

March 2000

**Removing a supplier's right to object to
customer transfer on the grounds of
insufficient termination notice**

A consultation document

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Executive summary

All gas suppliers and Designated electricity suppliers currently have the right to include in contracts with customers terms that permit the supplier to require notification from the customer of his or her intention to terminate the contract and switch supplier. In the event that contract with the customer contains such terms and the customer does not give sufficient notice of termination, the supplier may actively prevent a proposed customer transfer from taking place by instructing the Network Service Provider that it is “objecting” to the transfer.

Although objection rates in the Designated electricity market have to date remained relatively low at less than 5% of proposed transfers, objections in the domestic gas market have been very high, reaching over 30% of proposed transfers in October 1999. At that time well over half of the objections in the domestic gas market related to insufficient termination notice (in some cases suppliers were objecting to over 50% of the proposed transfers of their customers to other suppliers).

Ofgem has received complaints from customers and suppliers about the practices of some suppliers in preventing customer transfers and the quality of their procedures in processing termination notices. The operational requirements which both the incoming and outgoing suppliers need to put in place to ensure that termination notices are correctly raised, relayed, recorded and objections raised on the basis of lack of contract termination notice are onerous and expensive to administer.

Therefore in October 1999 Ofgem initiated an industry trial in which most domestic gas suppliers and Designated electricity suppliers volunteered to suspend their right to object for lack of termination notice. Ofgem audited three suppliers who chose not to take part in the trial and established that;

- if termination notices are not processed correctly suppliers may incorrectly prevent customers from transferring. This would be a breach of the gas licence or the MRA.
- suppliers may use receipt of a termination notice as an opportunity to contact customers with a view to persuading them not to transfer away. In certain cases this may be anti-competitive.

Following the trial and consideration of the issues raised in the audit, Ofgem has concluded that the right of gas and electricity suppliers to prevent customer transfers by raising objections for lack of termination notice is not necessary or desirable in either the domestic or Industrial Commerce (I&C) gas market or the Designated market in electricity . The existence of these rights and the way they are use are likely to be an impediment to the development of competition. They are not compatible with the interests of customers and the operation of a flexible, competitive market and they should be removed. Ofgem therefore proposes that the right to object for lack of termination notice should be deleted from the Standard Conditions of Gas Suppliers' Licences and from the electricity Master Registration Agreement.

By contrast, Ofgem proposes that the right for a supplier to object to a transfer taking place with the agreement of the other supplier and to avoid the otherwise erroneous transfer of a customer has been valuable for electricity and gas customers and should therefore be retained in the MRA and should also be formally recognised in the gas market by the amendment of the Standard Conditions of the Gas Suppliers' Licence .

1. Introduction

This document

- 1.1 This document sets out Ofgem's proposals for the removal of the right of domestic gas and electricity suppliers' and of industrial and commercial (I&C) gas suppliers to prevent the transfer of a customer away from them on the basis that the customer has given the supplier insufficient notice of contract termination. The removal of the right would require amendment to the Standard Conditions of Gas Suppliers' Licences and the electricity Master Registration Agreement (MRA).
- 1.2 The document considers the current legal and industry provisions concerning contract termination and a supplier's right to prevent a customer from transferring to another supplier in the domestic and I&C gas market and the Designated electricity market.

Background

Gas supply

- 1.3 Under the terms of the Standard Conditions of Gas Suppliers' Licence, customers supplied under a "deemed" contract are not required to give their supplier any notice that they are switching away to another supplier. When competition was introduced into the domestic gas market all of BGT's domestic customers were supplied under deemed contracts established under the Former Tariff Customer Scheme. Customers were therefore not required to give BGT any notice of their wish to terminate their deemed contract and switch away to another supplier. Although it is possible for I&C customers to be supplied under deemed contracts this is rare and is only possible in relation to sites consuming less than 2,196,000 kWh – almost all I&C customers are supplied under an "express" contract that is, a contract which have been formally entered into between a customer and a supplier.
- 1.4 As the gas market opened to competition suppliers competed to persuade customers to enter into express contracts for their gas supplies. Where a customer is supplied under an express contract, Standard Condition 7 of the

Gas Suppliers' Licence permits the supplier to make it a condition of the contract that the customer is required to give notice of his or her intention to terminate the contract. An extract from Standard Condition 7 is set out in **Appendix 1**. Domestic customers are required to give up to 28 days notice of termination (unless the customer is moving home in which case he or she need only give 48 hours notice). Although the licences do not specify the maximum notice which I&C customers are required to give, it is common for such contracts to require that notice is given between one and three months before the renewal date for the contract. If the supplier has not been given the appropriate notice it is entitled to object to a proposed transfer and retain the customer until appropriate notice has been given on the next anniversary of the contract.

- 1.5 Since the beginning of the rollout of domestic competition Ofgem has monitored the level of objections raised by suppliers on a weekly basis. As the market opened to competition customers were switching to new suppliers from a BGT deemed contract, and therefore the level of objections initiated due to lack of termination notice was low. Since that time, as customers on express contracts attempt to switch from non-BGT suppliers, the number of objections initiated by suppliers for lack of termination notice has increased rapidly and the overall objection rate has reached over 30% of proposed transfers.

Electricity supply

- 1.6 Electricity suppliers may specify in their contracts with non-designated customers a requirement for notice of contract termination. However, they are not entitled to object to the proposed transfer away of such customers on the grounds of lack of termination notice. Prior to the date when competition was introduced into the designated electricity market almost all Designated Customers were supplied by the local Public Electricity Supplier (PES) under tariff supply. Customers supplied under tariff are not required to give their supplier notice that they are switching to another supplier. New suppliers competed to persuade Designated Customers to switch supplier and take their

supplies under express contracts. In cases where a Designated Customer is supplied under an express contract, the MRA permits the supplier to make it a condition of supply that the customer is required to give up to 28 days notice of his or her intention to switch to another electricity supplier. If the supplier has not been given the appropriate notice it is entitled to object to a proposed transfer and retain the customer until notice has been given. Extracts from Clause 16 of the MRA and the relevant supply licence condition are set out in **Appendix 2.**

Impact of objections

- 1.7 Problems with processing and handling of termination notices can lead to suppliers raising objections. These objections cause delays in customer transfers and as a result some customers decide not to pursue the transfer because of the problems which they perceive with transferring between suppliers. Typically, gas customers who have transferred away from BGT and want to move again have greater problems if they are supplied under an express contract the terms of which require up to 28 days' notice of termination. Some customers may not be aware of this requirement, which did not apply in the pre-competitive market.

Views of customers and suppliers

- 1.8 Ofgem has received complaints from suppliers and customers about incumbent suppliers unfairly preventing customers transferring away from them. Delays in the transfer process together with the additional bureaucratic process the customer must deal with in relation to termination notices and objections will lead to an increase in the customer's perception that switching supplier is difficult, frustrating, subject to delays and that the suppliers new to the market put restrictions on customer transfers which were not applied by the ex-monopoly supplier. This would tend to consolidate the position of the dominant ex-monopoly supplier and could also have implications for the success of competition.
- 1.9 Ofgem has discussed with the industry the issue of the appropriateness of allowing objections on the grounds of lack of termination notice. As a result of these discussions Ofgem established a four-month trial starting on 15

October 1999 in which the majority of gas and electricity suppliers agreed to suspend their right to object for domestic customers. This trial has now been extended. This document reports the initial findings from the trial and on the audit visits conducted by Ofgem to three suppliers who elected not to participate in that trial. Details on the participation of suppliers in the trial can be found in **Appendix 3**.

