

Transfer objections: stronger rights for industrial and commercial customers

A consultation document

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Summary

Industrial and commercial¹ energy customers' right to choose their energy supplier is currently limited by suppliers' ability to object to their transfer to a new supplier. Suppliers' rights to block transfers differ between the gas and electricity sectors, which both suppliers and customers find unsatisfactory. Customers have also expressed to Ofgem considerable frustration that suppliers' existing rights create an obstacle to the normal, commercial operation of the market.

Ofgem recognises that the objections mechanism can have practical advantages, for example as a way of avoiding erroneous transfers. However, Ofgem believes the mechanism should be commercially neutral as it affects relations between supplier and customer. Current arrangements give stronger rights to a gas supplier since they allow the supplier to choose a dispute resolution mechanism not available to the customer.

Ofgem therefore proposes that the terms of the gas supply licence and the MRA be changed to place the onus on the supplier and customer to agree how their relationship should be managed. The licence and MRA would permit objections to transfer in circumstances foreseen in the contract. In particular, the contract could provide dispute resolution mechanisms (for example, over outstanding debt or termination arrangements), which may include transfer objection, but which, as in most other industries, would normally include commercial or legal means. This approach will allow customers and suppliers to consider together issues such as contract duration, objections and pricing, and also to reflect in the contract special circumstances such as large, multi-site portfolios. These arrangements should be available to both gas and electricity customers. Ofgem considers that transitional arrangements will be required to introduce the new arrangements for gas customers.

Implementation of this change will require a modification to Standard Condition 30 of the Gas Suppliers licence, which will require the consent of the majority of suppliers, and to Clause 16 of the Master Registration Agreement, which will require the consent of MRA Parties.

This consultation document seeks views by 14th February 2003.

¹ For a definition of Industrial and Commercial (I&C), see Appendix 1

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1. Rationale

Issue

- 1.1. Ofgem has received complaints from customers and suppliers in the industrial and commercial (I&C) market concerning the use made by some suppliers of the objection mechanism that enables an incumbent supplier to prevent a proposed customer transfer to a new supplier.
- 1.2. Different arrangements exist in electricity and gas, and these restrictions cause confusion and frustration for both customers and suppliers. The gas supply licence and the Master Registration Agreement (MRA)² govern the use of the objection mechanism in the gas and electricity market respectively. In the gas market I&C suppliers can block a transfer for both debt and contract issues. In the electricity market I&C suppliers are not permitted to object on grounds of debt or contract but may object where they have the agreement of the incoming supplier or where the supplier has not registered all of the related meter points.
- 1.3. Some customers consider that it is not appropriate for a gas supplier to have the right to make objections sanctioned by the gas supply licence. Others would wish the supplier to use the facility but only in certain circumstances, for example to aid the management of multi-site portfolios or where the customer has approved the objection. Some suppliers argue that the security offered by the right to object to a transfer enables them to offer better prices to customers. Electricity suppliers state that in some cases customers have asked them to object to a transfer, but the current rules do not enable them to meet the request.
- 1.4. Where a supplier raises an objection then this will prevent a customer from moving to a new supplier. Where the customer wanted the transfer to proceed then an objection results in delayed transfers that can frustrate customers and new suppliers. Customers complain that gas suppliers do not inform them when an objection has been made or the reason for it. Their contract with the supplier may not refer to the objection mechanism as the means by which the supplier

² A legally binding, multi-lateral agreement established on 1 June 1998 to govern the provision and use of metering point administration services by market participants for the development, maintenance and operation of an efficient system for the supply of electricity in England, Wales and Scotland.

will enforce the contract. This creates confusion for the transfer process and the risk that a supplier will use objections to retain customers outside of the circumstances permitted.

- 1.5. In electricity, suppliers are unable to offer arrangements to I&C customers that enable the supplier to prevent a transfer even though the customer may ask for the transfer to be stopped. Whilst the incumbent supplier is allowed to object if there is agreement with the new supplier, such agreement may not be possible to achieve within the available timescale of the transfer process.
- 1.6. The current objection arrangements result in a disruption to the smooth operation of the market as perceived by both customers and suppliers. Customers are in some cases impeded from changing supplier, suppliers and customers are restricted from developing commercial arrangements other than those prescribed by the gas supply licence and MRA, and there is a lack of transparency for customers as to how gas suppliers use their ability to make objections.
- 1.7. The objection arrangements have proved to be a source of complaint by both customers and suppliers. Complaints have resulted in Ofgem having to undertake regulatory action to enforce the current rules for the use of objections. Without modification it is unlikely that the gas and electricity objection rules will be able to deliver a satisfactory set of arrangements for either suppliers or customers.

Objective

- 1.8. Ofgem considers that, for I&C customers, how the objections process is used should be part of the relationship between the customer and the supplier rather than being determined in the licence or industry agreement. In particular, the customer should have the opportunity to negotiate the circumstances in which they consider it reasonable for their supplier to prevent a transfer from taking place. Disputes between I&C customers and suppliers (for example, over outstanding debt or termination payments) should be resolved through normal commercial or legal routes.

