



Ms Stephanie Tobyn
Regulation Manager
Scottish Power Energy Retail Ltd
Regulation, Legal and Commercial
Main Building
Cathart Business Park
Spean Street
Glasgow G44 4BE

*Promoting choice and
value for all customers*

Direct Dial: 020 7901 7256
Email: iain.osborne@ofgem.gov.uk

17 March 2003

Dear Stephanie,

Objections for debt: Direct Debit domestic customers

It appears from recent contacts between Ofgem and suppliers that a number of suppliers are not clear as to how the conditions permitting a supplier to block transfers on the grounds of debt should be applied operationally in respect of direct debit arrangements. This letter, which I have sent to all suppliers, is intended to clarify Ofgem's position on these issues. The approach described in this letter will inform Ofgem policy-making and compliance action.

The circumstances as to when a supplier may prevent a customer transfer by using the objection arrangements is governed by the Master Registration Agreement (MRA) for electricity and by standard conditions 30 and 46¹ of the Gas Suppliers Licence. Both documents permit an objection for debt in the domestic market where charges due have been demanded in writing and remain owing to the supplier 28 days after the demand was made (see Appendix 1). In the non-domestic market, in respect of contracts entered into on or after 5 January 2004, suppliers will be able to object only in the circumstances set out in their contract with the customer. These contract terms may provide for objections on grounds of debt.

Guidance was given by both Ofgas and Offer during the opening of the domestic market that, in respect of direct debit customers, the issuing of a statement informing the customer of the current state of the balance of their account 'for information' did not constitute a 'demand for payment'. Assuming the customer is making equal monthly payments, it would be typical for the

¹ A modification of Standard Condition 46 of the Gas Suppliers Licence dealing with objections for domestic customers was implemented on 27 November. This change does not affect the circumstances in which an objection for debt may be raised. Ofgem have further modified Standard Condition 30 of the Gas Suppliers Licence in respect of I&C customers.



customer's account to be in credit during the summer and autumn months and in debit during winter and spring. Suppliers were advised that, for so long as a customer maintains their payments and that no written demand for an outstanding amount was made, an objection should not be made. This guidance reflected the policy position that customers who had fulfilled requests to pay charges they owed in a timely fashion should not be impeded from transferring to another supplier. Ofgem maintains the view that a direct debit statement is not a demand for payment and will not be regarded as such.

Examples

However, the application of this approach can give rise to questions of interpretation in particular operational circumstances. These are discussed in the following examples. These examples are indicative of Ofgem's approach and are not exhaustive. Matters considered by Ofgem will, of course be determined on the particular facts.

Customer A opens their account with their new supplier on a direct debit contract. Their annual bill is estimated at £360, and a monthly payment of £30 is agreed. The supplier sends a regular statement of the customer's account. During the year there will be times when the account is in credit and times when it is in debit.

If the customer seeks to transfer to another supplier, the incumbent supplier **does not** have the right to object on grounds of debt as no demand for payment has been made.

Customer B has an existing quarterly credit account, and agrees with her supplier to pay in future by direct debit. The annual consumption is calculated as £360. However, it is agreed with the customer that the amount of £100 outstanding on her existing account (but not yet billed) will be rolled on to the new direct debit payment. Monthly payments are agreed at £38.50.

In this case, the customer and supplier have agreed the payment arrangements for the existing balance on the account. There has been no demand for payment made that has been outstanding for 28 days and the customer has fulfilled their obligations. The incumbent supplier **does not** have the right to object on grounds of debt.

Customer C is an existing quarterly credit customer who has received a bill and elects to change to direct debit payment. The supplier and customer agree on a payment plan that rolls the existing amount owing on the account on to the direct debit account. Monthly payments are calculated to include an element for the energy used and the recovery of the outstanding debt.

In these circumstances, the supplier **would** have the right to object on grounds of debt since a demand for payment had been made and the amount was outstanding for more than 28 days.

