

Proposals for non-domestic automatic rollovers and contract renewals

Consultation

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Overview:

At the time of developing the Retail Market Review (RMR) proposals we committed to review the practice of automatic renewal of contracts in the non-domestic retail energy market. This document sets out the findings of our review and our proposals. These proposals aim to improve protections for businesses when they renew an energy contract by improving the clarity of information provided by suppliers and bringing more consistency to the renewal process.

Our proposals include:

- Shortening the maximum termination notice period to 30 days.
- New rules for suppliers to include their current and renewal prices and their annual consumption on renewal letters.
- Requiring suppliers to acknowledge receipt of termination notice.

These proposals complement the implementation of the RMR policies.

You must reply by 11 April 2014. We expect these proposals to be implemented by autumn 2014.

Context

Ofgem's principal objective is to protect the interests of both existing and future energy consumers.

This document presents our proposals to improve the contract renewal process for micro-business consumers to help them get the right deal from energy suppliers.

This consultation follows from the Energy Supply Probe in 2008 and the Retail Market Review from 2011. It has links to the Change of Supplier project¹ and our work on Third Party Intermediaries (TPI). In February 2014 we also published our proposals to regulate non-domestic TPIs.²

Associated documents

All documents are available at www.ofgem.gov.uk.

- Quantitative research into non-domestic consumer engagement in the energy market, The Research Perspective and Element Energy, 18 December 2013.
- Implementation of the Retail Market Review non-domestic proposals – decision to make licence modifications, 28 June 2013, Reference: 108/13
- Automatic rollovers in the non-domestic market – call for evidence, 13 June 2013, Reference: 93/13
- The Retail Market Review – Final non-domestic proposals, 22 March 2013, Reference: 38/13
- The Retail Market Review – Updated proposals for businesses, 26 October 2012, Reference: 134/12
- The Retail Market Review: Non-domestic proposals, 23 November 2011, Reference: 157/11
- Amendment to proposals outlined in the Energy Supply Probe – proposed retail market remedies relating to automatic contract rollovers for micro-business consumers, 22 June 2009, Reference: 68/09
- The Energy Supply Probe - proposed retail market remedies, 15 April 2009, Reference: 41/09

¹ <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/smarter-markets-programme/change-supplier>

² <https://www.ofgem.gov.uk/publications-and-updates/third-party-intermediaries-tpi-recommended-proposals-regulation-non-domestic-tpis>

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Executive summary

Automatic rollover contracts have long been a feature of services that are supplied continuously, such as electricity, gas, telecommunications and insurance. In energy markets these have been a controversial area, as the consumer's active consent is not required to extend a contract at higher prices. There have also been concerns about the quality of information provided to consumers to notify them of an automatic rollover.

In March 2013, as part of the Retail Market Review (RMR) final proposals we committed to reviewing the current rules on automatic rollovers for micro-business consumers.

Our proposals

Our objective is to give micro-business consumers the best opportunity and information to engage effectively with the market. We are consulting on a set of proposals designed to provide clearer information and more consistency to the contract renewal process, without restricting consumer choice. Our proposals are summarised below.

- Suppliers will only be able to require micro-business consumers to give a maximum of 30 days' notice if they want to switch at the end of a contract. Currently they face different notice periods depending on their choice of supplier, which could cause confusion.
- Since 2010 we have required suppliers to send their micro-business customers a renewal letter near the end of a fixed-term contract clearly setting out the new prices. We now want suppliers to go further by including on this letter the business's annual consumption and a comparison between the current prices and the new prices offered.
- Finally, we want micro-businesses to be assured that if they have provided notice to their supplier that want to leave, that this has been received. Suppliers will be required to confirm this in writing. This will ensure that the consumer stays on the right deal for them.

We think that these proposals will collectively help improve current practices and improve the quality of consumer engagement. These proposals complement the implementation of our RMR policies and the work of the DECC and Number 10 Small Business Energy Working Group.

Why we aren't proposing to ban automatic rollovers

We acknowledge that there have been calls from some quarters of the industry to ban automatic rollover contracts for business consumers. These have been largely due to concerns about the clarity of information provided to consumers when they

come to renew their contract and the higher prices that they are rolled onto. However, we think that if business consumers are clearly provided all the necessary information before they renew their contract, automatic rollover contracts could still be a valid option for some consumers. Particularly for those consumers who do not have time to negotiate a new energy contract.

We are also live to the fact that stopping automatic rollovers could mean some suppliers face higher exposure to short term wholesale price volatility, leading to an increase in their costs and higher prices. This could pose a barrier to entry for new entrants.

Next steps

We would like to hear your views on our proposals and have included draft changes to licence conditions to show how these would take effect. Our consultation closes on **11 April 2014**. Once we have considered responses, we intend to issue a statutory consultation with our final proposals.

1. Introduction

Chapter Summary

This chapter sets out the purpose and background to this document. We also explain our process and next steps.

Background

1.1. This consultation follows our earlier work during the Energy Supply Probe and the Retail Market Review (RMR) to improve protections for non-domestic consumers.

1.2. In April 2009 we originally proposed to remove suppliers' ability to automatically extend fixed-term contracts.³ However, significant concerns were raised by consultation responses. These included the potential impact on the dynamics of competition and risk of an overall increase in prices as suppliers would be more exposed to short term changes in the wholesale market price. We amended our proposal in June 2009.⁴ Instead, we proposed to restrict the conditions⁵ under which suppliers could automatically rollover contracts for micro-business consumers and limited their duration to a maximum of 12 months. In January 2010 this proposal was implemented by Standard Licence Condition (SLC) 7A.

1.3. The RMR has further strengthened protections for non-domestic consumers.⁶ We are extending the definition of a micro-business and have introduced new rules for contract dates on bills. We have also introduced enforceable Standards of Conduct.⁷ These standards require suppliers to treat micro-businesses fairly when they are given contractual information, wish to change supplier, are on a deemed contract, or receive a bill.

1.4. Responses to our RMR consultations from some consumer groups and third party intermediary (TPI) representatives expressed concerns about automatic rollovers and called for them to be banned. They said rollovers unfairly locked customers into fixed-term contacts at significantly higher prices than if they

³<https://www.ofgem.gov.uk/ofgem-publications/38361/energy-supply-probe-proposed-retail-market-remedies.pdf>

⁴<https://www.ofgem.gov.uk/ofgem-publications/38357/amendment-energy-supply-probe-proposals-relating-automatic-contract-rollovers-micro-business-consumers.pdf>

⁵ More details can be found in our factsheet:

<http://www.ofgem.gov.uk/Media/FactSheets/Documents1/energycontractsforbusinesscustomersfs.pdf>

⁶ More information on the RMR can be found on our website:

<https://www.ofgem.gov.uk/simpler-clearer-fairer/information-business-consumers>

⁷ <https://www.ofgem.gov.uk/press-releases/new-standards-conduct-suppliers-are-first-step-simpler-clearer-fairer-energy-market>

negotiated a new contract and that information from suppliers did not help consumers clearly understand the impact of rolling over. In March 2013 we said we would review the current rules.

DECC and Number 10 Small Business Energy Working Group

1.5. In July 2013 the Department of Energy and Climate Change (DECC) and Number 10⁸ convened a working group to help ensure micro-businesses can benefit from a fair and transparent energy market.⁹ Members of the group included Energy UK, the Federation of Small Businesses, the Forum for Private Business, Consumer Futures, Ofgem, and supplier and TPI representatives.

1.6. In December 2013 DECC published a communiqué setting out a number of supplier commitments.¹⁰ The group has looked at ways to improve the contract renewal process and will continue to look at ways to address transparency and fairness of the energy market for small businesses. Our proposals build on these commitments and ensure that all suppliers will have to adopt these measures. We support the group and welcome industry initiatives.

Market developments

1.7. Between July and August 2013 seven suppliers announced changes to their current use of automatic rollovers. British Gas, RWE npower, SSE, Scottish Power and E.ON will no longer offer fixed-term automatic rollover contracts to their small business customers. EDF will still offer a fixed-term rollover contract, but with no early termination fees. Opus Energy will allow customers to opt in to an automatic rollover contract when they agree a new contract. These announcements are summarised in table 1.1.¹¹

1.8. Based on a request for information (see 1.11) these seven suppliers have an estimated market share in April 2013 for micro-business meter points of 96 per cent for electricity and 89 per cent for gas.








⁸ Number 10 refers to the Prime Minister's Office at 10 Downing Street.

⁹ In this document we use the term 'market' and 'markets' as shorthands for referring to different segments of the energy sector. For the avoidance of doubt these terms are not intended to describe or otherwise suggest the approach that may be taken by Ofgem for the purposes of market definition in competition law investigations.

¹⁰ <https://www.gov.uk/government/publications/small-business-energy-working-group-communiqué>

¹¹ For more details refer to supplier websites.