- 1.9. Ofgem considers that the arrangements governing the use of objections should as far as possible be aligned for both gas and electricity and that the customer experience in both markets should be the same.
- 1.10. The proposals will enable I&C customers to negotiate with suppliers the circumstances in which the objections process may be used. They would remove the automatic right for a gas supplier to object in cases of debt and insufficient contract termination notice.

Policy

- 1.11. The options available in considering the issue of objections are set out below:

Option 1: Maintain current rules

- 1.12. This consultation could conclude that there is no case for modifying the objection provisions set out in the supply licence and MRA. In such a situation a gas customer could attempt to negotiate terms in their contracts to prevent a supplier from using the objection process. Were a supplier to breach that term, the customer should seek a remedy through the courts. This approach is currently available but is considered not to have been widely adopted. In the electricity market maintaining the current arrangements would not address concerns that the inability of a supplier to object at the request of a customer is leading to erroneous transfers (ETs) and restricts the scope of the contract terms and conditions offered by suppliers.

Option 2: Introduce new gas objection arrangements only

- 1.13. Ofgem could propose a modification to the gas supply licence to entitle I&C suppliers to object only in circumstances permitted in their contract with the customer.
- 1.14. Where a customer claims that their proposed transfer has been blocked in breach of both the licence and its contract, this solution allows the customer to assert their contractual rights through court action. In addition, Ofgem will continue to be obliged to enforce against licence breaches.

- 1.15. This proposal would replace the existing ability of I&C suppliers to object on grounds of contract and debt. These areas would be left to contract negotiations between the supplier and customer. It is for consideration whether the current protection for customers, whereby suppliers are only able to object where a debt had been requested in writing for more than 28 days, should be maintained or whether this should be left to suppliers and customers to resolve through contract negotiations.
- 1.16. This proposal by itself does not promote alignment between the gas and electricity industry.
- 1.17. Additionally, a supplier could be allowed to raise an objection at the request of the supplier who was attempting to transfer the site. For example where the new supplier has made an error in selecting the site to transfer. This process is already permitted under the electricity arrangements.
- 1.18. Where a supplier raises an objection they could be required to inform the customer of the reason for the objection and how the cause of the objection could be resolved or disputed.

Option 3: Introduce new electricity objection arrangements only

- 1.19. A party to the MRA could propose an amendment to entitle I&C suppliers to object only in circumstances permitted in their contract with the customer. Ofgem would be required to sign off an amendment to the MRA relating to the objection rights of suppliers.
- 1.20. Such a change by itself does not promote alignment between the gas and electricity industry. However, the different governance mechanisms used to determine the objections regimes in gas and electricity mean that this option may be possible, even if consensus cannot be reached on modifying the gas licence condition.

Option 4: Align the gas objection rules to replicate the electricity arrangements

- 1.21. Ofgem could propose an amendment to the gas licence to allow I&C suppliers to object to customer transfers only where both suppliers agreed that the transfer had been initiated in error. This proposal would align the objection arrangements in the I&C gas market with the current rules in the I&C electricity market. In the electricity market I&C suppliers are only able to raise transfer objections on a co-operative basis and for a specific technical reason associated with related MPANs.

Option 5: Modify both the gas licence and the MRA to allow suppliers to object where the contract permits

- 1.22. This proposal requires a modification to both the gas supply licence and the MRA in respect of supply to I&C customers to permit a supplier to raise an objection under the circumstances specified in the contract. This approach aligns the I&C gas and electricity objection processes which may be of particular relevance to customers buying both fuels. It gives the opportunity for customers in both markets to control whether or not they can be blocked from transferring, and to specify the circumstances in as much detail as is desired.

2. Timetable and responses

- 2.1. The timetable for the key events identified in this document is as follows. This is an indicative timetable and depends on both the responses received to this document and the arrangements for the collective modification of licence conditions.

14 th February 2003	Responses requested on the issues raised in this document.
March 2003	Publish a statutory consultation document proposing a licence modification to the gas supply licence.
1 st June 2003	Implement modification to the gas supply licence.

In parallel Ofgem would expect an equivalent change to the MRA to be proposed by a supplier and progressed by the industry.

Views invited

- 2.2. Comments are invited on the issues raised in this document and in particular Ofgem's proposals for modifying the standard conditions of the Gas Suppliers' Licence and the Master Registration Agreement. These should be submitted by 14th February 2003. Responses should be sent to:

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- 2.3. If there are any questions regarding this document please contact either Ian Anthony or Nigel Nash (Tel: 020 7901 7065, email: nigel.nash@ofgem.gov.uk).

Confidentiality

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

3. Background

- 3.1. The central industry systems for both gas and electricity provide a mechanism for incumbent suppliers to prevent a proposed customer transfer from taking place. The circumstances in which a supplier may prevent a transfer are set out in the supply licence for the gas market and in the MRA for the electricity market.