- 1.10 A consultation document “Customers in debt and their access to the competitive market” was published in December 1999. It considered the arguments for suppliers being able to prevent customers transferring to a new supplier where there was an outstanding debt. This document concluded that it was not appropriate for customers in debt to be prevented from transferring to a new supplier. Ofgem is currently considering responses to the consultation and will be issuing a further document in March.

Structure of this document

- 1.11 The chapters in this consultation document are structured in the following way:

Chapter 2 describes the relevant licence provisions (including, for electricity, the industry’s MRA).

Chapter 3 considers the growth in the numbers of objections in the domestic gas market and the Designated electricity market.

Chapter 4 describes the Trial for suppliers to suspend their right to object in the domestic gas market and the Designated electricity market.

Chapter 5 considers a number of issues in relation to domestic gas and Designated electricity supply.

Chapter 6 considers a number of issues in relation to I&C gas supply.

Chapter 7 draws conclusions, and sets out Ofgem’s proposals for reform and a timetable.

Comments invited

- 1.12 Comments are invited on the issues raised in this document and in particular on Ofgem's proposals. It would be helpful to receive replies by 3 April 2000. Responses should be sent to:

Rosalind Cole
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Ofgem
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130 Wilton Road
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Or by e-mail: Rosalind.Cole@ofgem.gov.uk

- 1.13 It is open to respondents to mark all or part of their responses as confidential. However, we would prefer it if, as far as possible, responses were provided in a form that can be placed in the Ofgem library. If you have any queries concerning this document, Nigel Nash (020 7932 1665) will be pleased to help.

2 Licence and contractual provisions

2.1 All gas suppliers and electricity suppliers to Designated Customers may object to the transfer of customers to other suppliers in certain circumstances. These include:

- Where 28 days have passed since the supplier has sent a written demand to a gas customer or a domestic electricity customer who has failed to pay charges (and those charges are not in dispute) and the charges remain unpaid; and
- Where a gas customer or a Designated electricity customer is bound by a contract, which to the knowledge of the supplier will neither expire nor be terminated on or before the proposed transfer date.

A supplier which is entitled to prevent the customer transfer may do so by sending a standard data flow informing the electricity distributor or gas transporter that it objects to the transfer.

2.2 For gas suppliers, the right to object on this basis is set out in paragraph 4 of Standard Condition 7 of the Gas Suppliers' Licence. In electricity, similar arrangements are included in Clause 16 of the MRA. The MRA sets out inter alia, rules for customer transfers in the electricity market. All electricity suppliers are required by a condition of their licence to sign the Agreement and comply with its provisions. The relevant extracts dealing with objections from the standard conditions of the gas suppliers' licences are set out in **Appendix 1** and the relevant extracts from the electricity MRA and the supply licence provisions are set out in **Appendix 2**.

2.3 The right to object for lack of termination notice only applies to "express" contracts in gas or Designated contracts in electricity. A supplier which is supplying a customer under a deemed contract (in the case of gas customers) or under tariff supply by a Public Electricity Supplier (in the case of electricity customers) is not entitled to object to a customer transfer on the basis of lack of termination notice. Most gas customers currently supplied by BGT are supplied under a deemed contract provided for by the Former Tariff Customer

Scheme, and BGT is therefore not entitled to object to the transfer away of customers on this basis. BGT does not currently object on this basis even in cases where it has an express contract with customers.

2.4 Gas suppliers have the right to object for lack of termination notice in relation to all gas customers (domestic and industrial & commercial), whereas in the electricity market the right to object for lack of termination notice relates only to Designated Premises as defined in the PES licence and 2nd Tier Licence – essentially domestic customers and premises using 12,000 kWh or less per year. In both gas and electricity, suppliers which are entitled to object to transfers on the basis of a failure to terminate the contract may only do so if the terms of the contract with the customer require such notice to be given. In practice, most supply contracts contain such terms.

2.5 Notice of contract termination is usually provided to suppliers through one of three routes:

- The customer telephones the supplier which currently supplies him or her. Some suppliers will ask a customer who terminates by telephone to confirm in writing his or her instruction to terminate the contract.
- The new suppliers ask customers to sign a pro forma termination notice at the time that the customer enters into the contract with them. The new supplier submits this notice of termination to the incumbent supplier – usually by post. In relation to domestic gas customers the information that should be included on the termination notice is defined in the Supplier's Code of Practice for the Domestic Market under "Best Practice in the use of Termination Notices" .
- The customer writes to the supplier which currently supplies him or her.

2.6 The gas and electricity markets are both based on IT systems operated by distribution companies (for example Transco and the PESs) which manage the registration of customer supply points for suppliers. These systems incorporate procedures for transferring supply points between suppliers. The rules that govern these procedures are set out in Network Codes in the case of gas supply points and the MRA in the case of electricity supply points. A supplier

which wishes to supply a customer must use these systems to register a supply point and transfer a customer.

- 2.7 The registration procedures used for dealing with supplier objections to customer transfers in both gas and electricity are broadly similar. When a customer enters into a contract with a new supplier, that supplier sends an instruction (via their shipper in the case of gas) to the registration system of the relevant network operator - for example Transco's Supply Point Administration system (for a gas customer) or a PES Registration System (for the area the supply point is situated for an electricity customer) – that they wish the site to transfer on a particular date. The network operator will then notify the incumbent supplier that a transfer is intended to take place. On receipt of that notification, the incumbent supplier may initiate an objection if it is entitled to do so and sends an instruction to the registration system to block the transfer from taking place. If the reason for raising the objection is resolved – for example the customer gives adequate notice of termination – then the registration systems permit the incumbent supplier to withdraw their objection and allow the transfer to proceed. If this is not done, the new supplier will have to re-submit the transfer request at a later date and the customer will transfer if the reason for the objection no longer remains.
- 2.8 The operational requirements which suppliers need to put in place to ensure that they are correctly initiating objections on the basis of lack of contract termination notice are onerous. They have operational impact for both the acquiring supplier and the outgoing supplier. The new supplier has to ensure that customers are notifying the outgoing supplier of their wish to terminate their contract with that supplier. If the acquiring supplier is obtaining customer signatures on proforma termination notices then it must have in place procedures to collate the termination notices, correctly identify the appropriate outgoing supplier and forward the notices to that supplier in a timely way.
- 2.9 The outgoing supplier must have procedures in place to allow it to process on a timely and accurate basis all termination notices sent to it, whether from customers or other suppliers and (where the incumbent supplier permits) by

the customer telephoning the supplier. The outgoing supplier needs to match notices of termination correctly against customer records. Much of this work requires manual intervention to enter data onto the suppliers systems and in many cases, for the data to be reviewed by an operator during the transfer process to judge whether the grounds for an objection have been met, and if they have, to initiate the objection.