Table 1.1: Supplier announcements on automatic rollovers

Supplier	Date	Removed auto rollovers?	Date of change for customers		Detail
			New	Existing	
	17 July 2013	Yes	Sept 2013	June 2014	Customers given a choice of alternative offers with their renewal. The default product has a variable rate and 30 days notice.
 <small>An RWE company</small>	6 Aug 2013	Yes	April 2014	Nov 2014	Customers at the end of their contract will be offered a choice of fixed or variable-term products. These will not include a rollover provision unless specifically requested.
	16 Aug 2013	Yes	April 2014	April 2014	SSE will have in-depth discussions with the Federation of Small Businesses, Consumer Futures and others to discuss a new approach to contract renewals.
	20 Aug 2013	No	-	-	Customers who do not contact EDF before their contract end will be moved to EDF's Easy Fix tariff. This will freeze their prices for a year, with no exit fees.
	23 Aug 2013	Yes	April 2014	April 2014	Customers who do not take another fixed-term contract will be transferred to E.ON's cheapest evergreen tariff, with no exit fee.
	27 Aug 2013	Yes	April 2014	Late 2014	Renewal letters are sent by recorded delivery.
	30 Aug 2013	No	April 2014		Opus will give all new small business customers a choice of contract. At the end of the initial fixed period it will roll onto: (i) a variable rate with a 30-day notice period, or (ii) another 12 month fixed-rate term.

1.9. As most of these announcements will not become effective until later in 2014, we are yet to see the effect of these changes, including how the prices of variable-term contracts will compare to fixed-term contracts or how suppliers will notify customers of price changes. However, we encourage suppliers to consider our proposals in this consultation when making these changes.

Our process

Call for evidence

1.10. We issued a call for evidence on 13 June 2013. We asked for comments on current practices for contract renewals and automatic rollovers. A summary of responses is included in Appendix 3 and non-confidential responses are published on our website.¹²

Information request

1.11. In August 2013 we sent a request for information (RFI) to non-domestic suppliers. The aim of the RFI was to obtain an overview of the average prices and number of micro-business consumers on different types of fixed-term and variable contract. We also asked for copies of information sent to consumers after they agreed a contract and when a contract came up for renewal. A summary of our analysis is provided in Appendix 4.

Stakeholder event

1.12. In December 2013 we invited suppliers and consumer groups to an event to present our findings from the RFI and get feedback on our initial policy options. The minutes and material from this meeting are published on our website.¹³

Next steps

1.13. Please respond to this consultation by **11 April 2014** to nondomestic.rollovers@ofgem.gov.uk. Responses may also be posted to Meghna Tewari, Retail Market Policy, Ofgem, 9 Millbank, London SW1P 3GE. After assessing the responses, we intend to publish our final proposals and a statutory consultation later this year.

1.14. Responses will be published on our website. We would prefer to receive responses in an electronic form so they can be easily placed on our website. Respondents that do not wish their response to be published should clearly mark it as not for publication.

¹² <https://www.ofgem.gov.uk/publications-and-updates/open-letter-automatic-rollovers-non-domestic-market-%E2%80%93-call-evidence>

¹³ <https://www.ofgem.gov.uk/publications-and-updates/non-domestic-automatic-rollovers-%E2%80%93-stakeholder-event>

2. Automatic rollovers and contract renewals

Chapter Summary

This chapter outlines the current rules and describes our proposals to improve the contract renewal process for micro-business consumers.

Question 1: Do you agree with our proposal to reduce the maximum termination notice period to 30 days?

Question 2: Do you agree with our proposal to include current prices and annual consumption on contract renewal letters?

Question 3: Do you agree with our proposal to require suppliers to acknowledge termination notices received from a customer? Do suppliers already do this?

Question 4: Do you agree with our proposed implementation dates?

Question 5: Do you have views on the proposed amendments to standard licence condition 7A in Appendix 2?


The current process

2.1. Most business consumers have fixed-term energy contracts, typically between one and three years. Our request of information (RFI) indicated that in April 2013, 81 per cent of micro-business customers for electricity (74 per cent for gas) had a fixed-term contract.

2.2. Between 120 and 60 days before the end of a fixed-term contract a supplier must send a micro-business consumer a renewal letter. This letter must describe any new fixed-term offer and what will happen if the consumer does not contact the supplier to accept it, negotiate a new deal or tell them they want to switch supplier. If the consumer does not contact their supplier before the date specified in the contract, usually 30 days after receiving the renewal letter, the contract can be automatically extended for up to 12 months with any new terms (including prices) applying from the renewal date.

Issues we have identified

2.3. On the basis of the information gathered during our review we have identified the following concerns with the current automatic rollover process for micro-businesses:



Proposals for non-domestic automatic rollovers and contract renewals

- Rollover prices are, on average, a third higher than negotiated prices. Around a quarter of micro businesses are on fixed-term contracts that have been rolled over.¹⁴
- Renewal letters typically do not indicate the impact of any price increase before a contract is extended.
- Termination notice periods vary, which may cause confusion for consumers switching between suppliers.
- Some consumers have reported that they do not receive renewal letters, and they do not know if their termination notifications to suppliers have been accepted.

2.4. Together these can reduce the ability of micro-business consumers to fully assess their options when they come to renew their energy contract. Our proposals are therefore aimed at addressing these areas.

Our proposals

2.5. Following implementation of our proposals all micro-business consumers would receive a renewal letter from their supplier around 60 days before a fixed-term contract ends. This letter would include their annual consumption details and a comparison between prices under the current fixed term and prices which would apply if they did not respond to the letter or terminate the contract before a specified date. Consumers would have the right to provide notice to terminate their contract at the end of the fixed-term, any time up to 30 days before the contract expires. If they do decide to end their contract, suppliers will be required to acknowledge receipt of termination notice promptly.

2.6. Below we explain the detail, rationale and potential implementation timescale for these proposals. We are keen to hear your views on the potential costs and benefits.

Maximum termination notice period of 30 days

What

2.7. We propose to amend existing rules to allow a maximum termination notice period of 30 days.¹⁵ This would reduce the current maximum from 90 days.

¹⁴ See Appendix 4 for further detail.

¹⁵ Suppliers may have a notice period of less than 30 days.

2.8. Suppliers will have to send renewal letters to micro-business consumers around 60 days before a fixed-term contract ends.

Why

2.9. Suppliers currently have termination notice periods that vary between 30 and 90 days. An RFI in 2012 showed that over half of non-domestic suppliers have a notice period of 60 days or more. This variation may create confusion among consumers, particularly if they have switched suppliers.

2.10. In our recent quantitative research¹⁶ a significant minority of businesses with a fixed-term contract stated they did not know the month their contract ended (13 per cent) or their renegotiation or termination window (17 per cent). A further 36 per cent of businesses with a fixed-term contract knew approximately when they were able to renegotiate their contract.

2.11. Once our Retail Market Review (RMR) policy of contract dates on bills comes into effect on 31 March 2014 we would expect consumer knowledge of these dates to improve. We also consider a more consistent approach to termination notice periods will further simplify the contract renewal process for micro-business consumers.

2.12. As part of the commitments from the DECC and Number 10 working group (see 1.6) seven Energy UK members have already agreed to a common 30 day termination notice period for micro-business consumers. We encourage other suppliers to adopt this change before the proposed amendment to our licence conditions.

Price comparison and annual consumption on renewal letters

What

2.13. We propose that the renewal letter must include the prices paid by the consumer under the current fixed term, alongside the new prices which would apply from the renewal date. This letter must also include the consumer's annual consumption details (or a best estimate). As per the existing obligations of standard licence conditions 7A and 7B this information must be set out in plain and intelligible language and communicated fairly.

¹⁶ Quantitative Research into Non-domestic Consumer Engagement in the Energy Market, Element Energy and The Research Perspective, December 2013.
<https://www.ofgem.gov.uk/publications-and-updates/quantitative-research-non-domestic-consumer-engagement-energy-market>

Why

2.14. We expect this additional information to focus the consumer's attention on the impact of not choosing to contact their supplier when their contract ends. This will help them make informed decisions on whether or not to negotiate a new contract or accept the contract offered by the supplier. Energy UK members have also committed to provide customers with a factsheet that sets out the termination process in full.

2.15. Price is the main reason for businesses choosing to switch supplier. Nearly eight of out of ten SMEs surveyed by Datamonitor¹⁷ in 2013 considered price as the only factor affecting their decision to renew. In our quantitative research price-related factors were the most relevant reasons for switching.¹⁸

2.16. This proposal would also give the consumer the annual consumption information necessary to calculate the impact of any price change. Our research indicated that although over 60 per cent of micro-businesses in the survey reviewed their consumption at least once every year, 14 per cent never reviewed it.¹⁹

2.17. This additional information will align the content of the renewal letter more closely with the 'End of Fixed-term Notice' introduced by the domestic RMR.²⁰ Unlike this notice for domestic consumers, we are not proposing a personal projection.²¹

Supplier acknowledgement of termination notices

What

2.18. Suppliers must give customers confirmation in writing²² within five working days of receiving a termination notice.