Gas objection process

- 3.2. Under standard licence condition 30 of the gas supply licence, suppliers have the right to request their shipper to prevent a proposed transfer of one of their customers under certain circumstances. These are:
- ◆ Where the customer has failed to pay charges for the supply of gas that have been demanded in writing and have remained unpaid for at least 28 days; and
 - ◆ Where a valid supply contract is still in place between the supplier and the customer that will not terminate before the proposed transfer date.
- 3.3. The particulars of the objection process are set out in the Network Code of each relevant gas transporter. The objection processes operated by each gas transporter are broadly the same. On receipt of notification that a supplier, via their shipper, has applied to register a site (a confirmation), the relevant gas transporter will inform the existing supplier, via their shipper. Within seven days of receiving this notification, but at least seven days before the proposed transfer date, the old supplier may raise an objection to the transfer on the grounds set out above.
- 3.4. The old and new suppliers then have a period of time to resolve the cause of the objection. The old supplier may withdraw their objection up to seven days after having raised it or by the 8th business day before the proposed transfers, whichever is the sooner. Should the objection not be withdrawn, the confirmation will lapse and the transfer of the customer will be halted.

- 3.5. The relevant gas transporter is not obliged to check that any objections raised are valid and in accordance with the terms of the supply licence. There is no requirement on suppliers to inform customers of the reason for the objection being raised.

Electricity objection process

- 3.6. The rules governing an electricity supplier's right to object are set out in the Master Registration Agreement (MRA). When a supplier registers a customer, the old supplier will receive notification from the relevant Meter Point Administration Service (MPAS) that an application to register a site in their portfolio has been made. Within five working days from receipt of this notification, the old supplier is permitted to raise an objection to the transfer of the customer under two circumstances:
- ◆ Where both suppliers agree that the customer has been registered in error, the old supplier can raise an objection on behalf of the new supplier (a co-operative objection).
 - ◆ Where a supplier registers a metering point that is related to another (for example, where there are two meters on the same premises that supply the same customer), without also submitting a registration on the same day for all other related metering points for the same supply start date.
- 3.7. The MPAS is not required by the terms of the MRA to check that an objection that has been made is valid and in accordance with the above rules.
- 3.8. When an objection is made, the old supplier is required to notify the customer with details of the grounds for the objection and how the customer may dispute or resolve such grounds. The transfer of the customer is suspended by the MPAS, pending the withdrawal of the objection by the old supplier. A supplier may withdraw his objection within five days of making it where, for example, the grounds for objection have been resolved.
- 3.9. If an objection has been made and not withdrawn, the transfer will not take place and the old supplier will retain the supply of the customer.

- 3.10. Unlike their domestic counterparts, I&C suppliers are not permitted by the terms of the MRA to raise an objection to the transfer of a customer on the grounds that they still have a valid supply contract in place or the customer has an outstanding debt.

Previous objection modification proposals

- 3.11. In March 2000 Ofgem issued a consultation document “Removing a supplier’s right to object to customer transfer on the grounds of insufficient termination notice”, available on the Ofgem web-site³. This document proposed modifying the gas supply licence to remove the ability for domestic suppliers to object to a transfer on the grounds of contract. At that time, the licence modification voting arrangements required the consent of 90 percent of all suppliers (both domestic and I&C) by number of licence holders and Meter Point Reference Numbers (MPRNs). This modification did not achieve the required votes to allow it to be implemented. In particular, I&C suppliers expressed concerns that removing the right to object from the gas supplier licence would lead to an increase in erroneous transfers. In addition, there was a concern that were this proposal to be extended to the I&C market it would bring about an increase in prices in the I&C market with suppliers attempting to compensate for their increased contractual risk.
- 3.12. In August 2001 MRA parties considered a proposal to change the rules governing objections set out in the MRA. This MRA Change Proposal attempted to bring parity between the electricity and gas regimes by allowing I&C electricity suppliers to object on the grounds of contract.
- 3.13. At the conclusion of the change processes detailed in the MRA, the Authority’s approval is required for any changes relating to specified clauses, including those containing provisions for objections to the transfer of customers. The electricity industry recommended that the change be implemented and requested that Ofgem approve the modification.

³ <http://www.ofgem.gov.uk/docs/tranmar.pdf>

- 3.14. Therefore in October 2001 Ofgem, in considering whether to give its approval to the change, consulted gas and electricity suppliers as well as customer groups and energywatch. This consultation is available on the Ofgem web-site⁴.
- 3.15. While all respondents supported the harmonisation of the gas and electricity regimes, the views of suppliers and customers were polarised. The vast majority of suppliers supported the proposed change, citing several arguments in favour of allowing electricity suppliers to object on grounds of contract. These included allowing greater certainty in their customer portfolio, thereby reducing imbalance charges under the New Electricity Trading Arrangements (NETA), allowing for lower prices for customers under long terms contracts, facilitating the prevention of erroneous transfers and preventing individual premises transferring away from multi-site contracts. The majority of customers on the other hand opposed the proposed change arguing, among other things, that any breach of contract termination terms should be dealt with through legal proceedings and should not be used to prevent the customer transferring. The points raised are set out in more detail in Chapter 4.
- 3.16. Ofgem decided not to give consent to the proposed MRA change on the grounds that to do so would be inconsistent with the Authority's principal objective of protecting consumers, wherever possible by promoting effective competition. A letter setting out the reasons for this decision in detail is also on the Ofgem web-site⁵. In particular Ofgem was concerned that approving this modification would lead to customers raising concerns equivalent to those they experienced in the I&C gas market.