- 2.10 One example of the complexity of the objection process is that domestic or Designated suppliers are obliged to recognise and deal differently with circumstances where they have been advised of a change of tenancy by a customer. A domestic gas customer who has moved into the premises and has not entered into an express contract with a supplier is supplied under a deemed contract by the supplier which supplied the previous occupant. Under the terms of their licences, domestic gas suppliers have no right to raise an objection for lack of termination notice to the transfer of customers on deemed contracts. The electricity registration system supports an indicator that the new supplier can use to notify the incumbent supplier that there has been a change of tenancy. This facility does not exist on Transco's Supply Point Administration (SPA) system.
- 2.11 This range of complexities have resulted in suppliers having either to incur substantial costs to ensure that they are operating the objection facility correctly or risk breaching the conditions of their licence (in the case of gas suppliers) or the MRA (in the case of electricity suppliers).
- 2.12 In December 1999 Ofgem published a consultation document "Customers in debt and their access to the competitive market". It considered the arguments for and against the ability of suppliers to prevent customers transferring to a new supplier where there was an outstanding debt. The document expressed Ofgem's view that it was not appropriate for customers in debt (regardless of whether they were domestic, Designated or industrial and commercial customers) to be prevented from transferring to a new supplier in this way.

3. Rate of objections against customer transfers

- 3.1 Since the start of competition, Ofgem has monitored the level of objections in the domestic gas market and the Designated electricity market, and more recently in the I&C gas market. In Ofgem's view the rate of objections is a key indicator of industry performance. Ofgem monitors the number of objections raised, the rate of objections, i.e. the percentage of attempted transfers which are objected to, the reason for objections being raised and the frequency which individual suppliers object. The Office has been provided with information from a number of sources, primarily gas and 2nd tier electricity suppliers, individual PESs and Transco.
- 3.2 Throughout Phase 1 and Phase II of domestic gas competition the industry objection rate was relatively low at approximately 10%. However, following the completion of Phase III in May 1998 the objection rate began to increase (see Figure 1). In June 1998 the objection rate was 11.6%. By October 1999 the objection rate had risen to over 30%.
- 3.3 At that time, around 20,000 to 25,000 customer transfers each week were being objected to in the domestic gas market. Based on industry monitoring data, it is Ofgem's view that since the opening of the domestic market the level of objections relating to debt has remained fairly constant at around 10 – 13% of all attempted transfers, and that it is the rise in the level of objections relating to insufficient termination notice that has brought the rate up to over 30% in October 1999. In total around 500,000 customers had their proposed transfer blocked for insufficient termination notice.

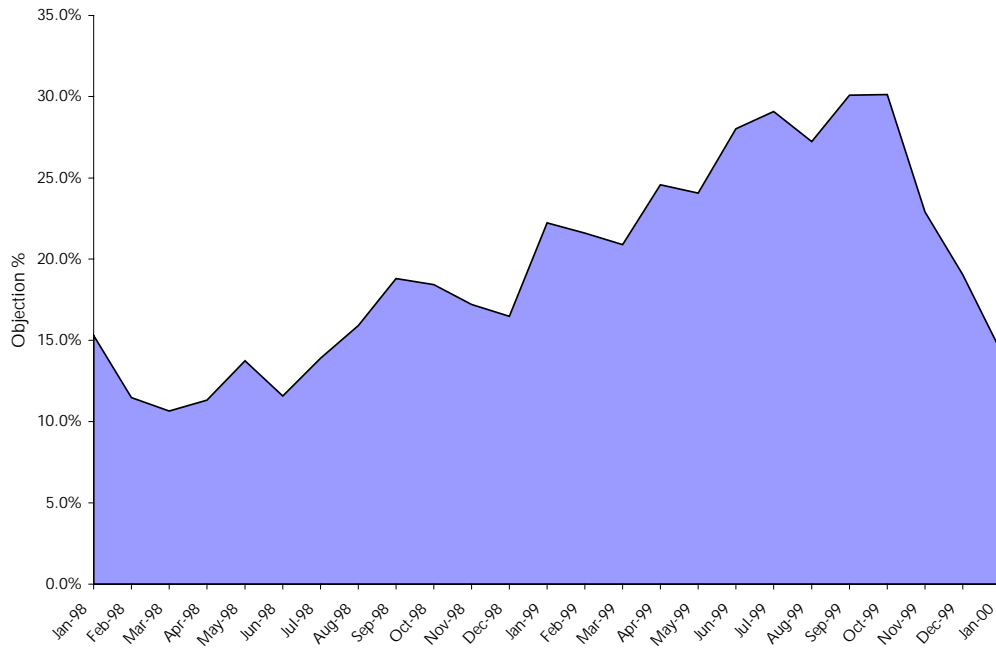


Figure 1: Total Objection Rate – Domestic Gas Market

3.4 In electricity the market has been fully opened for eight months and the rate of objections has remained fairly constant at around 4%(see Figure 2).

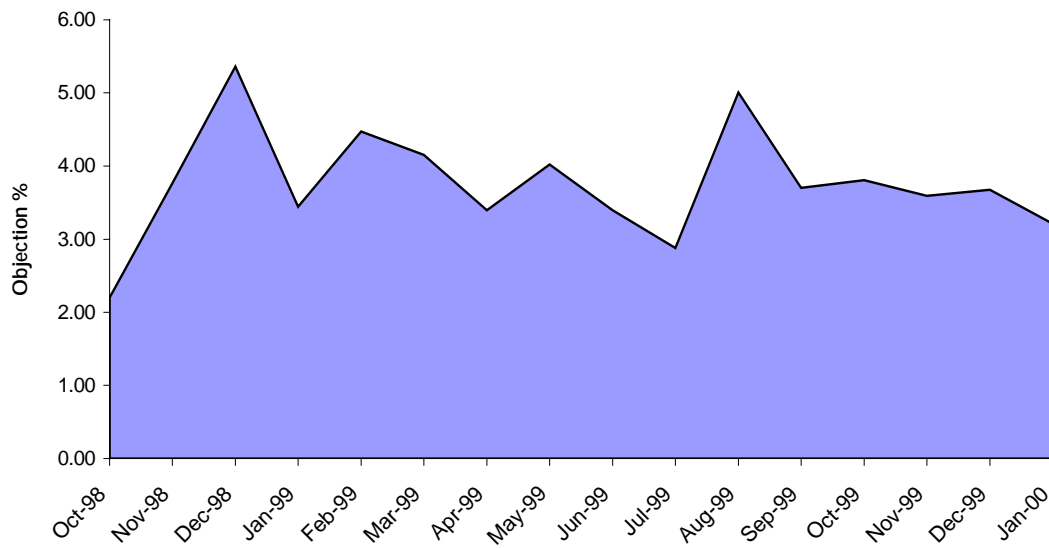


Figure 2 – Total Objection Rate – Sub 100kW Electricity Market

3.5 Ofgem collects information from suppliers on the reasons why they are raising objections. For data protection reasons domestic gas suppliers have not been required to define separately objections raised for debt and those raised for lack of termination notice. The remaining category of objections –where the confirming supplier asks the incumbent supplier to object to the transfer because it was confirmed in error (a co-operative objection) –is reported to involve less than 1% of attempted transfers.

3.6 In the below 100kW market electricity suppliers have provided Ofgem with detailed information on the reasons for objections being raised since the beginning of August 1999. Figure 3 shows that despite the relatively early stage of development of the market and the inability of PES suppliers to object on the basis of lack of termination notice to the transfer away of customers supplied under tariff, a significant proportion of objections between August 1999 and October 1999 were raised due to lack of termination notice. Thereafter the proportion and volume of objections raised due to lack of termination notice has declined significantly due to the Trial.

