**) Ofgem sought the views of respondents on the questions below:

**Question 1:** Should suppliers use the objection window to obtain and then rely on new rights to object (an objection may only be raised where the contract in place at the time the loss notification is received allows the supplier to object)?

**Question 2:** We asked for comments on the proposed licence drafting.

**Question 3:** Should new licence conditions apply to Deemed contracts as well as other Contracts?

## List of Respondees

Below is a list of those who responded to the consultation letter. In addition, we received two confidential responses. Responses may be found on the Ofgem website.<sup>8</sup>

Name
British Energy
British Gas
EDF Energy
Electricity for Business
energywatch
E.ON
Good Energy
Haven Power
Opus Energy
RWE npower
ScottishPower
Scottish and Southern Energy
Utilities Intermediaries Association

<sup>8</sup>

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=141&refer=Markets/RetMkts/Compl/CustTransf>

## Summary of Responses

1.1. Responses received by Ofgem which were not marked as being confidential have been published on Ofgem's website [www.ofgem.gov.uk](http://www.ofgem.gov.uk). Copies of non-confidential responses are also available from Ofgem's library.

1.2. The following is a summary of those responses which were received.

### **Question 1: Should suppliers use the objection window to obtain and then rely on new rights to object?**

#### *Respondents' views*

1.3. All but two of the respondents supported the proposal. British Gas said "We support the principle that new objection rights should not be introduced following receipt of the loss notification." E.ON agreed, stating "We support Ofgem's view that suppliers should not use the objection window to obtain and then rely on new rights to object."

1.4. Haven Power and the UIA were concerned that the proposals may not go far enough. The UIA supported the proposal, but remained concerned that Ofgem had "...addressed a purely technical point from a suppliers perspective..". They proposed that there should be a prohibition on marketing activity during the objection window. They feared that the proposal would lead to all contracts including cancellation fees, customers to be threatened with breach of contract and more complex objection criteria in contracts. This would result in customers being deterred from participating in the market.

1.5. Haven Power was also concerned that the proposals would not prevent re-contracting during the objection window. They proposed that the use of objection should be limited to circumstances where there was an outstanding debt, related MPAN, erroneous transfer or where the existing contract had not run its course or had not been properly terminated by the customer. Haven expressed concern that our proposals would have the effect of endorsing practices that the existing supplier may employ to re-contract with the customer that would lead to the new supplier having to apply termination fees to a customer who had entered into a contract with the new supplier but subsequently opted to stay with the existing supplier.

#### *Ofgem's view*

1.6. Our proposal means that the existing supplier cannot seek new rights to object during the objection window. This would prevent a supplier from using the loss notification as a trigger to contact the customer, enter into a new contract and then use the terms of the new contract to object to the proposed transfer. Nor would it permit the existing supplier to use a term in the existing contract, for example permitting the supplier to object where requested by the customer, unless that term was pertaining at the time the loss notification was received.

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1.7. . We do not consider that further regulating the terms and conditions on which suppliers and customers enter into contracts with each other would not be in customers' interests. The non-domestic energy market covers a wide range of customer types and contract values. Different customers want different things from their contracts and some will appreciate the flexibility and the freedom to determine the terms of their contracts. To restrict how agreements between suppliers and customers may be entered in to or formulated risks limiting customer choice and innovation. We do not consider that it is appropriate to seek to limit the circumstances in which a customer and supplier may enter into an agreement. This is a competitive market, and we see no justification at this time for seeking to regulate how and when contracts may be struck

1.8. Equally, regulation of contracts should not attempt to be a substitute for customers reading and understanding the agreements they enter into with suppliers. Ofgem has facilitated meetings with non-domestic customers and suppliers where there has been agreement that, particularly for smaller non-domestic customers, the principal terms and conditions of contracts should be presented clearly and made accessible to customers. We have seen number of suppliers introduce new contract forms and advice to support this. Suppliers have strong incentives to produce contracts that customers want.

1.9. There are plenty of examples suggesting that the competitive market is working to improve customer service. One of the major suppliers has voluntarily put in place a redress service for its small business customers, while others are rolling out smart meters. Suppliers have taken these steps because they want to gain a competitive advantage. Suppliers that do not listen to their customers or provide contracts that they want are likely to lose out in a competitive market. More regulation to restrict contract terms is likely to be counter-productive and to discourage innovation and therefore we do not think it is appropriate to consider it at this time.

