

Modification proposal:	<b>Master Registration Agreement Change Proposal (MRA CP) 0198 - Use of the Change of Tenancy Flag, and MRA CP 0200 - Replacement wording: Use of Change of Tenancy Flag</b>		
Decision:	The Authority <sup>1</sup> provides its consent for these changes to be made <sup>2</sup>		
Target audience:	MRASCo, Parties to the MRA and other interested parties		
Date of publication:	18 February 2013	Implementation date:	28 February 2013

## Background to the modification proposals

The Change of Tenancy (COT) flag is an item used during the registration process on the D0055, D0057 and D0058 data flows.<sup>3</sup> It indicates to the outgoing supplier that the customer is a new owner or occupier of the premises and the outgoing supplier should have no valid grounds to object to the transfer of the customer to another supplier.

The MRA currently places two requirements on suppliers in relation to use of the COT flag in registration:

1. Suppliers of Domestic Premises should satisfy themselves whether a customer is a new owner or occupier before submitting a Registration (MRA clause 15.3);
2. The Supplier of Domestic Premises should use reasonable endeavours to ensure that the COT flag is set to "True" where the acquisition relates to a new occupier or owner (MRA clause 15.7).

Furthermore, the MRA produced guidelines in June 2008 on the circumstances when the COT flag should be used.<sup>4</sup> Although there is no requirement, the COT flag is also used for non-domestic premises.

A number of suppliers have voiced concern that the COT flag is being misused, particularly in the non-domestic market. This can lead to suppliers losing sites erroneously and needing to introduce validation processes to check the accuracy of each COT flag. Analysis by a supplier indicated that the majority of COT flags from one supplier in the first half of 2011 were found to be invalid.

## The modification proposals

MRA CP 0198 introduces a new clause 15.3.1 to require that all suppliers will be responsible for ensuring that the COT flag is set to "True" only where a genuine change of owner or occupier of the premises has taken place. Suppliers would be responsible for retaining evidence, for a period not less than one year, to substantiate any claim made that the customer is a new owner or occupier. CP 0198 also amends clauses 15.3 and 15.7 to set out that the COT flag is applicable to registrations at all premises, and not only domestic premises.

<sup>1</sup> The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of Gas and Electricity Markets.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> Data flows communicate information between industry participants to support competitive trading. The D0055, D0057 and D0058 flows are the Registration of Supplier to Specified Metering Point, Rejection of Registration and the Notification of Termination of Supply Registration.

<sup>4</sup> <http://www.mrasco.com/admin/documents/GD28%20v1.0.pdf>

CP 0200 provides alternative wording for a new clause 15.3.1 to require that a supplier can set the COT flag to "True" where it has reasonable grounds to believe, having made reasonable enquiries of the customer, that they are a new owner or occupier of the premises. In line with CP 0198, evidence for that belief should be kept for a period not less than one year.

## **MRA Development Board and MRA Forum**

The MRA Development Board (MDB) considered CP 0198 at its meeting of 27 September 2012. There was some concern that terms such as 'sufficient' evidence needed clarification and the group discussed reconsidering the wording. The group voted to accept the change by majority vote, as modified at that meeting.

On 12 October 2012, Opus Energy appealed to the MRA Forum the decision to accept CP 0198 and raised CP 0200 on 19 November 2012. Although Opus Energy agreed with the intent of CP 0198, they were concerned with the wording and potential burden it could impose on new suppliers wishing to contract with new occupiers. The appeal was considered at the MRA Forum on 29 November 2012 and the resolution to overturn the decision to accept CP 0198 was rejected.

CP 0200 was discussed at the MDB of 20 December 2012. Parties indicated they were keen to solve problems associated with incorrect use of the COT flag. Opus informed MDB that if the proposal was rejected they would appeal the decision to accept CP 0198 to Ofgem. The CP was accepted by majority vote with the implementation date accepted as modified.

As CP 0198 and CP 0200 seek to amend clause 15 of the MRA, Authority consent to make these changes is required.<sup>5</sup>

## **The Authority's decision**

We have considered the issues raised by both change proposals. We have also considered and taken into account the responses to these proposals that were reported in the minutes of the MDB meetings held on 27 September 2012 and 20 December 2012. We have concluded that the implementation of the changes proposed by CP 0198 and CP 0200 would be consistent with the intent of the MRA as set out in Standard Condition 23 of the Distribution Licence and that both change proposals should be implemented.<sup>6</sup> We consider this to be consistent with our principal objective and statutory duties.

## **Reasons for the Authority's decision**

In 'The Retail Market Review – Updated proposals for businesses'<sup>7</sup> published in October 2012, we noted that we had received a number of allegations related to the misuse of the COT flag and we encouraged industry resolutions to the issue. We consider that these change proposals will improve the current processes without placing a significant burden on suppliers. However, we will continue to keep this area under close scrutiny.

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<sup>5</sup> In accordance with clause 9.5 of the MRA.

<sup>6</sup> Standard licence conditions available at:

<http://epr.ofgem.gov.uk/EPRFiles/Electricity%20Distribution%20Consolidated%20Standard%20Licence%20Conditions%20-%20Current%20Version.pdf>

<sup>7</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/The%20Retail%20Market%20Review%20-%20Updated%20proposals%20for%20businesses.pdf>

We consider that the changes defined within the proposals should better facilitate competition in the supply of electricity by helping to ensure that the change of supplier process is being followed correctly. This should reduce the scope for an unfair commercial advantage to be conferred on suppliers that may misuse the change of tenancy flag. By helping to ensure that suppliers are acting on accurate information about a change of tenancy, this should facilitate suppliers' confidence in the objection process and therefore we also consider that the proposed changes would be conducive to the operation of an efficient, co-ordinated and economical system for the supply of electricity.

### **Implementation**

We note that CP 0200 provides new drafting for the proposed clause 15.3.1 but does not include the amendments to clause 15.3 and 15.7 contained in CP 0198. We consider that the changes proposed to clauses 15.3 and 15.7 by CP 0198 are beneficial, ensuring that the arrangements apply to both domestic and non-domestic premises. However, we consider that the legal drafting of clause 15.3.1 set out in CP 0200 is an improvement to that outlined in CP 0198, ensuring that the solution is proportionate and that undue burden is not placed on new suppliers.

Whilst our consent relates to both change proposals, CP 0198 should therefore be implemented first, followed by CP 0200. This is so that the amendments to clauses 15.3 and 15.7 as set out in CP 0198 are made, however the adopted wording of clause 15.3.1 will be as set out by the legal text provided for CP 0200.

### **Decision notice**

We consent to changes to Priority Provisions defined in change proposals MRA CP 0198 and MRA CP 0200 being made.

**Colin Sausman**

**Partner, Retail Markets and Research**

Signed on behalf of the Authority and authorised for that purpose