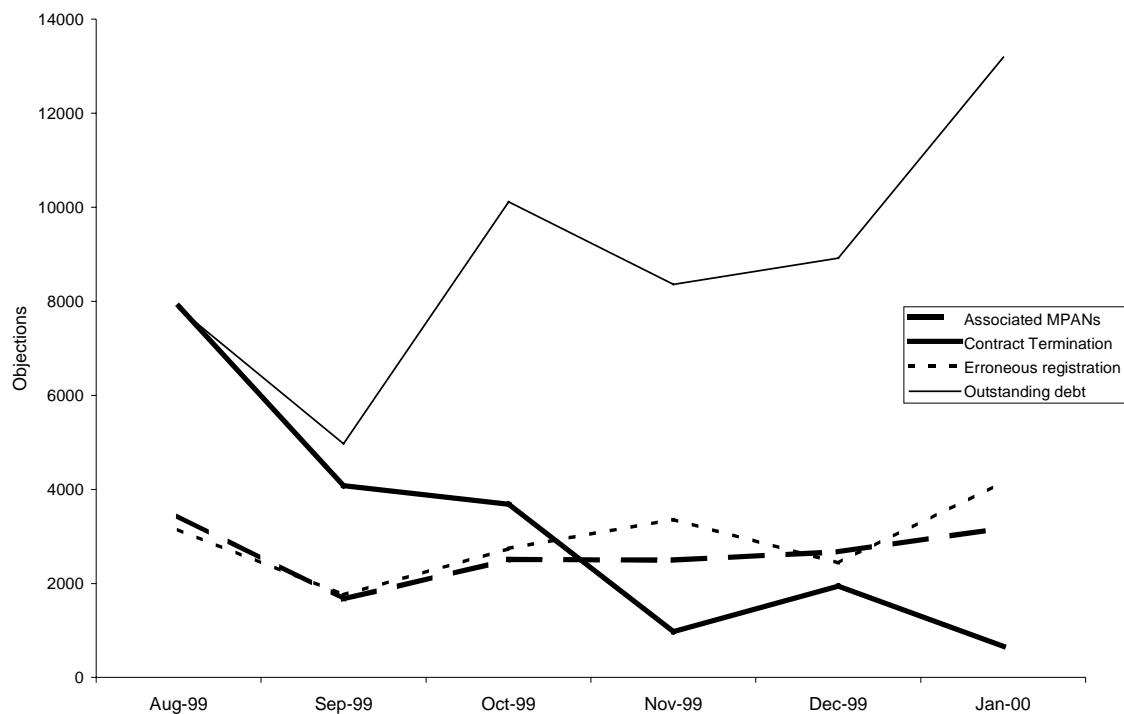


Figure 3: Objection Reasons in Sub 100kW Electricity Market

- 3.7 In the gas market the rate of objections relating to insufficient termination notice has increased dramatically since the roll out of domestic competition. This is due to the greater number of customers who are supplied under contract on terms which require notice of termination before the customer may transfer away together with increased activity in the “secondary” market. The secondary market relates to customers who, having switched from the incumbent supplier, are attempting to switch again.
- 3.8 It is Ofgem’s view that if the electricity market were to follow a similar trend to the gas market, with an increase in customers being supplied under contract rather than on tariff and a growth in the secondary market, then the rate of objections due to lack of termination notice will increase in a broadly similar way to that found in gas.

4. Industry trial

Introduction of an industry trial

- 4.1 During 1999 Ofgem was alerted to concerns about the high level of attempted customer transfers which were being blocked because the incumbent supplier had raised an objection due to lack of termination notice. Following discussion with the domestic gas and Designated electricity suppliers, Ofgem instigated a trial which has involved suppliers voluntarily suspending their right to prevent domestic transfers taking place on the basis that insufficient termination notice has been given.
- 4.2 The trial began on 15 October 1999 and was intended to run for 4 months. Following the introduction of the trial, the objection rate in the domestic gas market has fallen from 30.1% in October 1999 to 14.4% in January 2000. Several suppliers have not participated in the trial and they have continued to raise objections on grounds of insufficient termination notice. This accounts for the fact that objection rates are still higher than Ofgem would expect if debt were the only basis on which objections were raised. A list of those suppliers that agreed and did not agree to take part in the trial is set out in **Appendix 3**
- 4.3 A number of the suppliers which have not participated in the trial have expressed concern that the trial would result in an increase in the number of customers who are transferred erroneously. Ofgem's view has been that if that is the case then objecting to customer transfer merely masks the underlying problem and that it would be preferable to identify and address the root causes of erroneous transfers. Ofgem has been monitoring the effect of the trial to establish whether it has resulted in an increase in the level of erroneous transfers of customers.

Audit of suppliers not participating in the trial

- 4.4 To ensure that they are complying with the requirements of their licences and the MRA in relation to their right to object to the transfer of customers, Ofgem

has undertaken an audit of three of the suppliers that elected not to participate in the trial.

4.5 The two main aims of the supplier audit were:

- To understand the procedures used by suppliers for handling termination notices and the raising of objections to domestic customer transfers.
- To test whether objections are raised in accordance with the rules for preventing customer transfers.

4.6 Ofgem asked suppliers who were participating in the Trial for examples of cases where they had attempted to transfer customers and sent a termination notice but that the supplier being audited had objected to the transfer. The audit involved assessing the relevant processes and reviewing individual customer account records to establish the circumstances in which an objection had been initiated. To date, three audits have taken place and three different types of behaviour identified. In all three of the audit visits conducted to date by Ofgem there were cases where the supplier had objected incorrectly due to process failure or operator error. The three suppliers are here referred to as A, B and C.

Supplier A

4.7 In the case of Supplier A, there was evidence that a number of termination notices sent by other suppliers were not being recorded on the supplier's system and that, as a result, legitimate customer transfers were being prevented incorrectly. It has been suggested that one of the reasons for the failure to process termination notices in this case was that the company operated from a number of sites, and that the operational function of processing termination notices had transferred to a new address. Other suppliers had however continued to send termination notices to the old address and these had not been passed on to the appropriate team for processing. Ofgem expressed concern that Supplier A's systems and procedures were not sufficiently robust to ensure that all termination notices received were processed in a timely manner. Supplier A also claimed that other suppliers were not submitting termination notices on a timely basis.

- 4.8 Ofgem consider that this is an illustration of the operational problems that an essentially manual and bureaucratic process will generate. Irrespective of particular suppliers not organising their internal mail systems adequately or other suppliers not updating their contact lists the result is that a customer's wish to transfer is frustrated. Ofgem considers that incumbent suppliers are obliged by their licence or the MRA to ensure that they have robust systems to deal with any terminations notices received.

Suppliers B and C

- 4.9 Evidence from the audits of Suppliers B and C revealed that they had more robust systems for logging termination notices on to their systems. The receipt of a termination notice was used to initiate a contact with the customer with a view to allowing the customer to change their mind regarding the transfer. Where the customer indicated that they wished to stay, both Supplier B and C raised an objection to the transfer. They argued that the customer had withdrawn his or her notice of termination and therefore the suppliers were permitted to raise an objection as if they had not received one.
- 4.10 Upon receipt of a termination notice Supplier B wrote to customers. The letter used contained marketing messages and invited the customer to telephone Supplier B if they wished to stay with that supplier. Where a customer responded to the letter and indicated that they wished to stay, Supplier B raised an objection to the transfer. Supplier B stated to Ofgem that it had not previously been its practice to seek the consent of the other supplier to the prevention of the transfer. However it said that during the trial it would do so in circumstances where the customer had requested that the termination notice should be withdrawn.
- 4.11 Supplier C, on receipt of a termination notice, proactively sought to telephone the customer. The stated intention of this practice was to confirm that the customer actually wanted to transfer. However it provided the supplier with an opportunity to persuade the customer to cancel the termination notice and remain their customer. Where the customer indicated that they wished to stay, the supplier raised an objection preventing the transfer of the customer.