Ofgem's role

- 3.17. Ofgem has received complaints from customers and suppliers that the current arrangements in electricity and gas are not seen to be working effectively. We are therefore consulting on a series of proposed changes to amend the current arrangements.
- 3.18. Some gas customers are concerned that suppliers may be misusing their right to object and are preventing customers changing supplier. Others have questioned

⁴ http://www.ofgem.gov.uk/docs2001/iandc_transfers.pdf

the principle that a supplier should be permitted to object for the reasons set out in the licence. They argue that the right to object has no place in a competitive market and that suppliers should not be able to prevent a customer from receiving a supply from another supplier.

- 3.19. Conversely, the consultation on the proposed MRA change to permit electricity suppliers to object on grounds of contract revealed that a number of customers would like their supplier to object in certain circumstances. These include erroneous transfers and the proposed transfer of a single site within a multi-site contract where transfers unauthorised by customers cause significant costs to customers and suppliers.
- 3.20. The lack of harmonisation in the two markets also causes problems, especially when attempting to transfer dual fuel customers. This may be a particular problem in the smaller end of the I&C market. Ofgem has said that it would prefer to see harmonisation of the objections arrangements between the two regimes.
- 3.21. Where a gas supplier is found to be objecting in circumstances other than those allowed by their licence, Ofgem may take enforcement action for a breach of their supply licence.
- 3.22. Electricity supply licensees are required by the terms of their licence to become party to and comply with the provisions of the MRA. Processes are in place in the MRA to deal with a suspected breach of obligations. The MRA requires a supplier found by MEC to be in breach of the MRA defined objection rules to remedy the breach within 20 days of notification. Failure to do this could result in the supplier no longer being entitled to receive services or exercise voting rights provided for by the MRA. In addition, Ofgem could take enforcement action for a breach of Standard Condition 20 of the suppliers' licence.
- 3.23. After investigating complaints from customers, energywatch can refer matters to Ofgem where it believes Ofgem may be able to use its power of licence enforcement.

⁵ http://www.ofgem.gov.uk/docs2001/ic_objections_conc.pdf

- 3.24. Ofgem notes the difference of opinion among industrial and commercial customers and suppliers about whether suppliers should have the right to object. Ofgem considers that there is scope to address the question of objections and allow greater freedom for customers to determine the circumstances in which their suppliers may prevent a transfer.

4. Supplier and customer views on the current processes

- 4.1. During consultations, both formal and informal, conducted by Ofgem, both customers and suppliers have raised a number of views about the right of suppliers to object on the grounds of insufficient contract termination notice and debt. The majority of suppliers advocate that the power to object should be retained in the gas licence, and that similar provisions should be incorporated into the electricity market. Many customers however oppose introducing the right of a supplier to object on grounds of contract and debt to the electricity market, and support removing it from the gas market. Subject to that overall view, some customers have indicated that there is merit in the old supplier being able to object in certain circumstances. The views of customers and suppliers, highlighted in correspondence to Ofgem, are summarised below.

Customer concerns

- 4.2. Some customers have raised concerns that the right to object in gas is open to misuse and has the effect of locking in customers.
- 4.3. Many customers have also argued that the current arrangements are inconsistent with other markets. They have expressed the view to Ofgem that the enforcement of contracts should be conducted through commercial arbitration or court action and should not inhibit a customer's right to change supplier.
- 4.4. Some customers argue that suppliers use objections as a customer retention tool, and that this can expose them to further customer service issues. For example, where a supplier objects to a transfer request at the end of a contract's duration, such as where an outstanding debt exists, the customer may be placed on out of contract rates.
- 4.5. There is currently an information asymmetry between the I&C gas and electricity sectors. In electricity, the supplier is required to write to the customer to inform them when they have made an objection to their proposed transfer, to inform them of the reason for the objection and how they may dispute or resolve the

grounds for the objection. This allows the customer to understand better what has occurred and what steps they need to take if they wish the transfer to happen in the future. It is argued that, without this requirement in the I&C gas sector, customers are often ill informed about whether their transfer has been objected to, what the reasons were for the objection and the steps that they need to take to resolve the objection reason.

Harmonisation

- 4.6. All parties consulted by Ofgem are in favour of harmonising the two markets. The different regimes in place can cause difficulties when transferring dual-fuel customers as, at present, the gas transfer can be blocked on the grounds of lack of termination notice and debt while the electricity one cannot.
- 4.7. Suppliers have generally expressed the view that the electricity processes should be brought in line with the current gas processes and that the right to object apply in both markets. Customers, on the other hand, have advocated modifying the gas processes to harmonise them with the electricity.