### Question 2: Comments on the proposed licence drafting.

#### *Respondents' views*

1.10. Respondents who commented were broadly in agreement with the proposed drafting of the licence condition. British Gas suggested that Ofgem should provide guidance to the market about the implications of the proposed change, in particular in regard to re-contracting. They considered that such guidance was necessary to reduce the scope for debate and dispute at a future date.

1.11. ScottishPower proposed alternative drafting, to clarify the status of the loss notification through the industry agreement governing the process and that the objection reason "is enforceable against the customer at that time".

#### *Ofgem's views*

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1.12. We have considered ScottishPower's comments in regard to the drafting of the proposal and amended are original proposal. The drafting of the proposals is considered in more detail in Chapter 2 above.

### **Question 3: Should new licence conditions apply to Deemed contracts as well as other Contracts?**

#### *Respondents' views*

1.13. Four suppliers, BGT, EDF, Good Energy and RWE npower, indicated that they thought that suppliers should have the ability to prevent a proposed transfer where the customer was being supplied on a deemed contract and there was a debt. RWE npower said that "unlike in other competitive markets, the electricity and gas industries are highly unusual in sometimes putting a supplier in the position of providing an involuntary supply. The regulatory framework should therefore reasonably provide protection for suppliers in the special circumstances of 'deemed contracts'". EDF suggested that customers on deemed contracts "...may have chosen not to contract with a supplier in order to avoid paying charges." And therefore would expose the supplier to debt issues and costs. British Gas argued that despite their best efforts to identify customers on deemed contracts and to move them off them "...these customers often abscond without paying their liabilities, resulting in costly enforcement action. The facility to object is a pragmatic solution for an inevitable problem and we seek the introduction of a new right to object."

1.14. Other respondents who commented agreed that suppliers should not be able to object to transfers where the customer is being supplied on a deemed contract.

#### *Ofgem's view*

1.15. As set out in Appendix 5 of the July consultation letter, we had previously consulted on the question of whether objections should be permitted for deemed contracts, in particular where there is a debt. We had asked for evidence to support the case that it was in the interest of consumers that suppliers should have such rights and invited respondents to submit quantitative evidence about the scale and cost of debt management in relation to Deemed Contracts. No new evidence has been offered, and so we do not propose to extend objection rights

### **Other matters**

#### *Respondents' views*

1.16. RWE npower noted that there is a mechanism for suppliers to object where requested to do so by a domestic customer, with the aim of preventing erroneous transfers (this is often referred to as 'customer requested objections'). The supply licence permits an objection to be made where both suppliers agree to an objection for a non-domestic customer, but not where the customer requests one to be made. In the domestic market there are safeguards that require the existing supplier to maintain evidence that the proposed transfer is considered by the customer to be

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erroneous and requirements on the existing supplier to notify the new supplier and the customer why the objection has been made.

*Ofgem's view*

1.17. Our view is that this difference exists because in the domestic market, the existing supplier is not permitted to object for reasons of contract. In the non-domestic market, customers are more likely to have contracts that permit the supplier to object where notice has not been given, and erroneous transfer may more easily be prevented. We also note that non-domestic gas suppliers are not required to be a party to the Supply Point Administration Agreement, which provides the governance for the use of this facility for gas suppliers. However, if evidence was presented suggesting that this limitation on the use of objections gave rise to a significant incidence of erroneous transfers, we would consider the issue further.



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## Appendix 2 – Notice of modification of the standard conditions of the gas supply licence

**To: All holders of a gas supply licence**

### **NOTICE OF MODIFICATION OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCE UNDER SECTION 23 OF THE GAS ACT 1986**