Supplier C did not inform the other supplier of the outcome of the contact with the customer.

Issues raised by the audits

- 4.12 Ofgem considers that there is potential for the type of practice adopted by Supplier B and C to lead to significant problems with the operation of the competitive domestic gas and Designated electricity markets. We are particularly concerned that:
- There is great potential for customers to be misled and misinformed during the resulting contacts with their current supplier.
 - Behaviour of this type may hide the root cause of erroneous transfers, especially when information is not provided to the new supplier to demonstrate the sources of problems.
 - The practice may be anti-competitive, especially when associated with dual fuel contracts for customers currently supplied by the first tier electricity supplier. In these cases suppliers could be seeking to persuade a customer to remain as a dual fuel customer and therefore retain them as a tariff electricity customer.

Action taken by Ofgem

- 4.13 As a result of the audits, Ofgem asked Supplier A to cease raising objections on contractual grounds until they could demonstrate that their systems and procedures were robust and there was assurance that they were dealing with terminations notices received by them in an efficient manner.
- 4.14 Subsequently, Supplier A requested a second audit visit. During the second audit, Ofgem found no evidence that Supplier A was unable to register current termination notices sent to them. Supplier A was therefore permitted to start objecting again, but agreed not to object in the case of sites for which a transfer had been attempted before the problem with receiving termination notices had been corrected.
- 4.15 Ofgem made an official information request to Suppliers B and C, running for twelve weeks, to provide weekly reports on the numbers of customers that

provided termination notices, the number of withdrawal notices they received and the actions they had taken.

- 4.16 Supplier C subsequently informed Ofgem that they had decided to cease the practice of telephoning customers from whom they had received a termination notice. Their view was that the practice offered little tangible benefit in terms of customer retention compared to the costs and resources involved in making the outbound calls.

Monitoring erroneous transfers

- 4.17 Some suppliers have stated that they believe that the right to object for lack of contract termination prevents customers being erroneously transferred. Ofgem agrees that in certain cases, particularly in situations where there has been an error in correctly identifying the site to be transferred, objections for lack of termination notice could prevent erroneous transfers. One of the aims of the audit is to establish whether these problems are of sufficient scale to justify an objection process by monitoring whether the percentage of erroneous transfers does increase as a result of the trial.

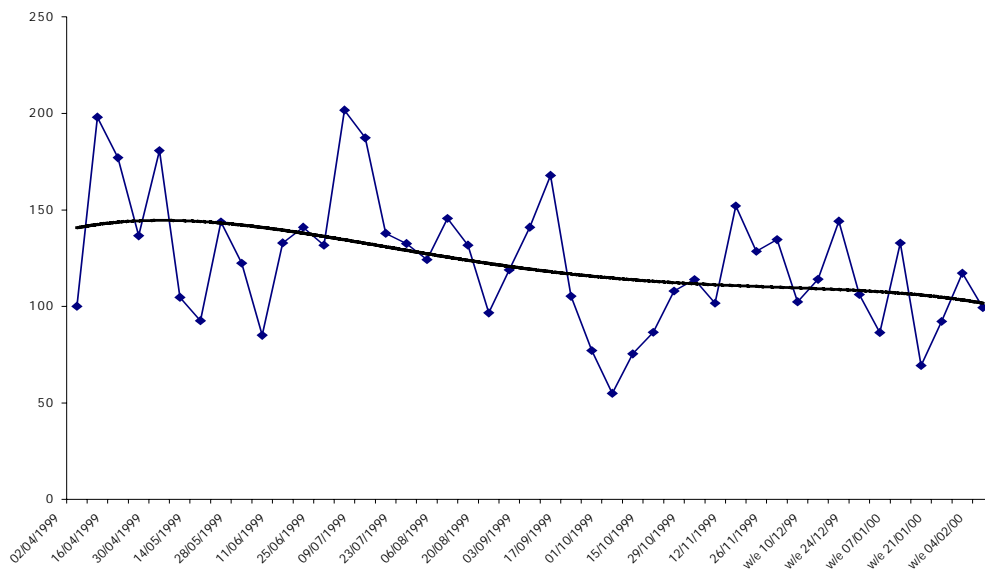


Figure 4: Returner Rate in the Domestic Gas Market with trend analysis (Base 100 at start April 1999)

4.18 Ofgem has closely monitored the effect of the trial suspension of objections for termination notice on the numbers of erroneous transfers. During the course of the trial, although the objection rate has fallen sharply (from over 30% to 14%) there has not been an increase in either the numbers or the rate of erroneous transfers – that is the number of erroneous transfers against the total number of proposed transfers. Figure 4 shows the fall in returners expressed as a percentage of transfers.

Conclusions from the trial

4.19 The evidence from the trial and the audits indicate that:

- There is considerable risk that suppliers fail to manage adequately the processes that support the processing of termination notices.
- The receipt of a termination notice presents the incumbent supplier with an early opportunity to re-market to a customer who has entered into a contract with another supplier and offers a mechanism for subsequently preventing the transfer from taking place.
- There is no evidence to suggest that the rate of erroneous transfers has risen as a result of the objection trial.
- The number of customers who are able to transfer between suppliers and take advantage of the savings to be made has increased.

5 Issues for consideration

- 5.1 BGT is entitled to transfer all its domestic customers from deemed contracts onto express contracts. However it has not yet done so. Even where individual customers have been moved onto express contracts following, for example, a change of tenancy, BGT does not in most cases object to an attempted transfer if notice of termination has not been given. BGT has, however, indicated that if the current regime in relation to objections for lack of termination notice remain in place they may wish to move customers from the Former Tariff Customer Scheme onto express contracts requiring customer to give notice, and would then exercise their right to object in cases where insufficient notice of termination had been given. The effect of this could be to constrain severely the number of domestic gas customers transferring away from BGT.
- 5.2 The Electricity Act 1989 does not prevent PESs from offering express contracts to its tariff customers. However, a PES cannot compel customers to enter such contracts where it is not reasonable in all the circumstances for them to do so.
- 5.3 In electricity, customers who remain with their host PES continue to be supplied on tariff. They do not have to give notice to terminate this arrangement, except where they cease to occupy the premises to which the supply relates. In these circumstances, they have to give two working days' notice. If the customer moves to another property within the PES's authorised area and wishes to remain with that PES, he or she will be supplied under tariff rather than contractual terms. However, if a designated customer requests supply from a second tier supplier, this will be on the basis of a Designated Supply Contract. If a subsequent move to another supplier occurs, the 28 notice period will apply, and the second tier supplier may object to the transfer if insufficient notice is given.
- 5.4 Some suppliers have indicated to Ofgem that they wish to retain the right to object if the customer does not give notice of termination of the contract. The principal reason they have given is that it provides an opportunity for the supplier to contact the customer and persuade him or her to change their mind. These suppliers argue that this is reasonable because they have

incurred significant customer acquisition costs that can only be recovered by retaining the customer over an extended period. Some of these suppliers require customers to give them 28 days notice, while others waive this requirement and will not object if they have received a termination notice even if it was submitted less than 28 days previously. Other suppliers have said that they wish to see the right for suppliers to object for lack of termination notice removed completely as it increases the cost of winning customers and extends the time it takes for customers to transfer.