Contractual security

- 4.8. In gas, many suppliers have raised concerns that the security of their contractual arrangements would be reduced if the power to object to transfers were removed. They maintain that contracts are usually made on a fixed term basis, with the expectation that exposure to seasonal variation in costs of settlement and transportation will be covered over the period of the contract. The security gained by the right to object to transfers mid-contract, while binding customers to longer term contracts, exposes the supplier to reduced risk and enables customers to enjoy lower prices. As contracts are generally offered with a fixed unit price per kWh for their duration, suppliers will tend to under-charge customers during periods where the cost of gas was higher such as the winter months, with the expectation that this will be recovered over the course of the year. Without the ability to object, it is argued, suppliers will face costs if a customer wished to transfer half-way through the life of the contract. Suppliers have indicated to Ofgem that this could result in a significant increase in prices offered to customers to reflect the increased risk. At present, in a small number

of cases, some gas suppliers include contractual terms stating that they will waive the ability to object on the grounds of lack of contract termination notice but inform the customer that a higher price is required.

- 4.9. As an alternative to higher prices, it is possible that suppliers could compensate for additional risks from not having the right to object to a transfer by charging contract termination fees should a customer transfer without giving the appropriate notice period. This is already a feature of electricity supply contracts and is supported by many customers as the most effective way to deal with the issue of a supplier's reduced contractual security. Customers have expressed to Ofgem the view that risks incurred by the supplier through not being able to prevent customers transferring should be reflected in termination fees that can be negotiated between the two parties.
- 4.10. Another concern expressed by suppliers is that resolving the issue through court action where a customer has transferred while still having a valid contract in place is a more costly process than objecting to the transfer in the first instance. This cost may dissuade suppliers seeking compensation for a breach of contract terms from smaller I&C customers in particular, where the sums sought by the supplier in each case are small. Any additional cost in resolving such issues, it is argued, may be smeared by some suppliers across all their I&C customers in the form of higher prices.
- 4.11. A number of I&C electricity suppliers have supported the right to object on the grounds of contract being introduced into the electricity market because binding contracts and the ability to prevent customers transferring will provide greater certainty in their energy trading in order to prevent imbalance charges. Under the New Electricity Trading Arrangements, imbalance charges incentivise suppliers to forecast accurately energy supply and demand across their portfolio. Having the power to prevent customers transferring, it is argued, would give suppliers more confidence in the future demand of their customers and reduce the financial risk of energy imbalance charges. The reduced risk can be passed through to customers in lower electricity prices.
- 4.12. Some customers however have argued that the risk of these imbalance charges could be mitigated by appropriate contract termination notice periods and fees

enforced through the courts, and that again the right to object is not the most effective way of dealing with the issue. It is also argued that the risk suppliers are exposed to in this way is only significant if the customer wishing to transfer constitutes a large part of the supplier's total demand.

Erroneous transfers and multi-site contracts

- 4.13. Suppliers and some customers have argued in favour of the ability to object on grounds of contract so that they can prevent erroneous transfers of customers. Preventing the transfer of a customer that has been registered erroneously is preferable for both suppliers and the customer to the greater effort and expense of returning the customer after the transfer.
- 4.14. This is particularly relevant where a number of sites are included under a multi-site contract. As with long-term contracts, a multi-site contract can result in lower prices for the customer than could otherwise be achieved due to the reduced risk to the supplier and the ability to predict the future demand of their portfolio more accurately. Individual premises within such a contract may attempt to transfer to another supplier, either through error or misselling or simply without being aware that they are part of a multi-site contract. This can undermine the terms of the supply contract and the preferential prices achieved through the inclusion of multiple sites. The right to object to these transfers is, it is argued, a simple and inexpensive method of preventing erroneous transfers and allowing suppliers to manage their portfolios effectively.
- 4.15. In responses to previous Ofgem consultations, a number of electricity customers have supported this view. They have highlighted difficulties in preventing other suppliers transferring some of their premises in electricity and stated that the right for their current supplier to object, as exists in the gas market, would be an effective way of preventing this. In discussions with customers, including a selection of high-street retail companies, Ofgem has been informed that individual premises or branches are occasionally registered by another supplier without the knowledge of their head office. In gas, the power to object can prevent the transfer taking place. In electricity, even though the customer may wish it, the supplier can only object without contravening the terms of the MRA by receiving the consent of the other supplier. This is often difficult to achieve in

the timescales allowed. Indeed, Ofgem is aware of some electricity suppliers raising objections on the grounds of contract at the request of their customers, thereby being at risk of contravening the terms of the MRA. Without raising an objection to the transfer, considerable time and effort is required to return the customer to the correct supplier.

- 4.16. Some customers however have expressed the view that individual sites being transferred away from a multi-site contract can, in part, be prevented by effective management by customers of their portfolios. Customers should establish robust internal procedures, it is argued, to prevent individual sites signing up with new suppliers and remove the need for suppliers to object to transfers.
- 4.17. However, in cases where premises within a multi-site contract are registered erroneously, the customer may not even be aware that one of his sites has been signed up by another supplier. Such circumstances can occur regardless of a customer's procedures put in place to manage his portfolio.
- 4.18. In the electricity market, suppliers are currently permitted to raise objections where both suppliers are in agreement that this should occur (a "co-operative" objection). In the gas market I&C suppliers are not currently specifically permitted under their licence to make co-operative objections. Many I&C gas suppliers however agree to do so where this is in the customer's interests. An example of this is where the new supplier registers a customer to transfer in error. Amending the gas licence to permit I&C gas suppliers to raise objections in such circumstances would legitimise the actions of suppliers in preventing erroneous transfers.