#### **WHEREAS:**

1. Each of the companies to whom this notice is addressed holds a gas supply licence granted, or treated as granted, pursuant to section 7A(1) of the Gas Act 1986 (the "Act").
2. In accordance with section 23(3) and (4) of the Act, the Gas and Electricity Markets Authority (the "Authority") gives notice ("Notice") that it proposes to modify the standard conditions of the gas supply licence in accordance with the Schedule to this Notice.
3. The proposed licence modification is intended to clarify the basis on which objections to a proposed customer transfer can be raised. The modification is intended to ensure that suppliers do not use the objection window to obtain and then rely on new rights to raise an objection. This means that once a loss notification has been received, a customer transfer must proceed unless there is an existing reason that would permit an objection to be made.
4. The reasons why the Authority proposes to make this modification have been published by the Authority in the following documents:
  - (a) Ofgem. September 2007 *Modifying the gas and electricity supply licences for the use of objections in the non-domestic market. Ref 251/07*
  - (b) Ofgem. July 2007 *Modifying the arrangements for the use of objections in the non-domestic market for gas and electricity supply. Ref 191/07*
  - (c) Ofgem. April 2007 *Modifying the arrangements for the use of objections in the non-domestic market*

These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London SW1P 3GE (0207 901 7003) or from the Ofgem website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

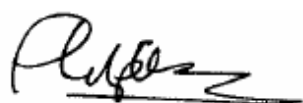
5. Any representations or objections to the proposed modification may be made before 22 November 2007 and sent to:

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or by email to [nigel.nash@ofgem.gov.uk](mailto:nigel.nash@ofgem.gov.uk).



Philip Davies  
Director, GB Markets  
Ofgem  
Authorised on behalf of the Authority

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## SCHEDULE 1

### **PROPOSED MODIFICATION OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCE UNDER SECTION 23 OF THE GAS ACT 1986**

1. Standard condition 14 (Customer transfer blocking) is amended as follows.
2. For paragraph 14.2(a), substitute:

“at the time the licensee receives Notice under the Network Code by way of the Relevant Gas Shipper that another Gas Supplier has applied under the requirements of the Network Code to supply the premises, the licensee’s Contract with that customer for the supply of gas to the premises includes a term which:

  - (i) allows the licensee to prevent the Proposed Supplier Transfer; and
  - (ii) may be relied upon in the circumstances arising at that time;”.

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## Appendix 3 Notice of modification of the standard conditions of the electricity supply licence

**To: All holders of an electricity supply licence**

### **NOTICE OF MODIFICATION OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCE UNDER SECTION 11A OF THE ELECTRICITY ACT 1989**

#### **WHEREAS:**

1. Each of the companies to whom this notice is addressed holds an electricity supply licence granted, or treated as granted, pursuant to section 6(1)(d) of the Electricity Act 1989 (the "Act").
2. In accordance with section 11A(3) and (4) of the Act, the Gas and Electricity Markets Authority (the "Authority") gives notice ("Notice") that it proposes to modify the standard conditions of the electricity supply licence.
3. The proposed licence modification is intended to clarify the basis on which objections to a proposed customer transfer can be raised. The modification is intended to ensure that suppliers do not use the objection window to obtain and then rely on new rights to raise an objection. This means that once a loss notification has been received, a customer transfer must proceed unless there is an existing reason that would permit an objection to be made
4. The reasons why the Authority proposes to make this modification have been published by the Authority in the following documents:
  - (a) Ofgem. September 2007 *Modifying the gas and electricity supply licences for the use of objections in the non-domestic market*. Ref 251/07
  - (b) Ofgem. July 2007 *Modifying the arrangements for the use of objections in the non-domestic market for gas and electricity supply*. Ref 191/07
  - (c) Ofgem. April 2007 *Modifying the arrangements for the use of objections in the non-domestic market*

These documents are available free of charge from the Ofgem Research and Information Centre, 9 Millbank, London SW1P 3GE (0207 901 7003) or from the Ofgem website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk).

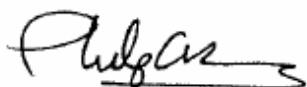
5. Any representations or objections to the proposed modification may be made before 22 November 2007 and sent to:

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Nigel Nash  
Head, Market Infrastructure  
Ofgem  
9 Millbank  
London  
SW1P 3GE

or by email to [nigel.nash@ofgem.gov.uk](mailto:nigel.nash@ofgem.gov.uk).



Philip Davies  
Director, GB Markets  
Ofgem  
Authorised on behalf of the Authority

22 October 2007

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## **SCHEDULE 1**

### **PROPOSED MODIFICATION OF THE STANDARD CONDITIONS OF THE ELECTRICITY SUPPLY LICENCE UNDER SECTION 11A OF THE ELECTRICITY ACT 1989**

1. Standard condition 14 (Customer transfer blocking) is amended as follows.

2. For paragraph 14.2(a), substitute:

“at the time the licensee receives Notice under the Master Registration Agreement that another Electricity Supplier has applied under the requirements of the Master Registration Agreement to supply the premises, the licensee’s Contract with that customer for the supply of electricity to the premises includes a term which:

(i) allows the licensee to prevent the Proposed Supplier Transfer; and

(ii) may be relied upon in the circumstances arising at that time;”.