¹⁷ Datamonitor B2B Energy Buyer Research H1 2013. Datamonitor define an SME as a business consumer spending less than £50,000 per year on electricity or gas.

¹⁸ Element Energy and The Research Perspective, 2013.

¹⁹ Element Energy and The Research Perspective, 2013.

²⁰ See page 102 of the Retail Market Review – final domestic proposals <https://www.ofgem.gov.uk/ofgem-publications/39350/retail-market-review-final-domestic-proposals.pdf>

²¹ The personal projection (or estimated annual cost) uses a consumer's actual consumption or, where this is unavailable a best estimate, to estimate what they would pay for their energy over the next 12 months, assuming they take no action in the meantime.

²² This can include by email if the customer has expressed a preference for electronic communication.

Why

2.19. Suppliers and consumer groups at our stakeholder event in December 2013 thought this was already good practice. Nevertheless, customers have told us they have been rolled over when a termination notice has already been submitted.

2.20. This should be relatively simple for suppliers to implement, while providing an important audit trail and assurance to micro-business consumers that their contract will not be automatically extended. Based on current practice we think that five working days is a suitable period, but we welcome your views.

Implementation

2.21. These proposals would be implemented through changes to the existing licence conditions 7A.8, 7A.11, 7A.12 and 7A.14, a new licence condition 7A.12C and consequential amendments to the definition of 'Annual Consumption Details' in SLC 1.²³ They would apply to all micro-business consumers.

2.22. We propose these changes would take effect from 31 August 2014. For contracts entered into before 31 August 2014, the proposal for a maximum termination notice period of 30 days would apply when a micro-business consumer enters into a new contract, or when the contract is extended in any way.

²³ Draft licence condition amendments for all proposals are included in Appendix 2.

3. Deemed and out-of-contract terms

Chapter Summary

Our views on the current situation for customers on deemed and out-of-contract terms.

Question 6: Do you agree that the current licence conditions provide sufficient protection to consumers on deemed contracts?

Question 7: Do you agree that more consistent use of terms across suppliers would benefit consumers?

Question 8: Should suppliers be able to object to the transfer of a deemed consumer with outstanding debt?

What are deemed and out-of-contract terms?

3.1. Typically a deemed contract arises where a person moves into a new property and consumes electricity or gas without agreeing contractual terms with a supplier. The circumstance where a deemed contract occurs is set by relevant legislation.²⁴ It could also arise when a fixed-term contract ends and there are no explicit provisions for the period immediately after.

3.2. Suppliers may alternatively apply out-of-contract (OOC) terms when a fixed-term contract ends but the customer does not switch supplier or agree a new contract. The supplier has to send the terms to the customer before the fixed-term contract ends. Suppliers have told us they may also charge OOC rates to customers with a poor credit rating. OOC rates are not defined in legislation or in our licence conditions.

How are these linked to automatic rollovers?

Our concerns

3.3. Deemed and OOC terms are relevant to automatic rollovers as consumers that opt out of an automatic rollover and terminate their contract may be moved to one of these contracts. Some business consumers and consumer groups have told us that they believed deemed and OOC prices are too high.

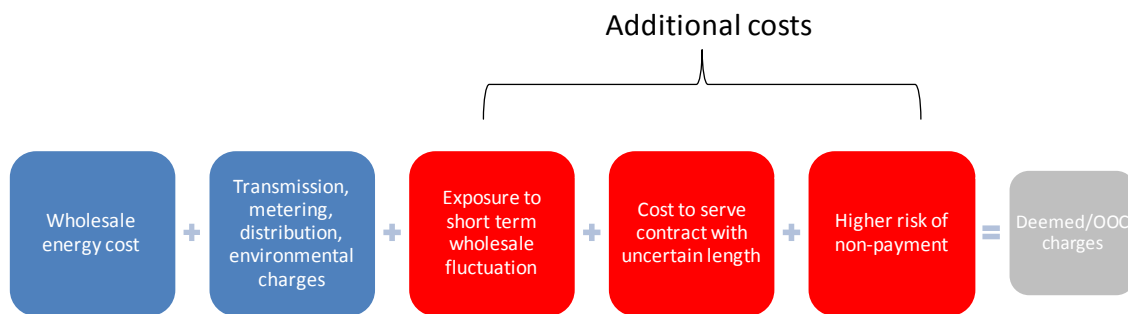
²⁴ Schedule 2B paragraph 8(1) of the Gas Act and Schedule 6 paragraph 3(1) of the Electricity Act.

Current practice

3.4. Our request for information (RFI) showed that deemed and OOC prices were significantly higher than those offered for negotiated contracts. An annual deemed electricity bill was typically 82 per cent more expensive than an equivalent acquisition contract and 69 per cent more expensive for gas.²⁵

3.5. Although suppliers have different methodologies for calculating their deemed and OOC rates, these higher prices are generally attributable to three main factors, shown in Figure 3.1 below.

Figure 3.1: Typical components of deemed and OOC charges



Source: Ofgem, 2013

3.6. Suppliers face additional costs when purchasing electricity or gas on contracts with an uncertain duration, as this exposes them to more volatile prices. For customers on fixed-term contracts, suppliers can purchase at a fixed price in advance (see 4.6 for more detail).

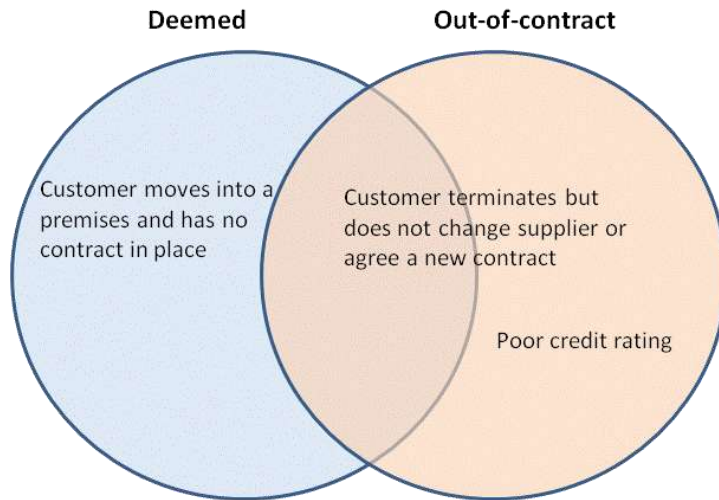
3.7. Suppliers highlighted the higher risk of non-payment as the reason for higher deemed and OOC rates. One estimated that half of deemed customers are in debt and the average balance owed by those who left was £1,500. For deemed contracts, suppliers cannot object to the transfer of a customer with outstanding debt. Some suppliers have indicated that deemed prices could be lower if they were able to object for debt.

3.8. A significant number of micro-business consumers are on deemed or OOC rates; an estimated 10 per cent for electricity and 11 per cent for gas. In the extreme, consumers had been on these rates for over 10 years. Over half had been on these types of contract for more than a year (see figure 1.5 in Appendix 4).

²⁵ See Appendix 4 for further detail of the RFI.

3.9. Some suppliers apply deemed rates for both deemed and OOC circumstances, while others have two distinct products. This overlap is shown in Figure 3.2 below.

Figure 3.2: Circumstances where suppliers apply deemed and OOC terms



Source: Ofgem, 2013

Current rules

Deemed contracts

3.10. Where a customer is supplied on the basis of a deemed contract,²⁶ SLC 7.3 states that the suppliers must take “all reasonable steps to ensure that the terms of each of its Deemed Contracts are not unduly onerous”.

3.11. Under SLC 7.7 suppliers must also take all reasonable steps to provide the customer with the principal terms of the deemed contract. They must also tell customers that other contracts may be available and how to obtain information about such contracts.

²⁶ On 26 October 2009 we published guidance to provide greater clarity on whether a deemed contract is likely to exist. <https://www.ofgem.gov.uk/ofgem-publications/38477/guidance-deemed-contracts-standard-licence-condition-7.3-gas-and-electricity-supply-licences.pdf>

Standards of Conduct

3.12. The RMR introduced enforceable Standards of Conduct (SOC), with effect from 26 August 2013. They require suppliers to treat micro-businesses fairly when they are given contractual information, wish to change supplier and receive a bill. Their scope also includes all matters relating to deemed contracts, including the charges for electricity or gas. Suppliers should therefore treat micro-businesses fairly with regard to deemed contracts. This would include actively communicating clear information about deemed contracts and their terms.