5. Options

- 5.1. There are a number of options open to Ofgem and the industry in seeking to address the concerns raised by customers and suppliers regarding the current objection arrangements. The following chapter provides a summary of these options.

Option 1: Maintain current rules

- 5.2. Ofgem could argue that there is no case for modifying the objections provision in the gas supply licence and MRA.
- 5.3. I&C gas customers could negotiate terms in their contracts to prevent a supplier from using the objection process. Were a supplier to breach that term, the customer could seek a remedy through the courts.
- 5.4. Whilst this option would provide clarity on the position of gas customers and electricity customers it has a number of disadvantages in that it does not tackle the issues and concerns raised by both customers and suppliers in Chapter 4. In particular, it seems very possible that the current regulatory rules create an obstacle to customers who may wish to negotiate alternative arrangements.

Option 2: Introduce new gas objection rules only

- 5.5. There are several areas where Ofgem could propose modifications to the gas supply licence for I&C suppliers. These are detailed below. Modifications to the gas supply licence require those licence holders affected to vote on the proposed modification. Both domestic and I&C suppliers are required to comply with Standard Licence Condition 30, which contains the licence requirements relating to objections. As such both domestic and I&C suppliers would be required to be included in a vote to modify this condition. A statutory instrument containing orders under the Gas and Electricity Acts, prescribing voting thresholds for collective licence modifications, is expected to be laid before

Parliament in the near future⁶. Once this is in place then Ofgem will be able to facilitate votes on proposed licence modifications using this mechanism.

Option 2a: Object only in circumstances where the contract permits

- 5.6. The gas licence permits I&C gas suppliers to object to proposed transfers for reasons of debt and contract. Ofgem could propose a modification to the gas licence to replace this supplier right with the ability of a supplier to object in cases where the contract permits. The contract may itself allow the supplier to object on grounds of debt or contract, but only where the customer had agreed to this contract provision.
- 5.7. Under such a set of proposals customers could negotiate with the supplier to ensure that the contract best fits their needs. Suppliers would be able to tailor the prices and other terms and conditions of their contracts to reflect the risks and costs associated with supplying a particular customer.
- 5.8. Where a customer claims that its transfer has been blocked in breach of the contract, the customer should assert their rights under the contract. There would also be an obligation on Ofgem to enforce against licence breaches. However, it seems likely that Ofgem would be unable to take enforcement action until the correct construction of the contract had been established.
- 5.9. The gas licence provides that suppliers can object on grounds of debt in certain specified circumstances. This provides protection for the supplier that its customers will not be able to transfer away if the debt has been requested in writing and this request has been outstanding for more than 28 days.
- 5.10. In determining the correct approach for objections relating to debt there are a number of options available. These are highlighted below.
 - ◆ Allow debt objections to be subject to negotiations between suppliers and customers;
 - ◆ Recommend that the industry, in conjunction with customer representative bodies, identify a set of standard industry terms for inclusion in contracts dealing with issues such as debt ;

⁶ These orders will be introduced by Sections 35 and 82 of the Utilities Act 2000.
Transfer objections in the I&C market
Office of Gas and Electricity Markets

- ◆ Restrict the scope of contract terms relating to debt objections under the gas licence so that suppliers will only be able to object where a debt has been requested in writing and remains outstanding for more than 28 days. This would maintain the existing restrictions on debt objections but would allow parties to negotiate over the inclusion of this term.

5.11. By itself this amendment would not promote harmonisation between the I&C gas and electricity objection arrangements.

Option 2b: Permit I&C suppliers to raise objections on a co-operative basis

- 5.12. Electricity suppliers are permitted to raise co-operative objections. This is of particular use when the new supplier has identified that they have registered the customer transfer in error. In the gas market suppliers are able to withdraw their registrations. Whilst Ofgem considers this to be the most efficient process for preventing erroneous transfers we recognise that some suppliers have not implemented the functionality to enable them to withdraw registrations.
- 5.13. Ofgem could therefore propose a modification to the gas licence to enable suppliers to raise objections on a co-operative basis where both suppliers are in agreement that the transfer would otherwise occur in error. This modification would align the gas arrangements with the I&C electricity co-operative objection rules.

Option 2c: Objection information.

- 5.14. In the electricity market, suppliers are required to inform the customer when they raise an objection, the grounds of the objection and how the customer may dispute or resolve such grounds. This requirement ensures transparency in the status of the transfer for customers.
- 5.15. Ofgem could propose a modification to the gas supply licence to require I&C gas suppliers to provide information to a customer when they raise an objection to their proposed transfer. Under a separate modification proposal we are also considering an extension of this requirement to the domestic gas market. This

information could include the reason for the objection and how the customer could challenge and resolve the reason for the objection.