- 5.5 Ofgem's view is that the right for suppliers to object to a customer transferring away for lack of termination notice is not compatible with the interests of customers and the operation of a flexible, competitive market.
- 5.6 The majority of customers give notice of termination of the contract with their existing supplier by signing a termination notice when they enter into a contract with a sales agent, usually as a result of door-step selling. Some suppliers will accept notice of termination by customers over the telephone. Suppliers will also generally accept written termination notices submitted by the incoming suppliers on behalf of the customer. An increasing proportion of suppliers offer the ability for customers to enter into a contract by telephone or the Internet, without the need for a written signature. In Ofgem's view the requirement by some suppliers for customers to submit written notice of termination would significantly impede the development of these marketing routes.
- 5.7 Under the electricity MRA and the gas Network Codes, before a customer supply point can be registered for transfer to a supplier, that supplier is required to warrant that on the proposed date of transfer it will have a contract with that customer. Upon receipt of the request for transfer of a customer supply point, the relevant Network Operator notifies the outgoing supplier of the fact that the customer supply point has been registered for transfer away. In Ofgem's view this should be sufficient notice to the outgoing supplier that the customer is terminating his or her contract with that supplier and negate the need for other forms of termination notice.

Erroneous transfers

- 5.8 Some suppliers have suggested that the right for suppliers to object on the basis of lack of termination notice is a mechanism that will prevent erroneous transfers taking place. They argue that where a customer has not told their current supplier that they are terminating their contract, the supplier is protecting the customer by preventing the transfer taking place on the basis that the customer has not authorised the supplier to let them go.
- 5.9 Ofgem is concerned about the number of customers who are erroneously transferred between suppliers and would not support any change to the regime which resulted in an increase in erroneous transfers. The evidence from the industry trial is that the numbers of erroneous transfers has not risen as a result of suppliers' giving up their right to object for lack of termination notice.
- 5.10 Ofgem considers that the root cause of the majority of erroneous transfers is suppliers' poor marketing practice and failure to effect customer cancellations. Ofgem considers that suppliers should address the root causes of erroneous transfers and not rely on objections by the customer's current supplier to prevent them. Ofgem will continue to monitor the levels of erroneous transfers and take action against suppliers who are performing poorly in this area.

Co-operative objections

- 5.11 Ofgem proposes that the arrangements which currently exist in both the gas and electricity markets to allow an incoming supplier to agree with the outgoing supplier that an otherwise erroneous transfer of a customer should not proceed - the 'co-operative' objection - should be retained and formalised in the case of gas by amendment to the Standard Conditions of Gas Suppliers' Licences. A possible amendment is set out in Appendix 4.

Summary

- 5.12 Ofgem's view is that the practice of preventing a domestic customer from transferring to a new supplier for lack of notice of contract termination is an impediment to the development of competition. At best it involves inconvenience for customers and at worst prevents them from transferring to the supplier of their choice and making resultant savings. In no other

competitive market are customers faced with such a regime.. There is also no evidence that it significantly protects customers from erroneous transfers. Nor does it offer obvious benefits to the majority of suppliers' costs associated with processing termination notices are considerable. For suppliers who are seeking to win customers in the market, the costs associated with processing termination notices are considerable and the practice extends the time it takes to transfer customers. The frustration that this causes is evidenced by the complaints that Ofgem receives from new suppliers who have transfers blocked even though they believe they have correctly sent termination notices on behalf of customers to the old supplier.

6. The industrial and commercial markets

- 6.1 Although many of the issues discussed in the previous chapters also apply in the case of industrial and commercial (I&C) customers, it is appropriate to deal more fully here with the specific circumstances of the industrial sector. In electricity there is no provision in the MRA for suppliers to object on the basis of lack of termination notice to the transfer away of I&C customers. In gas the I&C (non designated) market has been established for longer than the domestic gas market. Gas consumers consuming more than 732,000 kWh have been able to choose their supplier from 1986; this threshold was lowered in 1992 to users consuming more than 73,200 kWh per annum.
- 6.2 In common with the domestic market, the right of an I&C gas supplier to object to a supply transfer is provided by Standard Condition 7(4) of the Suppliers' Licences and operates in conjunction with an obligation on gas shippers (under Standard Condition 13(1) of the Shippers' Licence) to allow a transfer to proceed unless required by the relevant supplier to oppose it.
- 6.3 The terms "debt" and "contract" are not defined in the appropriate part of the Suppliers' Licence, and this has led to some inconsistency in the raising of objections by gas suppliers.
- 6.4 Complaints are regularly received by Ofgem from customers in the I&C gas market that their existing gas supplier is preventing them from switching to an alternative supplier at a time of their choosing. Customers have expressed the view that such behaviour is anti-competitive. Ofgem has been monitoring I&C suppliers' use of the objection facility. The results over the period July 1998 to June 1999 show that around 8% of transfers were objected to for contractual reasons – representing around 10,578 occasions when customers could not transfer in the I&C gas market.
- 6.5 Business customers have pointed out that in no other market can a supplier prevent a customer from choosing to take their goods or services from a competitor. They feel that the licences should be amended to facilitate the operation of competitive market pressures and so compel suppliers to use the

normal commercial processes for recovering debt and the appropriate legal procedures for the settlement of contractual disputes.

- 6.6 I&C gas suppliers have suggested that the supply of gas is different from the supply of other products. Although delivery of goods or services in other markets can be halted pending resolution of disputes etc, the nature of gas supply through pipes to the customers premises means that the customer can continue taking gas without the agreement of the supplier. Suppliers also argue that:
- The ability to prevent a customer transfer where there is an existing contract for the supply of gas to the relevant site(s) and on stated terms and conditions, is important to avoid a breach of contract: and
 - the price of gas quoted in the contract is based on the predicted average price expected to arise during the contract period (thus if a customer transfers to another supplier offering a lower p/kWh rate then the incumbent risks incurring a loss on the contract).
- 6.7 Whilst suppliers' preference for enforcing the duration of their supply contracts is understandable, this approach is not in the interests of a customer who has received such poor service from their supplier that they wish to transfer to a new supplier. The existence of the facility to object for lack of termination notice can mean that the supplier has no incentive to improve its performance and the customer remains locked into what he or she believes to be an unacceptable contractual arrangement.
- 6.8 There are also a number of ancillary issues associated with the contract itself which can operate to the detriment of the customer and which, in other markets, would be resolved through the Courts. In gas however, the supplier's right to object to a transfer represents a lock in of the customer. These issues are:
- existing contract terms,
 - change of terms on assignment of contract and
 - change of ownership.

Contract terms

- 6.9 Although domestic customers entering into contracts receive protection in law through, for example the Unfair Contract Terms Regulations, no such protection is available to I&C customers. Whilst many I&C customers have considerable experience at contract negotiation (including the inclusion and exclusion of terms), it is the case that some, particularly at the lower levels of I&C consumption, do not.

Duration of contracts

- 6.10 Ofgem is aware that some customers in the I&C sector, particularly small businesses such as shops, takeaways etc, have entered into contracts which have no termination date or, alternatively, are of a lengthy duration - 5 years in the case of one supplier. In these instances it is sometimes the case that the contract does not include provisions allowing it to be easily or readily terminated by the customer.