3.13. Under the SOC a supplier would not be regarded as treating a micro-business consumer fairly if their actions or omissions significantly favour the interests of the licensee and also give rise to a likelihood of detriment. The SOC do not prevent suppliers from exercising their right to do something as long as the process and way of exercising that right is fair and consistent with the SOC principles.

Our views

3.14. At this stage we do not propose to provide additional guidance or prescribe a methodology for calculating deemed or OOC charges. Nevertheless, there are a number of areas where we think suppliers could improve their processes by:

- consistent use of terminology for deemed and OOC terms by all suppliers
- publishing deemed and OOC contract terms on their website²⁷
- reviewing deemed and OOC terms regularly and notifying customers promptly when terms change

3.15. Energy UK will be working with their members and consumer groups in 2014 to develop standard terms for the non-domestic market, including deemed and OOC. We encourage all relevant parties to be involved in the process and adopt any agreement on a voluntary basis.

3.16. Suppliers need to ensure they comply with the relevant licence conditions. Our assessment of the seriousness of a potential breach will be made in accordance with our enforcement guidelines.²⁸ Our approach to enforce the SOC will also include

²⁷Some suppliers already publish their deemed terms on their website. The Electricity and Gas Acts require licensees to “publish, in such a manner as he considered appropriate for bringing it to the attention of persons likely to be affected by it, a notice stating the effect of the scheme or revision”.

²⁸ <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines-complaints-and-investigations>. Our enforcement guidelines are currently being revised and we expect to publish a consultation in 2014 as part of our wider enforcement review.

considering whether a reasonable person, intent on complying with the SOC, would have acted in the way the supplier did with the consumer.²⁹

3.17. Moreover, our proposals set out in this document will help non-domestic consumers manage concerns associated with deemed or OOC rates. If a supplier is rolling the consumer onto a deemed or OOC rate at the end of their fixed term contract, then the proposed information requirements will make any price differentials clear to the consumer and act as a prompt for them to negotiate a new contract.

²⁹ <https://www.ofgem.gov.uk/ofgem-publications/74749/implementationoftheretailmarketreviewnon-domesticproposals-decisiontomakelicencemodifications.pdf>

4. Options we considered

Chapter Summary

We have considered a range of policy options as part of our review. This chapter outlines these alternatives and why we are not proposing to ban automatic rollovers.

Question 9: Do you consider there are any other options we have not considered?

Question 10: Do you agree that we should not ban automatic rollover contracts?

Question 11: Can you estimate the potential costs and benefits (in £) of our preferred options? Please consider the initial implementation and ongoing costs where possible.

Question 12 Are there any other impacts we have not identified?

Introduction

4.1. This chapter explains the initial set of options we considered and describes their main benefits, risks and unintended consequences. We have not published a separate impact assessment (IA) at this stage.³⁰ The rationale for our preferred options is described in more detail in chapter 2.

4.2. While we do not currently have sufficient information to quantify the costs and benefits of these proposals, we are keen to receive estimates in response to this consultation.

Why we aren't proposing to ban automatic rollovers

Choice for consumers

4.3. Although some stakeholders support a ban on automatic rollovers, we still think business consumers that do not want to contact their suppliers may prefer a fixed-price 12 month rollover to the alternative of a variable contract. One supplier has already introduced a fixed-price contract extension of 12 months that allows a customer to leave any time without termination fees. We do not wish to inhibit such options for business consumers.

³⁰ In October 2013 we published an update to our impact assessment guidance. <https://www.ofgem.gov.uk/publications-and-updates/impact-assessment-guidance>

4.4. Our quantitative research³¹ asked respondents who had renewed their contract with their current supplier or had their contract rolled over about their satisfaction with the renewal process. This research found that the majority (83 per cent) of these respondents reported they were satisfied with the experience of renewing their contract. There was no significant difference in the level of satisfaction between those who negotiated a new contract with an existing supplier (83 per cent) and those who had been rolled over (86 per cent). Although a small subset of all consumers claimed they had been rolled over without their knowledge (2 per cent) it was not possible to look separately at their level of satisfaction, as the sample size was too small.

4.5. Following the announcements of suppliers (see table 1.1) and using data from our request for information (RFI), we estimate that a minority of micro-business consumers (five per cent for electricity and less than two per cent for gas) will remain on automatic rollover contracts.

Hedging risk

4.6. Having a large proportion of customers on fixed-term contracts allows a supplier to hedge³² their risk of short-term changes in wholesale prices for electricity and gas. If a small supplier has a high degree of uncertainty as to how many customers it is likely to have for the next 12 months, it will be unable to hedge its demand effectively.

4.7. Suppliers that do not operate rollovers are likely to have more customers on variable-term contracts. Due to greater uncertainty about customer numbers, they would have to purchase more electricity or gas on the near term market, one to two months ahead of delivery. One independent supplier has said a variable term contract costs around five per cent more than a fixed-term contract. Additional costs could be passed through, leading to higher prices and reducing their ability to offer competitive rates.

4.8. To help independent suppliers reduce their hedging costs and encourage competition, we are now introducing a 'Secure and Promote' licence condition to make access to wholesale markets easier. The new licence condition will take effect on 31 March 2014.³³

³¹ Element Energy and The Research Perspective, 2013.

³² A 'hedge' is a transactions that fixes the future price of a good or service, and thereby removes exposure to the daily (or spot) price of a good or service. This enables a supplier to reduce the risk of short term price movements.

³³We published our final decision on 23 January 2014. <https://www.ofgem.gov.uk/ofgem-publications/85716/wholesalepowermarketliquidity-decisionletter.pdf>

Retail Market Review (RMR) implementation

4.9. From 31 March 2014 all suppliers to micro-businesses must include the contract end date and last date of termination on all bills and statements of account. Most suppliers and consumer groups welcomed these measures.

4.10. Once implemented this will give consumers regular prompts for when they need to review their contract, and should help to reduce instances of them inadvertently rolling over. According to our recent research only a small proportion of business consumers are rolled over without their knowledge (see 4.4). We are yet to see how effective this policy will be in improving micro-business understanding of the key dates of their contract.

4.11. As we stated in our RMR final proposals, we will be closely monitoring how suppliers implement these policies.

Initial options

4.12. At our stakeholder event (see 1.12) we sought feedback from supplier representatives and consumer groups on our initial policy options. We grouped these into three main areas: terminations, renewals and contracts. Below we briefly describe the potential benefits, costs and unintended consequences of these options. We also consider a 'do nothing' option and any distributional effects. Our preferred options are described in more detail in chapter 2.

4.13. These proposals are likely to require suppliers to develop IT systems. In our IA of the final RMR non-domestic proposals we estimated that implementation of our new SLC 7A rules would incur initial costs to suppliers of £3.7m and ongoing costs of £1.2m per year.³⁴ Approximately £2.6m of the initial costs were attributed to systems development. We do not have specific costs for these proposals, but are keen to receive estimates from suppliers.

Do nothing

4.14. The current contract renewal process and our concerns are described in 2.2. We are wary of the risk of consumer confusion due to the different approaches suppliers have taken to automatic rollovers (see 1.7) and we do not think they address these concerns. If we did nothing suppliers could still have a range of termination notice periods and renewal processes. This would mean it may continue to be difficult for non-domestic consumers to engage effectively at the end of a fixed-term contract.

³⁴ See page 37, table 3.2 of The Retail Market Review – Impact assessment for the final non-domestic proposals. <https://www.ofgem.gov.uk/ofgem-publications/39354/rmrimpactassessmentnon-domestic22032013.pdf>

4.15. We think that bringing more consistency to the renewal and termination processes will do more to address these concerns than limiting contract choices for micro business consumers.

Renewal options

4.16. We considered:

1. Renewal letters to include current prices and new prices offered. **[our recommended option]**
2. Renewal letters to include current annual bill and a personal projection for the next year.
3. Renewal letters sent by recorded delivery.³⁵
4. Additional reminder notice sent to the consumer before the last termination date.

4.17. Options 1 and 2 have similar benefits, as they would both help micro-business consumers understand the effect of a price change and the impact of not contacting their supplier at renewal. Option 2 would go further by including a personal projection, similar to the domestic RMR rules.³⁶ Both these options could lead to more customers contacting their supplier to negotiate a new contract, or consider switching supplier and maintain competitive pressure on suppliers.

4.18. Suppliers indicated that option 2 could be particularly costly, as it would require coordinating information from different databases. They highlighted a risk that adding requirements of the renewal letter could result in too much information and ultimately confusing consumers.

4.19. Although option 3 would highlight the importance of the renewal letter, it was also cited as being expensive for suppliers to implement. It could also cause frustration if the customer were not at the premises to sign for receipt. However, two suppliers have decided to send their renewal letters to customers using recorded delivery.