Option 3: Introduce new electricity objection rules only

- 5.16. Parties to the MRA are able to propose modifications to this document. In certain defined instances Ofgem is required to approve the proposal before it can be implemented. Clause 16 of the MRA, which specifies the instances where suppliers may raise objections, requires that any modifications receive written approval from Ofgem before taking effect.
- 5.17. A party to the MRA could propose a modification to allow customers and suppliers to negotiate contract clauses which allow suppliers to raise an objection under the circumstances defined in their contract. If this proposal was agreed by the industry and written consent was provided by Ofgem then suppliers could raise objections in the I&C market as specified in their customer contracts.
- 5.18. Where a customer claims its transfer has been blocked in breach of the contract, the customer should assert his rights through court action. Additionally a customer could complain to Ofgem that a supplier had breached Standard Licence Condition 20 requiring them to comply with the MRA. In such circumstances Ofgem could investigate and may take enforcement action.
- 5.19. By itself this amendment would not promote harmonisation between the I&C gas and electricity objection arrangements.

Option 4: Align the gas objection rules to replicate the electricity arrangements

- 5.20. Ofgem could propose an amendment to the gas licence to allow I&C suppliers to object to customer transfers only where both suppliers agreed that the transfer had been initiated in error. This proposal would align the objection arrangements in the I&C gas market with the rules in the I&C electricity market. In the electricity market I&C suppliers are only able to raise transfer objections

on a co-operative basis and for a specific technical reason associated with related MPANs.

- 5.21. This proposal has been suggested by many I&C customers who have been frustrated by suppliers actions in raising objections. However some customers consider that there are benefits to suppliers being able to object in certain circumstances such as preventing erroneous transfers and in managing large multi-site portfolios.
- 5.22. This option would require the agreement of gas suppliers to the proposed licence modification. Many suppliers have indicated that they would be unwilling to vote for such a modification.

Option 5: Align the gas and electricity objection rules

- 5.23. Currently the objection provisions in the I&C gas and electricity regimes are significantly different. This is confusing and frustrating for both suppliers and customers. Ofgem considers that it is desirable to align the objection reasons in the gas and electricity markets where this is possible.
- 5.24. In considering amendments to the gas licence and whether to consent to any proposed amendments to the MRA, Ofgem would take into account the desirability of alignment between both markets.

6. Recommendation and conclusions

- 6.1. The relationship between I&C customers and their suppliers should wherever possible be determined in the supply contract. I&C customers are not a homogenous group. They have different requirements and place different values on the terms and conditions of supply. As noted above, some customers would not wish to have the objections mechanism used for contract enforcement, others would welcome the option as a solution to portfolio management problems. Suppliers place a value on the ability to object and claim that customers benefit from cheaper prices as a result. Some customers would prefer not to be faced with cancellation fees. Such a wide range of opposing views suggests that it is appropriate that customers and suppliers should be free to determine by contract the circumstances in which the supplier can use the objection facility, rather than predetermining the circumstances in the gas supply licence or the MRA.
- 6.2. Currently the gas supply licence permits a supplier to object for debt or for insufficient termination notice of the contract. Both these circumstances could be specified on the face of the contract. However, parties to the contract could opt to have only one or neither. This should properly be left to negotiation between the parties, rather than predetermined by regulation.
- 6.3. Using the contract to specify the circumstances in which an objection may be made would enable parties to the contract to agree arrangements to support the objections process to meet their needs. For example, where the requirement is driven by concerns with portfolio management, the contract may specify that the supplier must inform the customer that a site is proposed to transfer and get the customer's agreement to an objection being made.
- 6.4. This proposal places the emphasis on the contract clearly setting out the circumstances in which it is appropriate for an objection to be made. Where the contract is silent on objections and no circumstances are referred to, the supplier would not be permitted to object to a proposed transfer in any circumstances.
- 6.5. Suppliers have expressed concerns that the removal from the licence of explicitly stated circumstances in which a supplier can object, and placing them

within the terms of the contract, may lead to confusion for suppliers seeking to register new customers. The considerable variety of circumstances in which a supplier could raise an objection, individually negotiated between a supplier and each customer, and the lack of visibility to others would make it very difficult for the supplier attempting to sign up a customer to challenge the validity of the objection if the transfer were prevented.

- 6.6. Some suppliers are also concerned that the ability for suppliers to include their own grounds for objections may be open to abuse. Complicated and elaborate clauses regarding a supplier's right to object, the implications of which a customer may not be fully aware of when signing the contract, could be introduced. Many customers, it has been argued, would not be comfortable without the apparent protection offered by precise grounds for objection being included in the gas licence conditions, but instead with a supplier's own terms on this issue included in the contract.
- 6.7. Ofgem does not believe it is appropriate to regulate supply to I&C customers in the same way as to domestic customers. I&C customers are more sophisticated and, where appropriate, should include the cost of appropriate advice in their procurement activities. Moreover, complexity is a feature of the current arrangements. Although the gas suppliers licence defines that an objection may only be made where the contract has not been properly terminated, contracts can require the customer to be subject to intricate termination clauses.
- 6.8. Ofgem considers that it may be helpful for suppliers and consumer groups to draw up accepted standard terms detailing the grounds of the supplier to object. This should result in increased visibility of contractual terms and improved clarity for both customers and suppliers. It should in addition provide comfort for customers that the terms within their contract relating to the supplier's ability to object have been approved by an appropriate body.