Changes to existing contract terms and conditions

- 6.11 Customers may be disadvantaged if the supplier, at the time when an existing contract is renewed, alters the terms and conditions of a customer's contract, particularly in relation to termination clauses, without specifically bringing the change to the attention of the customer, and explaining how such changes may affect the customer's right to take their business elsewhere. Such changes might reduce the customer's right to terminate the contract and could therefore lead to the supplier objecting to the customer's transfer away.

Termination process

- 6.12 Many customers experience difficulty in the contract termination process. Some suppliers' contracts require customers to send the termination notice to the supplier by a prescribed means and during a prescribed window of opportunity. It is also not uncommon for the supplier sometimes to deny receipt of the customer's termination notice – even when the customer claims that the notice was sent in good time and by recorded delivery.

- 6.13 Some suppliers' do not make their offer to renew the contract until after the window of opportunity within which the customer could give notice of termination and transfer to a competitor. The effect of this is that the supplier retains that customer for a further period. Whilst it is obviously in the customer's interest to manage his contract with his supplier, this is not always easy for the sole trader or small business.

Competition clauses

- 6.14 A further area of difficulty relates to the use by I&C suppliers of a "competition clause". This type of clause generally states that if the customer is seeking to change supplier he or she must provide the incumbent supplier with a specified number of valid quotes from rival suppliers. The incumbent then has the option of matching the lowest quote (or in some cases an average of all or some quotes) before releasing the customer. The use of such a clause means that the customer who is seeking to change supplier because of poor service rather than price cannot necessarily do so.

Change of ownership

- 6.15 Small businesses frequently move premises. Suppliers may not be alerted to such changes. The impact of the suppliers' right to object for lack of termination notice can lead to situations where the supplier is unaware that a proposed transfer does not relate to its customer but to a different business which has moved into premises previously occupied by the supplier's customer. The effect of this is that the supplier may object incorrectly to the transfer and the customer is prevented from transferring to the supplier of their choice. Some suppliers insist on objecting until the "new" customer provides details of the Change of Ownership in writing along with for example a copy of the change of tenancy agreement. This can be onerous for customers.

Summary

- 6.16 In Ofgem's view the ability of suppliers to lock in a customer who wishes to transfer to another supplier for reasons of uncompetitive price or poor service is inappropriate and appears to be potentially anti-competitive. In industry and commerce generally, it is not uncommon for either party to a contract to want to vary the terms of or even break that contract in order to benefit from more beneficial arrangements offered by a competitor. The Courts routinely deal with cases arising under contract law and considerable expertise exists in this field. It is not appropriate to underpin contractual rights with active blocking of the customer's transfer.
- 6.17 The existence of the right for gas suppliers to object to a customer transferring away is also inconsistent with the position in electricity where the lack of such a right does not appear to have given rise to problems even though some of the electricity supply companies also supply gas.

7. Conclusions and next steps

- 7.1 In Ofgem's view, the current arrangements which permit electricity and gas suppliers to prevent a customer transfer on the basis of a lack of sufficient notice of contract termination and is not compatible with the interests of customers and the operation of a flexible, competitive market and they should be removed.
- 7.2 In relation to gas supply this will require the deletion of sub-paragraph (b) from paragraph 4 of Standard Condition 7 of the Gas Suppliers' Licence. Ofgem proposes that the wording in that paragraph should be replaced with a provision allowing suppliers co-operatively to prevent a transfer where both suppliers agree. This will align with the provision in the electricity market in particular, clause 16.1.4 of the MRA. A possible amendment is set out in **Appendix 6**
- 7.3 Such an amendment to the standard licence conditions would require the procedure set out in section 23 of the Gas Act 1986 – it will be necessary for not less than 90% of all licensed gas suppliers, both by number and by volume of gas supplied, to consent to the modification. The process for obtaining the consent of gas supply licence holders is set out in **Appendix 4**. The formal notice of the proposal to modify the Standard Conditions of the Gas Suppliers' Licence is set out in **Appendix 5**.
- 7.4 In relation to electricity supply, bringing about this change would require an amendment to Clause 16.1 of the Master Registration Agreement, involving the deletion of an element of the Clause. A possible amendment is set out in **Appendix 7**. The making of such an amendment is a matter for the parties to the MRA e.g. electricity suppliers in the first instance - although decisions by the MRA Executive can be appealed to the Director, he has no powers to initiate changes to the MRA.
- 7.5 However, if industry agreement to the proposal cannot be reached, the Director may consider proposing a new licence condition, amending the relevant provisions of the MRA in relation to transfers. A change to the relevant licence provisions relating to the termination of contracts on notice

can be dealt with by the Director by an amendment to the Contract Terms Conditions. The process is similar to that in gas, requiring 90% of electricity suppliers both by number and by number of designated premises supplied on contract, to consent to the modification. Licence Condition 41 of 2nd Tier Electricity Supply Licence and Condition 33 of the Public Electricity Supply Licence for England and Wales (Licence Condition 42 of 2nd Tier Electricity Supply Licence and Part V Condition 28 of the Public Electricity Supply Licence for Scotland) defines the process.

7.6 Before deciding on the most appropriate next steps, the Director would welcome views from customer groups and suppliers on the issues raised in this document **by Monday 3 April 2000** and in particular:

- the effects of removing the right to object for contractual reasons ; and
- the introduction of a specific right to make a co-operative objection.

Appendix 1

Extract from standard condition 7, gas suppliers' licence

- (4) 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 customer except for so long as –
- (a) the customer fails to pay charges for the supply of gas to those premises or any premises previously owned or occupied by him in respect of which such charges are payable which –
 - (i) are due to the licensee and have been demanded in writing, and
 - (ii) have remained unpaid for 28 days after the making of the demand, or
 - (b) the customer is bound by the provisions of a 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.

Appendix 2

Extract from Clause 16 of Master Registration Agreement: Procedure for objection by old supplier.

16.1. An Old Supplier may issue an objection ("**Notice of Objection**") to the relevant Host PES in relation to an Application for Registration of which it has been notified pursuant to Clause 15.10 where:

16.1.1. Subject to Clause 16.2, the Application for Registration is in relation to a Metering Point which is associated with Designated Premises at which the Customer is being supplied by the Old Supplier under a contract that will neither expire nor (to the Old Supplier's knowledge) be terminated by the New Supplier's Supply Start Date notified to the Old Supplier pursuant to Clause 15.10; or

16.1.2. Subject to Clause 16.2, the Application for Registration is in relation to a Metering Point which is associated with Domestic Premises where charges for electricity supplied to the Customer (at any such Domestic Premises), having been demanded in writing by the Old Supplier, prior to the notice of termination being given, remain owing to the Old Supplier more than 28 days after that demand was made; or

16.1.3. (no longer relevant)

16.1.4. the new Supplier has contacted the Old Supplier and both Suppliers have agreed that the New Supplier's Registration has been made in error;

Termination of Contracts on Notice: PES Licence Condition 38; Second Tier Supply Licence Condition 46 (England and Wales) ; Scottish Composite Licence Condition 33; and Second Tier Supply Licence Condition 47(Scotland).