4.20. One supplier already sends a simple reminder letter to its customers, akin to option 4. Suppliers said it could be expensive to differentiate customers between those that had and had not responded to the first renewal letter. There is a risk that a consumer that had not taken action after the renewal letter may ignore any further reminders.

³⁵ This would require a signature from the receiver to confirm receipt.

³⁶ See Chapter 3 of the Retail Market Review – final domestic proposals.

<https://www.ofgem.gov.uk/ofgem-publications/39350/retail-market-review-final-domestic-proposals.pdf>

Termination options

4.21. We considered:

1. Maximum termination notice period of 30 days. ***[our recommended option]***
2. Termination notification from customer must be acknowledged by the supplier. ***[our recommended option]***
3. No termination notification has to be provided by the customer – fixed-term contract expires at its end date.

4.22. Option 1 has benefits to consumers in bringing consistency across the market to termination notice periods. As noted in 2.12, most Energy UK members have already committed to introducing a 30 day termination notice period.

4.23. Option 1 may affect suppliers' energy purchasing if they currently have a notice period of more than 30 days. Those suppliers would also incur costs to change their terms and conditions and internal processes, such as the date that renewal letters are sent to customers. There is a risk that some consumers may prefer to receive a renewal letter 90 or 120 days before the contract ends. Suppliers generally agreed that option 2 was good practice and has minimal costs.

4.24. Option 3 could simplify the renewal process for consumers as they would not need to notify their existing supplier if they wanted to terminate their contract. Suppliers said that this option would create significant uncertainty for them, ultimately leading to higher prices.

Contract options

4.25. We considered:

1. Allow customers to opt-in to an automatic rollover provision when they agree a new contract.
2. Allow customers to exit a rolled over contract with no termination fee.
3. Ban automatic rollover contracts. Customers move to relevant OOC terms when fixed-term ends.

4.26. Option 1 would benefit customers who preferred an automatic rollover contract. Suppliers indicated recording consent would increase their costs. They argued that customers may find it difficult to opt in to a future contract without knowing the full terms and conditions that would apply.

4.27. There is a risk that TPIs would have an incentive not to opt customers in, as more customers on variable contracts with a short notice period would give them additional business opportunities.

4.28. Option 2 could benefit consumers, as they would still have prices fixed for a year but could also leave at any time without penalty. One supplier has decided to adopt this model. Nevertheless, there is a risk that the costs of this proposal would be spread across all customers. It would also undermine the hedging benefits for smaller suppliers from automatic rollovers.

4.29. Of the three, option 3 was considered to be the most beneficial to consumers by stakeholders in the group. However, they highlighted the risk that it could result in more consumers on higher OOC prices. This option would also need consumers to actively contact their supplier to be effective; otherwise they could remain on OOC terms for long periods. Our reasoning for not choosing this option is discussed in more detail from 4.3.

Other impacts

4.30. We do not expect our proposals to have any impact on sustainable development, security of supply, the environment, or any distributional impacts not already identified above. However, we invite your views on any potential impacts we have not identified.

Appendices

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Appendix 1 - consultation response and questions

1.1. We'd like to hear your view on any of the issues in this document.

1.2. We especially welcome responses to the questions which we have set out at the beginning of each chapter heading. These are repeated below.

1.3. Responses should be received by **11 April 2014** and sent to:

Meghna Tewari
Senior Economist
Retail Markets Policy
9 Millbank
London
0207 901 7000
nondomestic.rollovers@ofgem.gov.uk

It would be helpful if you could submit responses by email and in writing.

1.4. Unless they are marked confidential, we'll publish all responses in our library and on our website www.ofgem.gov.uk. You may ask us to keep your response confidential. We shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. If you'd like your response to remain confidential, clearly mark it to that effect and include the reasons for confidentiality. Please restrict any confidential material to the appendices to your response.

1.6. Once we've considered the responses to this consultation, we intend to publish our final proposals and statutory consultation. Any questions on this document should be directed to:

Meghna Tewari
Senior Economist
Retail Markets Policy
9 Millbank
London
0207 901 7000
nondomestic.rollovers@ofgem.gov.uk

CHAPTER 1: Introduction

No questions

CHAPTER 2: Automatic rollovers and contract renewals

Question 1: Do you agree with our proposal to reduce the maximum termination notice period to 30 days?

Question 2: Do you agree with our proposal to include current prices and annual consumption on contract renewal letters?

Question 3: Do you agree with our proposal to require suppliers to acknowledge termination notice received from a customer? Do suppliers already do this?

Question 4: Do you agree with our proposed implementation dates?

Question 5: Do you have views on the proposed amendments to standard licence condition 7A in Appendix 2?

CHAPTER 3: Deemed and out-of-contract terms

Question 6: Do you agree that the current licence conditions provide sufficient protection to consumers on deemed contracts?

Question 7: Do you agree that more consistent use of terms across suppliers would benefit consumers?

Question 8: Should suppliers be able to object to the transfer of a deemed consumer with outstanding debt?

CHAPTER 4: Options we considered

Question 9: Do you consider there are any other options we have not considered?

Question 10: Do you agree that we should not ban automatic rollover contracts?

Question 11: Can you estimate the potential costs and benefits (in £) of our preferred options? Please consider the initial implementation and ongoing costs where possible.

Question 12 Are there any other impacts we have not identified?

Appendix 2 – draft licence conditions

The purpose of this appendix is to provide stakeholders with an indication of how Ofgem envisages transposing the proposals into licence conditions. Whilst we have sought to provide as comprehensive licence condition drafting as possible, the licence conditions are intended to be working drafts. As such, we would welcome comments from stakeholders and will be considering appropriate methods of seeking further engagement. The table below provides a summary of each licence condition (in numerical order) that would be modified or inserted in respect of these proposals.

Licence condition	Status	Proposal
1.3	Amendment to definition of "Annual Consumption Details"	Price comparison and annual consumption on renewal letters
7A.8	Amendments to existing provisions	Price comparison and annual consumption on renewal letters
7A.11	Amendments to existing provisions	Maximum termination notice period of 30 days
7A.12	Amendments to existing provisions	Maximum termination notice period of 30 days
7A.12C	New	Supplier acknowledgement of termination notices
7A.14	Amendments to existing provisions	Maximum termination notice period of 30 days

Proposed modifications to standard condition 1

The text below shows the envisaged modifications to standard condition 1. Insertions are shown by underlined text in red and deletions by strikethrough text.

Annual Consumption Details means:

- (a) where the ~~Domestic~~ Customer has held their Domestic Supply Contract or Non-Domestic Supply Contract (as applicable) for at least 12 months and the licensee has obtained actual meter readings (including meter readings provided by the ~~Domestic~~ Customer and accepted by the licensee in accordance with standard condition 21B) which can reasonably be considered to cover the whole of that 12 month period, the quantity of ~~E~~lectricity/gas which was treated as consumed at the ~~Domestic~~ Customer's Domestic Premises or Non-Domestic Premises (as applicable) during the previous 12 months on the basis of those meter readings; or
- (b) where the ~~Domestic~~ Customer has held their Domestic Supply Contract or Non-Domestic Supply Contract (as applicable) for:
 - (i) less than 12 months; or
 - (ii) at least 12 months and the licensee has not obtained actual meter readings (including meter readings provided by the ~~Domestic~~ Customer and accepted by the licensee in accordance with standard condition 21B) which can reasonably be considered to cover the whole of that 12 month period,

the licensee's best estimate of the quantity of ~~E~~lectricity/gas that the ~~Domestic~~ Customer may be expected to consume during a 12 month period having regard to any relevant information that is available to the licensee or which the licensee could otherwise have reasonably ascertained (including any actual meter readings that have been obtained and which cover part of the previous 12 months);

Proposed modifications to standard condition 7A

The text below shows the envisaged modifications to standard condition 7A. Insertions are shown by underlined text in red and deletions by strikethrough text.

Condition 7A. Supply to Micro Business Consumers

Identification and treatment of Micro Business Consumers

7A.1 If the licensee intends to:

- (a) enter into a Non-Domestic Supply Contract with a Customer; or
- (b) extend the duration of a Non-Domestic Supply Contract (including the duration of any fixed-term period which may form part of a Contract of an indefinite length)

the licensee must either take all reasonable steps to identify whether that Non-Domestic Customer is a Micro Business Consumer, or deem that Non-Domestic Customer to be a Micro Business Consumer.

7A.2 Where any Contract or Contract extension as described in paragraph 7A.1 is entered into with a Non-Domestic Customer that has been identified as, or deemed to be, a Micro Business Consumer, that Contract shall be a "Micro Business Consumer Contract" for the purposes of this Condition.

7A.3 The licensee must not include a term in a Micro Business Consumer Contract which enables it to terminate the Contract or apply different terms and conditions to that Contract during a fixed-term period on the grounds that the Customer no longer satisfies the definition of Micro Business Consumer.