Transitional Provisions

- 6.9. Implementing the proposal in electricity will require a change to the MRA. This would in turn enable suppliers and customers to negotiate an amendment to an

existing contract permitting an objection to be made in the specified circumstances.

- 6.10. Existing gas contracts will have been made on the basis that the supplier was entitled by their licence to object for reasons of debt and insufficient termination notice. Transitional arrangements will therefore need to be set out in the modified licence condition. In determining these transitional arrangements, it is not the intention unduly to disrupt contracts that are already in existence. Ofgem proposes that all new contracts made or renewed after the proposed date for licence modification 1st June 2003 would be subject to the revised licence condition.
- 6.11. Ofgem notes that longer term contracts exist which, for example in the case of supply to power stations, can have a duration of up to 15 years. Since it is unlikely that all such contracts will expire or be subject to review by 1st June 2003, views are invited on the subject of appropriate transitional arrangements for existing contracts. For example, the transitional arrangements set out in the proposed new licence condition could be made only to apply to new contracts. Any long-term contract would therefore be allowed to expire in accordance with its original terms, without alteration. Alternatively, the transitional arrangements could include a cut off date, for example 18 months ahead, by which time all contracts, including those that had not expired, would be subject to the revised condition. This would require existing contracts to be altered and re-negotiated. Views are invited on what cut off date, if any, would be appropriate for existing contracts to be subject to the new licence condition.
- 6.12. Views are invited are invited on the following areas:
- ◆ **Whether respondents agree with amending the rights of I&C suppliers to object only in cases where this is permitted in their contract with the customer?**
 - ◆ **Whether it would be helpful for suppliers and consumer groups to draw up standard terms detailing the grounds of the supplier to object?**

- ◆ What transitional arrangements, if any, would be appropriate for dealing with existing contracts following amendment to suppliers' rights to object in the I&C gas market?
- ◆ Whether the draft modification proposal set out in Appendix 3 is fit for purpose?
- ◆ Whether respondents consider that 1st June 2003 is an appropriate and achievable date for having amended the I&C objection arrangements in the gas and electricity markets?

Appendix 1 Defined terms

- 1.1 Before the introduction of the Utilities Act 2000, in electricity premises that were domestic or that consumed less than 12,000 kWh per annum were termed 'designated premises'. All other premises were known as 'non-designated'. In gas, premises consuming less than 2,500 therms (73,200 kWh) of gas per year were termed 'domestic' while all other premises were categorised as 'industrial and commercial (I&C)'.
- 1.2 Following the introduction of the Utilities Act the definitions of premises were altered in revised standard licence conditions. These state that, in electricity and gas, premises 'at which a supply is taken wholly or mainly for domestic purposes' are classed as 'domestic premises'. All other premises are termed 'non-domestic'.
- 1.3 For the purpose of this document, the term 'I&C' is used to describe non-domestic premises.

Appendix 2 Domestic objections proposals

- 2.1 A statutory instrument containing orders under the Gas and Electricity Acts, prescribing voting thresholds for collective licence modifications, is expected to be laid before Parliament in the near future. Once this is in place then Ofgem will be able to facilitate votes on proposed licence modifications using this mechanism.
- 2.2 In the gas market, the ability of both domestic and I&C suppliers to object is set out in Standard Licence Condition (SLC) 30. A supplier that is impacted by a proposed licence modification is allowed to vote on that proposal. Any proposed change to SLC 30 will therefore require both I&C and domestic suppliers to vote on the proposal.
- 2.3 It is intended that a modification to suppliers' ability to object in the domestic market will be consulted upon in early 2003. This proposal will seek a change to both the gas supply licence and to the MRA.
- 2.4 The proposed modification to the gas licence for domestic suppliers will include new provisions within SLC 46. This licence condition only relates to domestic customers and as such will only require domestic suppliers to vote on proposed modifications.

Appendix 3 Proposed wording for Standard Licence Condition 30

- 3.1 Suggested wording for Standard Licence Condition (SLC) 30 is provided below. It should be noted that this does not contain provisions for transitional arrangements, views on which are invited by this consultation. Consideration is given in Chapter 5 as to whether the existing provisions for debt should be retained in the licence condition. The wording below does not include such provisions.

Condition 30. Debt Blocking

1. The licensee shall not procure or permit the relevant shipper, in pursuance of any contract with that shipper, or otherwise request it, to prevent a proposed supplier transfer in relation to any premises at which the licensee supplies gas to a non-domestic customer except for so long as;
 - (a) the licensee is permitted by the provisions of a contract with the customer for the supply of gas at those premises; or
 - (b) the supplier which has initiated the proposed transfer has agreed with the licensee that the proposed supplier transfer has been initiated in error.
2. Where the licensee prevents a proposed transfer, the licensee will inform the non-domestic customer of the grounds for preventing the transfer and how the customer may dispute or resolve such grounds.