Ofgem would expect that the supplier and the customer would agree the period over which the recovery of the debt would be made, and that the customer should be kept informed as to the outstanding balance. Where possible, the progress made in repaying the outstanding balance being recovered should be displayed on the statement sent to the customer. As an alternative, suppliers might wish to contact customers in other ways from time to time (for example, by writing a letter) with this information. The supplier should keep records to ensure that it is clear when the debt has been paid off. In setting

the period over which the outstanding debt should be recovered, the supplier should be mindful of the customer's ability to pay.

Customer D is a direct debit customer who misses a monthly payment. If the customer subsequently sought a transfer to a new supplier, the incumbent supplier could only object where a demand for payment had been made in respect of the missed payment. The continuing requirement to make the monthly direct debit payment can not be interpreted as a demand for payment. Until such a demand had been sent and had remained unpaid for 28 days, the supplier would not be permitted to object for debt.

Customer E is a direct debit customer who contacts their supplier and negotiates a reduction in the monthly payment as they are currently having difficulty meeting the required payments. The supplier agrees to a 'payment holiday' on the understanding that the deficit will be repaid in the future. Should the customer subsequently seek to transfer to another supplier, the incumbent supplier would not be permitted to object on the grounds of debt until a written demand had been issued and was unpaid for 28 days.

Wider Policy

Ofgem expects that suppliers will use meter readings and estimation techniques to ensure that monthly direct debit payments reasonably match the customer's energy usage.

One company has considered changing the nature of their regular direct debit statements to customers so that they may act as a suspended demand for payment that could be activated should the customer seek to change supplier, with the intention of permitting the supplier to block the transfer on the grounds of debt in a wide range of circumstances. Ofgem considers that this approach would be likely to lead to a significant increase in the prevalence of debt blocking. Should any supplier seek to implement this approach, Ofgem would need to review the definitions used in the gas licence and MRA and therefore the basis upon which debt blocking is permitted. It is Ofgem's current view that such a review would need to take account of the full range of opinion on this subject, for example including energywatch's stated position that supplier's right to object for debt should be abolished.

I would be interested in your views on this issue, in particular whether Ofgem should consider consulting on these issues with the aim of seeking a modification of the gas licence and MRA. Specifically, it would be helpful to know whether there is a particular problem with direct debit customers failing to pay final bills.

I would be grateful if you would respond by 4th May 2004.

Yours sincerely,



Iain Osborne
Director, Consumer Markets

1) MRA Clause 16.[Extract]

16 PROCEDURE FOR OBJECTION BY OLD SUPPLIER

16.1 An Old Supplier may issue an objection ("**Notice of Objection**") to the relevant MPAS Provider in relation to an Application for Registration of which it has been notified pursuant to Clause 15.9 where either:

16.1.1 the Application for Registration is in relation to a Metering Point which is associated with Domestic Premises and:

16.1.1.1 subject to Clause 16.2, 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

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

16.1.1.3 its Customer at the Premises has advised the Old Supplier that they have not entered into a contract with the New Supplier (a '**Customer Requested Objection**'), or

16.1.1.4 the Application for Registration relates to a Metering Point which is a Related Metering Point and the New Supplier has not applied to Register all the Related Metering Points on the same Working Day for the same Supply Start Date.

Or

16.1.2 the Application for Registration is in relation to a Metering Point which is associated with non Domestic Premises and:

16.1.2.1 subject to Clause 16.2, where the Old Supplier is permitted to do so by the provisions of a contract with its customer at those premises; or

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

16.1.2.3 the Application for Registration relates to a Metering Point which is a Related Metering Point and the New Supplier has not applied to Register all the Related Metering Points on the same Working Day for the same Supply Start Date.

Each ground of objection in Clauses 16.1.1.1 to 16.1.1.4 and 16.1.2.1 to 16.1.2.3 shall be treated as separate and independent from each of the other grounds of objection in those Clauses.

Each ground of objection in Clauses 16.1.1 to 16.1.3 shall be treated as separate and independent from each of the other grounds of objection in those Clauses.