Notification of Micro Business Consumer Contract terms and other information

7A.4 Before the licensee enters into a Micro Business Consumer Contract, it must take all reasonable steps to bring the following information to the attention of the Micro Business Consumer and ensure that the information is communicated in plain and intelligible language:

- (a) a statement to the effect that the licensee is seeking to enter into a legally binding Contract with the Micro Business Consumer; and
- (b) the Principal Terms of the proposed Contract.

7A.5 The licensee must ensure that all the express terms and conditions of a Micro Business Consumer Contract are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

- 7A.6 Where the licensee enters into, or extends the duration of, a Micro Business Consumer Contract for a fixed-term period, it must prepare a statement (hereafter referred to as a "Statement of Renewal Terms") which:
- (a) is set out in Writing;
 - (b) is drafted in plain and intelligible language;
 - (c) displays the following information in a prominent manner:
 - (i) the date the fixed-term period is due to end, or if that date is not ascertainable the duration of the fixed-term period;
 - (ii) the Relevant Date, or if not known at the time of providing the Statement of Renewal Terms, a description of how the Relevant Date will be calculated by reference to the end of the fixed-term period;
 - (iii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee at any time before the Relevant Date in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed-term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed-term period which currently applies;
 - (iv) a postal and Electronic Communication address to which the Customer may send a notification in Writing for that purpose; and
 - (v) a statement explaining the consequences of the Micro Business Consumer not renewing the Micro Business Consumer Contract or agreeing a new Contract before the Relevant Date.
- 7A.7 Where the licensee enters into or extends the duration (including the duration of any fixed-term period) of a Micro Business Consumer Contract, it must take all reasonable steps to provide the Micro Business Consumer with the following information within 10 days, or do so as soon as reasonably practicable thereafter:
- (a) a copy of all the express terms and conditions of the Micro Business Consumer Contract; and
 - if the Micro Business Consumer Contract contains a fixed-term period, the Statement of Renewal Terms.
- 7A.8 On or about 30 days before the Relevant Date, the licensee must provide the Micro Business Consumer with:
- (a) the Statement of Renewal Terms (unless the licensee has already prevented the Micro Business Consumer from extending the duration of the Micro Business Consumer Contract);

- (b) a copy of any relevant Principal Terms that might apply to the Micro Business Consumer after the fixed-term period of the Micro Business Consumer Contract ends, including:
 - (i) terms that would apply in the event the Customer does nothing;
 - (ii) terms that would apply if the Customer sends (or has already sent) a notification in Writing before the Relevant Date to prevent renewal of the Micro Business Consumer Contract but does not appoint another supplier;
- (c) a statement displaying the Charges for the Supply of Gas/Electricity:
 - (i) which apply to the Customer in respect of the current fixed-term period as at the Relevant Date; and
 - (ii) which would apply to the Customer on expiry of the fixed-term period of the Micro Business Consumer Contract in each of the situations described in sub-paragraphs 7A.8(b)(i) and 7A.8(b)(ii);
- (d) the Customer's Annual Consumption Details.

7A.9 Where pursuant to paragraph 7A.8 the licensee is required to provide a Micro Business Consumer with any relevant Principal Terms, it must ensure that the Principal Terms are:

- (a) set out in Writing; and
- (b) drafted in plain and intelligible language.

7A.10 Where pursuant to paragraph 7A.8(b) the licensee provides a Micro Business Consumer with any offers of terms that relate to Charges for the Supply of Electricity, it must ensure that at least one offer is made in Writing which may be accepted at any time before the Relevant Date.

Information on Bills etc

7A.10A Where the licensee has entered into a Micro Business Consumer Contract for a fixed-term period, the licensee must provide the information specified in paragraph 7A.10B on each Bill and statement of account and display that information in a prominent position and ensure that it is drafted in plain and intelligible language.

7A.10B The specified information is:

- (a) the date the fixed-term period of a Micro Business Consumer Contract is due to end;

- (b) where the licensee has entered into a Micro Business Consumer Contract for a fixed-term period and it may, in accordance with that Micro Business Consumer Contract, be extended for a further fixed-term period:
- (i) the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Consumer Contract);
 - (ii) a statement to the effect that the Micro Business Consumer may send a notification in Writing to the licensee before the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Consumer Contract) in order to prevent the licensee from extending the duration of the Micro Business Consumer Contract for a further fixed-term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed-term period which currently applies; and
- (c) where the licensee has entered into a Micro Business Consumer Contract for a fixed-term period and it does not have the ability to extend that Micro Business Consumer Contract for a further fixed-term period:
- (i) the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed-term period which currently applies; and
 - (ii) a statement to the effect that this is the latest date the Micro Business Customer could give notice in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed-term period which currently applies.

Length of notice periods in Micro Business Consumer Contracts

7A.11 The notice period for termination of a Micro Business Consumer Contract by a Micro Business Consumer must be no longer than 390 days.

7A.12 Paragraph 7A.11 is without prejudice to the licensee's ability to enter into a Micro Business Consumer Contract with a Customer for a fixed-term period which is longer than 390 days.

Termination of Micro Business Consumer Contracts which do not include a fixed-term period

7A.12A Without prejudice to any notice period that complies with paragraph 7A.11, in relation to any Micro Business Consumer Contract that does not include a fixed-term period, the licensee must ensure that the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.

Termination of Micro Business Consumer Contracts which include a fixed-term period

7A.12B In relation to any Micro Business Consumer Contract which includes a fixed-term period, the licensee must ensure that:

- (a) a Micro Business Consumer is entitled to give notice of termination before the Relevant Date (or, where applicable, such a later date as may be specified in the Micro Business Supply Contract) in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed-term period which currently applies; and
- (b) without prejudice to any notice period which complies with paragraph 7A.11, if, at the end of any fixed-term period, a Micro Business Consumer is not subject to a further fixed-term period, the Micro Business Consumer is entitled to give notice to terminate the Micro Business Consumer Contract at any time.

Acknowledgement of receipt of termination notice

7A.12C If the licensee receives notice of termination in accordance with 7A12.A or 7A.12B it must take all reasonable steps to notify the Micro Business Consumer in writing within 5 Working Days of receipt of such notice of termination, or as soon as reasonably practical thereafter, that such notice of termination has been received.

Extending the duration of Micro Business Consumer Contracts

7A.13 Where the licensee has entered into a Micro Business Consumer Contract for a fixed-term period, it may only extend the duration of that Contract for a further fixed-term period if:

- (a) it has complied with paragraphs 7A.7 and 7A.8;
- (b) the Micro Business Consumer has not sent the licensee a notification in Writing before the Relevant Date in order to prevent it from extending the duration of the Micro Business Consumer Contract for a further fixed-term period and in order to terminate the Micro Business Consumer Contract with effect from the end of any fixed-term period which currently applies; and
- (c) the duration of the further fixed-term period is 12 months or less.

Definitions for condition

7A.14 In this condition:

“Micro Business Consumer” means a Non-Domestic Customer:

(a) which is a "relevant consumer" (in respect of premises other than domestic premises) for the purposes of article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268); or

(b) which has an annual consumption of not more than 100,000 kWh.
[Electricity only]

which has an annual consumption of not more than 293,000 kWh.
[Gas only]

"Relevant Date"

means the date which is ~~at least 30 days, and no longer than 90 days,~~ before the date any fixed-term period of a Micro Business Consumer Contract is due to end.

Appendix 3 – summary of responses to our call for evidence

1.1. On 13 June 2013 we issued a call for evidence, which closed on 11 July 2013. We received 27 responses. All non-confidential responses are published on our website.³⁷

Consumers and consumer groups

1.2. Most consumers favoured banning automatic rollovers and all thought regulatory intervention was needed. A consumer mentioned they would prefer to be on deemed rates for a few months while searching for a better deal rather than being rolled on to a 12-month contract. Another consumer who supported an automatic rollover ban argued that even brokers do not fully understand the terms of some contracts.

1.3. The responses from consumer groups were mixed. One was strongly in favour of the ban. It argued that micro-businesses behave in similar ways to domestic consumers and should be offered the same level of protection.³⁸

1.4. Another consumer group supported a ban, as long as high out-of-contract rates were appropriately addressed. It also argued that suppliers should consider evergreen contracts for micro-businesses. Although it thought prices for these contracts could be higher than a fixed-term contract, it expected this to give micro-businesses the flexibility they want. An evergreen contract could also be the default contract that a customer would be rolled on to, enabling businesses to leave the supplier at any time.

1.5. One consumer group was against a blanket ban on automatic rollovers. They said some businesses could benefit from not having to negotiate a new contract, as it allows them to focus on other aspects of their business. It recommended that suppliers include in the renewal letter the percentage increase in energy costs resulting from an automatic renewal. It also recommended that when a micro-business is automatically rolled over, it receive a cooling-off period of 30 days after the receipt of the first bill. This would give businesses another opportunity to negotiate a better contract.