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## Appendix 4 – The Authority's Powers and Duties

4.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

4.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.<sup>9</sup>

4.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly<sup>10</sup>.

4.4. The Authority's principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

4.5. The Authority must when carrying out those functions have regard to:

- The need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- The need to secure that all reasonable demands for electricity are met;
- The need to secure that licence holders are able to finance the activities which are the subject of obligations on them<sup>11</sup>; and
- The interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.<sup>12</sup>

4.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

<sup>9</sup> entitled "Gas Supply" and "Electricity Supply" respectively.

<sup>10</sup> However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

<sup>11</sup> under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

<sup>12</sup> The Authority may have regard to other descriptions of consumers.

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- Promote efficiency and economy on the part of those licensed<sup>13</sup> under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
  - Protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity;
  - Contribute to the achievement of sustainable development; and
  - Secure a diverse and viable long-term energy supply.

4.7. In carrying out the functions referred to, the Authority must also have regard, to:

- The effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- Certain statutory guidance on social and environmental matters issued by the Secretary of State.

4.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation<sup>14</sup> and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

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<sup>13</sup> or persons authorised by exemptions to carry on any activity.

<sup>14</sup> Council Regulation (EC) 1/2003



## Appendix 5 - Glossary

### A

#### Authority

The Authority is the governing body for Ofgem, consisting of non-executive and executive members.

### D

#### Deemed contract

The Electricity Act and the Gas Act, provide that where a supplier supplies gas or electricity to premises (electricity) or a consumer (gas) otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the consumer for the supply of gas or electricity from the time when he began to supply that gas or electricity. Typically a deemed contract will occur where a customer moves into a new property and has not agreed contractual terms with a supplier who is supplying energy to that property or where a fixed term contract expires and the contract continues after that date.

### E

#### Electricity Act

Electricity Act 1989 as amended.

#### Energy Supply Ombudsman

Independent body, established by the ERA, that resolves disputes between a customer and their energy supplier associated with billing and transfer issues. Ombudsmen are an independent and impartial means of resolving disputes outside the courts and the Energy Supply Ombudsman. <http://www.energy-ombudsman.org.uk/>

#### energywatch

energywatch is the Gas and Electricity Consumer Council set up under the Utilities Act 2000 to represent the interests of gas and electricity consumers. Link to the energywatch website: <http://www.energywatch.org.uk/bst/index.asp>

### G

#### Gas Act

Gas Act 1986 as amended.

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## **M**

### **MRA – Master Registration Agreement**

This agreement, along with its associated documentation, sets out the inter-operational arrangements that support the processes for the registration of a change of electricity supplier in the UK retail market.

## **O**

### **Objection**

The process by which an existing supplier may instruct the distribution network operator to prevent a proposed customer switch away from that supplier. The process is governed by the Master Registration Agreement (for electricity) and the relevant Network Code (for gas). The circumstances in which the existing suppliers is permitted to object is set out in Standard Condition 14 of the gas and electricity supply licences.

## **S**

### **SLC - Supply Licence Condition**

These are licence conditions that gas and electricity suppliers that have to comply with. Under the Gas Act 1986 and Electricity Act 1989, failure to comply with licence conditions can result in financial penalties and/or enforcement orders to ensure compliance.

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## Appendix 6 - Feedback Questionnaire

6.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

- Does the report adequately reflect your views? If not, why not?
- Does the report offer a clear explanation as to why not all the views offered had been taken forward?
- Did the report offer a clear explanation and justification for the decision? If not, how could this information have been better presented?
- Do you have any comments about the overall tone and content of the report?
- Was the report easy to read and understand, could it have been better written?
- Please add any further comments?

6.2. Please send your comments to:

**Andrew MacFaul**  
Consultation Co-ordinator  
Ofgem  
9 Millbank  
London  
SW1P 3GE  
andrew.macfaul@ofgem.gov.uk