2) Gas Suppliers Licence: Standard Conditions

Condition 30. Non-Domestic Transfer Blocking

1. The licensee shall not procure or permit the relevant shipper, in pursuance of any contract with that shipper, or otherwise request it, to prevent a proposed supplier transfer in relation to any premises at which the licensee supplies gas to a non-domestic customer except for so long as -
 - (a) the licensee is permitted to prevent the proposed supplier transfer by the provisions of a contract with the customer for the supply of gas at those premises; or
 - (b) the supplier which has initiated the proposed transfer has agreed with the licensee that the proposed transfer has been initiated in error; or
 - (c) in relation to a contract entered into between the licensee and the customer prior to 5 January 2004 which does not contain provisions that permit the licensee to prevent a proposed supplier transfer:
 - (i) the customer fails to pay charges for the supply of gas to those premises or any premises previously occupied by him in respect of which such charges are payable which -
 - a) are due to the licensee and have been demanded in writing; and
 - b) have remained unpaid for 28 days after the making of the demand; or
 - (ii) the customer is bound by the provisions of that contract with the licensee for the supply of gas at those premises which will neither expire nor, to the knowledge of the licensee, be terminated on or before the date of the proposed transfer.
2. Where the licensee makes a request to its shipper to prevent a proposed supplier transfer, the licensee shall, at the same time as making that request to its

shipper, send notification to the non-domestic customer that it has made a request to prevent the proposed supplier transfer, the grounds for the request and how the customer may dispute or resolve such grounds.

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

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

- a) the domestic supply contract was terminated under any provision of standard condition 47 (Termination of Contracts in Specified Circumstances);
 - b) the domestic supply contract was one of indefinite length, and was terminated other than during a fixed term period;
 - c) the licensee notified the domestic customer, under paragraph 6 of standard condition 44 (Notification of Terms), of a unilateral variation of the domestic supply contract and the domestic customer gave notice of termination in accordance with paragraph 7 of that condition; or
 - d) the domestic supply contract was one to which paragraph 3 of standard condition 47 (Termination of Contracts in Specified Circumstances) applied and the licensee did not, before entering into it, take all reasonable steps to draw the attention of the customer to the effect of the term set out at that paragraph.
6. Where a termination fee is payable, it shall be of an amount not greater than that which the licensee may in all the circumstances reasonably require.
7. Standard condition 30 (Debt Blocking) shall not apply in relation to the supply of domestic customers.
8. Notwithstanding paragraphs 1 and 2 of this standard condition the licensee shall not procure or permit the relevant shipper, in pursuance of any contract with that shipper, or otherwise request it, to prevent a proposed supplier transfer in relation to any premises at which the licensee supplies gas to a domestic customer other than in the following circumstances –
- a) for so long as the customer fails to pay charges for the supply of gas to those premises or any premises previously owned or occupied by him in respect of which such charges are payable which -

- (i) are due to the licensee and have been demanded in writing; and
 - (ii) have remained unpaid for 28 days after the making of the demand; or
 - b) the proposed new supplier who has initiated the proposed supplier transfer has agreed with the licensee that the proposed supplier transfer has been initiated in error; or
 - c) the customer states not to have entered into a contract with the proposed new supplier and has requested the licensee to prevent the proposed supplier transfer from taking place.
9. Where any of the circumstances referred to in paragraph 8 of this standard condition apply and the licensee makes a request to its shipper to prevent a proposed supplier transfer, the licensee shall at the same time as making that request to its shipper, send notification to the customer that it has made a request to prevent the proposed supplier transfer, the grounds for the request and how the customer may dispute or resolve such grounds.
10. Where the circumstances referred to in paragraph 8 (c) of this standard condition apply and the licensee has agreed to prevent a proposed supplier transfer at the request of a customer, the licensee shall –
- a) keep evidence of the customer's request and reasons for the request for at least 12 months, and
- at the same time as making the request to its shipper to prevent the proposed supplier transfer, inform the proposed new supplier that the objection has been raised at the customer's request and of the reason given by the customer.