Suppliers

1.6. Suppliers were mostly against banning automatic rollovers. However, after the call for evidence closed, seven suppliers (see table 1.1 in chapter 1) announced

³⁷ <https://www.ofgem.gov.uk/publications-and-updates/open-letter-automatic-rollovers-non-domestic-market-%E2%80%93-call-evidence>

³⁸ The RMR prohibits auto rollovers for domestic consumers.

<https://www.ofgem.gov.uk/publications-and-updates/retail-market-review-final-domestic-proposals>

that they would be changing their current process for automatic rollovers. None of the smaller suppliers supported a ban on automatic rollovers.

1.7. One respondent recommended that suppliers should allow a customer to terminate early and provide flexibility around the renewal date. Another supplier recommended that renewal letters be sent by recorded delivery, in line with its current practice.

1.8. The main arguments against banning automatic rollovers were:

- The current rules are clear and effective. Customers are aware of the renewal process, and the new Retail Market Review (RMR) policies deal with any minor problems remaining.
- Banning rollovers would make some expensive RMR policies redundant. Specifically the requirement on suppliers to introduce contract termination notice dates on bills.
- More customers will use switching sites and brokers, which could be problematic in the absence of a market wide TPI code of practice.
- Banning automatic rollovers would remove an important consumer choice. Some small businesses do not want to negotiate a new contract because they do not have the time or their energy costs are low. There would be an additional burden of search costs for these businesses.
- The domestic energy market is dominated by variable tariffs, and the market share of independent suppliers is still small as they cannot deal with the volatility of wholesale prices. Because of this volatility smaller non-domestic suppliers cannot easily offer competitively priced variable contracts to micro-businesses. A requirement to do so would significantly alter their business models. Removing automatic renewals would therefore increase the costs of small suppliers and reduce competition.

Third party intermediaries (TPI)

1.9. Most TPI responses were in favour of banning automatic rollovers. One argued that customers moving to deemed or OOC rates was preferable in the short term as the customer could still shop around or negotiate a better deal.

1.10. Several TPIS noted examples where renewal letters were sent to the wrong address or, addressed to the wrong person, or the customer did not receive a renewal letter at all.

1.11. One TPI indicated that if automatic renewals were banned, Ofgem would have to commit to regulating the default rates.

1.12. A TPI not in favour of banning automatic rollovers suggested that all renewal windows should remain open until 30 days before the contract end date, bringing consistency across the industry. It also recommended that all renewal letters should be sent by recorded delivery; once at 90 days before and again at 60 days before the contract end date.



Proposals for non-domestic automatic rollovers and contract renewals

1.13. The same TPI suggested suppliers offer a retention price to customers that contact them after they have been rolled over, reacting to an increase in their bills.

Appendix 4 – information request and analysis

Summary

1.1. In August 2013 we sent a request for information (RFI) to non-domestic suppliers. The aim of the RFI was to obtain an overview of the average prices and number of micro-business consumers on different types of fixed-term and variable contracts. This information included:

- average prices for acquisition, retention, rollover, evergreen, out-of-contract (OOC) and deemed contracts, offered on 1 April 2013;³⁹
- the number of meter points supplied under each contract type, on 1 April 2013;
- copies of renewal letters and key terms sent to micro-business consumers;
- explanations of how often suppliers reviewed deemed/OOC rates and how they are calculated;
- the number of days consumers were supplied on deemed/OOC rates;
- the number of complaints received about automatic rollovers and the total number of complaints received over a year period.

Analysis

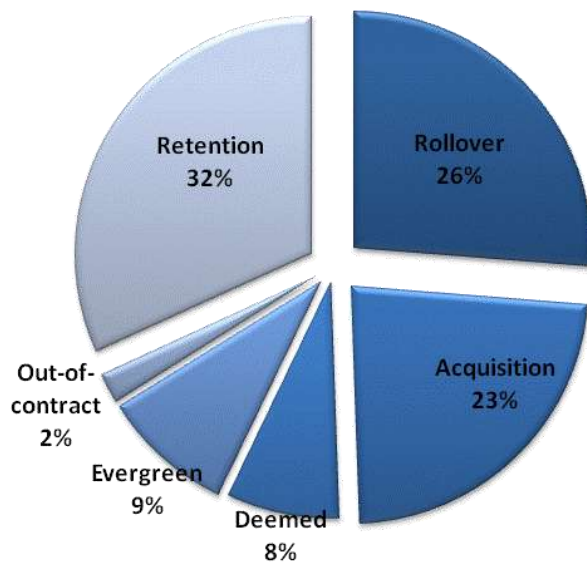
Contract types

1.2. An estimated 1.6 million electricity meter points are supplied to micro-businesses.⁴⁰ Of these, 81 per cent have fixed-term contracts and 10 per cent are on deemed or OOC rates. Figure 1.1 presents the split between different contract types.

³⁹ See glossary in Appendix 5 for definitions of contract types.

⁴⁰ Most non-domestic suppliers apply the supply licence requirements of SLC 7A to businesses larger than the definition of a micro-business.

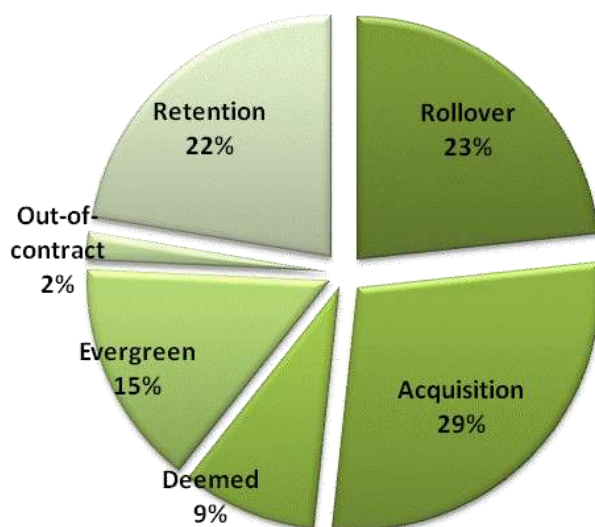
Figure 1.1: Contract types for micro-businesses – Electricity



Source: Ofgem, 2013

1.3. For gas, an estimated 0.55 million meter points are supplied to micro-businesses. Of these, 74 per cent are on fixed-term contracts and 11 per cent on deemed or OOC rates. Figure 1.2 shows the split between different contract types.

Figure 1.2: Contract types for micro-businesses – Gas



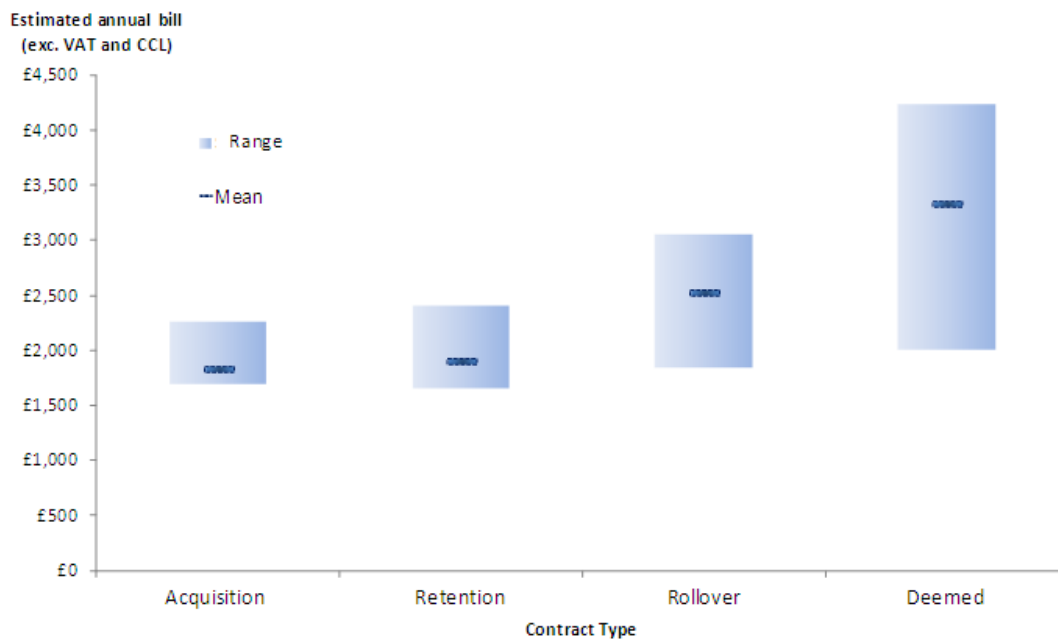
Source: Ofgem, 2013

1.4. Suppliers made announcements in July and August 2013 about ending automatic rollovers (see 1.7 in chapter 1). Based on the split of contract types in April 2013, we estimate that once these have been implemented rollover contracts could fall to five per cent of the total for electricity (from 26 per cent) and less than two per cent for gas (from 23 per cent).