1. Each Designated Supply Contract shall contain a term allowing the customer to terminate such contract at any time by:

a) giving to the Licensee a valid notice of termination; and

- b) subject to paragraph 6, paying to the Licensee on demand a termination fee.
- 2. A notice of termination is valid where it is given at least 28 days in advance of the date on which it is to take effect and where , not later than that date, the requirements of paragraphs 3 and (unless the Licensee expressly agrees to waive it) 4 are satisfied.
- 3. The requirement of this paragraph is that either:
 - a) another Electricity Supplier commences a supply of electricity to the relevant premises; or
 - b) the relevant premises are cut off because the customer at those premises has ceased to require a supply.
- 4. The requirement of this paragraph is that no charges for electricity supplied to the customer (whether at the relevant premises or at any premises previously occupied by him), having been demanded in writing prior to the notice of termination being given, remain owing to the Licensee more than 28 days after that demand was made.
- 5. Each Designated Supply Contract shall provide that a notice of termination which is not valid shall not be effective to terminate such contract.
- 6. A termination fee shall not be demanded of a customer where:
 - a) the contract was terminated under any provision of Condition 39;
 - b) the contract was a contract of indefinite length, and was terminated other than during a fixed term period;
 - c) the Licensee notified the customer, under paragraph 5 of Condition 36, of a unilateral variation of the contract and the customer gave notice or termination in accordance with paragraph 6 of that Condition; or
 - d) the contract was a contract to which paragraph 4 of Condition 39 applied and the Licensee did not, before entering into it, take all reasonable steps

to draw the attention of the customer to the effect of the term set out at that paragraph.

7. Where a termination fee is payable, it shall be of an amount not greater than that which the Licensee may in the circumstances reasonably require.

(Note: Licence Conditions numbers in para 6 relate to the PES Licence; for other types of Licences different Conditions apply).

Appendix 3

Supplier participation in suspension of objection trial

domestic gas suppliers

Gas suppliers participating in the trial	Gas suppliers not participating in the trial
Amerada	CPL British Fuels
Beacon	Crown Energy
BGT	Eastern
Calortex	MSF Natural Gas
Cambridge Gas	North Wales Gas
Elf at Home (until 15/2/2000)	Norweb
Energy Supplies UK / Northern Energy	Scottish & Southern
Gas West	York Gas
Independent Energy	
London Electricity	
Midlands	
Northern Electric	
Powergen Retail Gas	
Scottish Power	
SWALEC (provisionally 1-Nov)	
SWEB	
The Gas Supply Co	
Yorkshire Electricity	

Domestic electricity suppliers

Electricity Company's participating in the trial	Electricity Company's not participating in the trial
BGT	Eastern Energy
Independent Energy UK Ltd	Eastern Electricity
London Electricity	Norweb
Manweb	Scottish & Southern Energy
National Power Energy Company (NPEC)	
Northern Electric	
Powergen Energy (1-Nov)	
Scottish Power	
Seeboard	
SWALEC	
SWEB	
UK Electric Power	
Yorkshire Electricity	

Standard Condition 35 site suppliers

Sc 35 sites participating in the trial	Sc 35 sites not participating in the trial
Total Gas Marketing Ltd	BP Gas
National Power Gas	Butler Fuels
Saturn Gas Ltd	Mobile Gas Marketing UK Ltd
Southern Counties Gas Ltd	Pennine Natural Gas
	Saracen / The Gas Co
	Shell Gas Direct
	The Gas Light and Coke Co.

Appendix 4

The consent of gas licence holders

Under the Gas Act 1986, the Director may modify the Standard Conditions of Licences, where Licence holders agree to such modifications. It is necessary, under section 23 of that Act, that not less than 90 per cent of Licensed gas suppliers, both by number and by volume of gas supplied, consent to the modifications. For this purpose, the volume of gas of each supplier is as estimated by the Director on the basis of information made available to him. The Director is required to allow not less than 28 days from the giving of notice of the changes for suppliers to express their views on his proposals.

The Director will obtain from Transco information showing the volume of gas supplied in the last twelve months. For the purposes of assessing consent or non-consent to the proposals, Licence holders will be sent a form for return to the Director on which they will be asked to indicate whether they consent to the modifications or not. That form will also show the estimate of gas volume provided by Transco for the supplier and will seek the supplier's acceptance of that volume, for the purposes of the determination by the Director of the percentage by volume of suppliers consenting to the proposed modification. If a supplier regards the volume to be used by the Director in respect of his supply as inappropriate he should provide the Director with an alternative estimate and a statement of reasons for preferring his estimate over that proposed by the Director.

The Director General's formal notice of the proposal to modify the gas Licences is included **at Appendix 6.**

Appendix 5

Notice of Proposal to Modify the Standard Conditions of Licences Granted and Treated as Granted Under Section 7A(1) of the Gas Act 1986 (Gas Suppliers' Licences)

The Director General of Gas Supply (hereinafter referred to as "the Director") pursuant to section 23(3) (1) (b) of the Gas Act 1986 (c.44) (hereinafter referred to as "the Act") hereby gives notice as follows:

1. The Director proposes, pursuant to section 23 (1) (b) of the Act, to modify the standard conditions of licences granted and treated as granted under section 7(A) (1) of the Act (gas suppliers' licences) by deleting subparagraph (b) from Standard Condition 7(4) (b) and inserting a new subparagraph (b) in the form shown in Appendix 6.
2. The effect of the modification is set out, and the reasons why the Director proposes to make the modification are stated, in the preceding pages of the document accompanying this notice.
3. Representations or objections with respect to the proposed modification may be made by 3 April 2000 and should be addressed to the Office of Gas and Electricity Markets, Stockley House, 130 Wilton Road, London SW1V 1LQ, marked for the attention of Ms Rosalind Cole.

.....

Rosalind Cole, Director Retail Markets

Authorised in that behalf

by the Director General of Gas Supply 8 March 2000

Appendix 6

Proposed amendment to Standard Condition 7, Gas Suppliers' Licence

- (4) 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 customer except for so long as –
- a) the customer fails to pay charges for the supply of gas to those premises or any premises previously owned or occupied by him in respect of which such charges are payable which –
 - i) are due to the licensee and have been demanded in writing, and have remained unpaid for 28 days after the making of the demand, or

delete the following

- [(b) the customer is bound by the provisions of a 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.]

and insert the following

- b) the supplier which has initiated the proposed supplier transfer has agreed with the licensee that the proposed supplier transfer has been initiated in error.

Appendix 7

Possible amendment to Clause 16 of Master Registration Agreement:

Procedure for objection by old supplier.

16.1 An Old Supplier may issue an objection ("**Notice of Objection**") to the relevant Host PES in relation to an Application for Registration of which it has been notified pursuant to Clause 15.10 where:

16.1.1 Deleted Subject to Clause 16.2, the Application for Registration is in relation to a Metering Point which is associated with Designated Premises at which the Customer is being supplied by the Old Supplier under a contract that will neither expire nor (to the Old Supplier's knowledge) be terminated by the New Supplier's Supply Start Date notified to the Old Supplier pursuant to Clause 15.10; or

16.1.2 Subject to Clause 16.2, the Application for Registration is in relation to a Metering Point which is associated with Domestic Premises where charges for electricity supplied to the Customer (at any such Domestic Premises), having been demanded in writing by the Old Supplier, prior to the notice of termination being given remain owing to the Old Supplier more than 28 days after that demand was made; or

16.1.3 (no longer relevant)

16.1.4 the new Supplier has contacted the Old Supplier and both Suppliers have agreed that the New Supplier's Registration has been made in error;