Average annual bills

1.5. Figure 1.3 shows the average annual electricity bill for a typical micro-business consumer on each contract type.⁴¹ The shaded column indicates the range of annual bills across suppliers. Acquisition and retention contracts are broadly similar. However, on average a rollover contract was 33 per cent higher than a retention contract. The average deemed contract was 32 per cent more expensive than a rollover contract and 75 per cent higher than a retention contract.

Figure 1.3: Micro-business average annual electricity bill values and range



Source: Ofgem, 2013

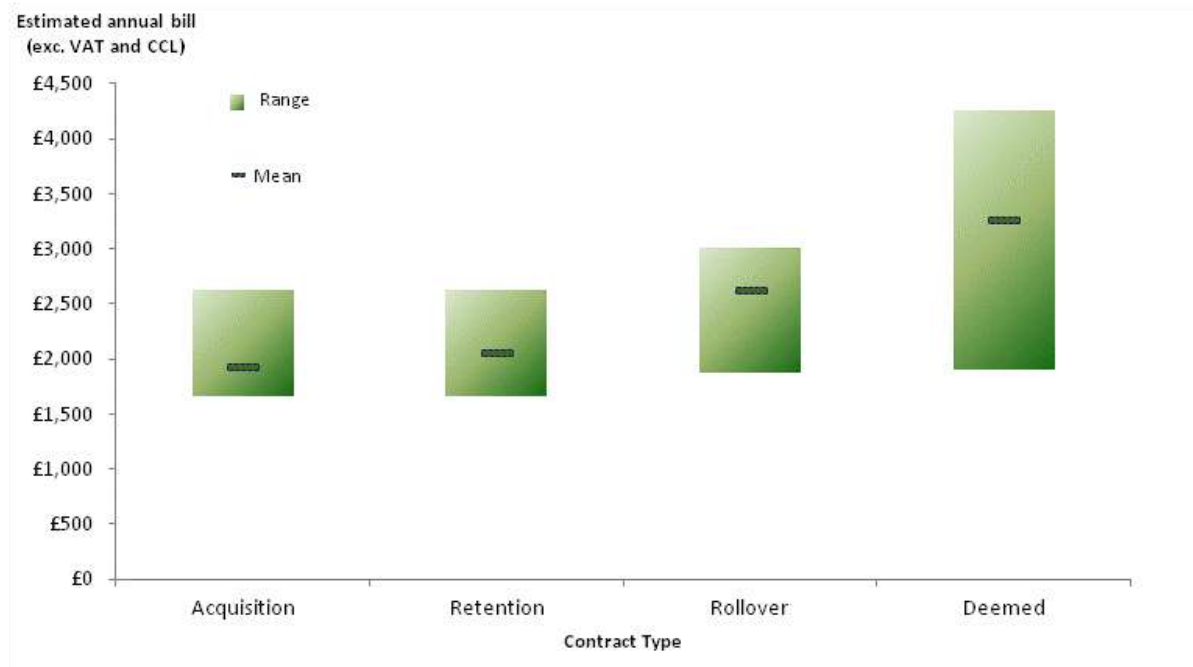
1.6. Average bills for micro-business gas consumers follow a similar pattern, shown in Figure 1.4 below.⁴² Again, acquisition and retention contracts are at a similar level.

⁴¹ Bill values are based on average prices available in April 2013 for one year contracts, in profile class 03 with annual consumption of 16,000 kWh.

⁴² Bill values are based on average prices available in April 2013 for one year contracts with annual consumption of 50,000 kWh.

The average rollover contract was 28 per cent more expensive than a retention contract. The average deemed contract was 24 per cent higher than an average rollover contract and 58 per cent higher than the average retention contract.

Figure 1.4: Micro-business average annual gas bill values and range

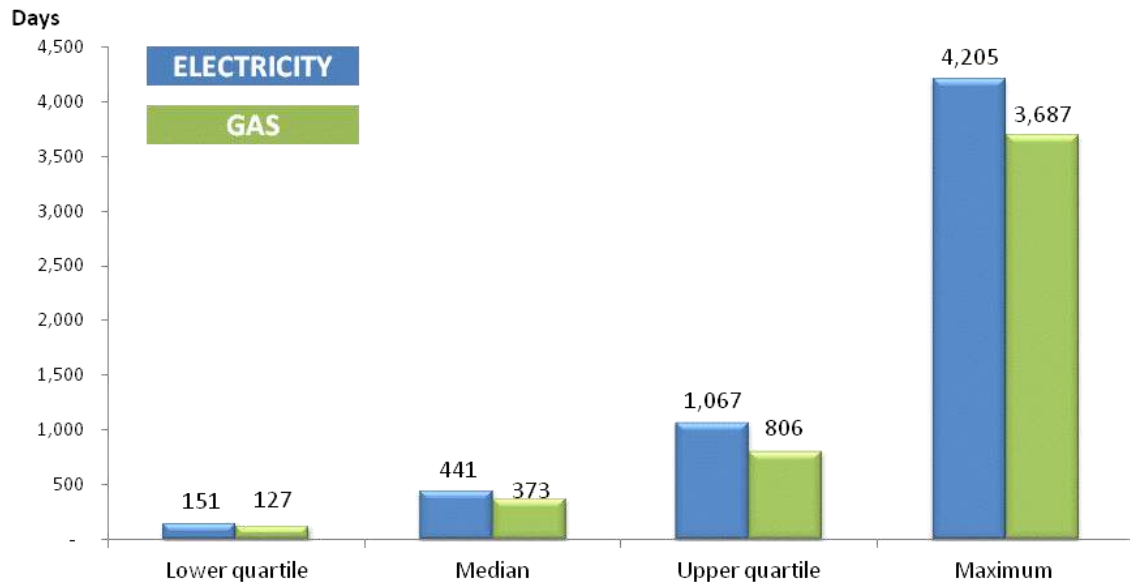


Source: Ofgem, 2013

Deemed and out-of-contract rates

1.7. As seen from Figure 1.1 and 1.2, 10 per cent of electricity and 11 per cent of gas meter points are on deemed or OOC rates. Figures 1.3 and 1.4 show how deemed rates are typically higher than acquisition or retention contracts. Figure 1.5 below shows that the median duration deemed consumers had stayed on these rates (as of 1 April 2013 across all suppliers) was over one year.

Figure 1.5: Duration of customers on deemed and out-of-contract terms, April 2013



Source: Ofgem, 2013

Appendix 5 - glossary

A

Acquisition contract

A fixed-term contract agreed with a new customer.

Automatic rollover

The practice of a supplier extending the duration of a fixed-term contract on expiry in accordance with the terms of the supply contract and without the express consent of the customer at the time of the contract renewal

D

Deemed contract

A deemed contract arises where a person moves into a new property and consumes electricity or gas without agreeing contractual terms with a supplier. The circumstance where a deemed contract occurs is set by relevant legislation.⁴³ It could also arise when a fixed-term contract ends and there are no explicit provisions for the period immediately after.

D

Evergreen contract

A contract for a period of indefinite length and which does not contain a fixed term period that applies to any of the terms and conditions of that contract. In this document it excludes any out-of-contract or deemed contract.

K

kWh

Kilowatt-hour is a unit used to measure energy consumption in both electricity and gas.

⁴³ Schedule 2B paragraph 8(1) of the Gas Act and Schedule 6 paragraph 3(1) of the Electricity Act.

M

Market share

The proportion of total customers (typically the number of meter points) within a market that are registered to a particular supplier.

Micro-business

A business that;

- consumes not more than 55,000 kWh of electricity per year, **or**
- consumes not more than 200,000 kWh of gas per year, **or**
- employs fewer than 10 persons (or full time equivalent) and whose annual turnover or balance sheet does not exceed €2m.

From 31 March 2014, the definition will be extended to a business that;

- consumes not more than 100,000 kWh of electricity per year, **or**
- consumes not more than 293,000 kWh of gas per year, **or**
- employs fewer than 10 persons (or full time equivalent) and whose annual turnover or balance sheet does not exceed €2m.

N

Non-domestic consumer

A consumer that uses energy wholly or mainly for commercial purposes.

O

Objection

A supplier can object to and block the transfer of supply of a customer's electricity or gas to another supplier under certain circumstances specified in the contract. These will typically be if the consumer is still in contract or in debt.

Out-of-contract

Suppliers may apply out-of-contract (OOC) terms when a fixed-term contract ends but the customer does not switch supplier or agree a new contract. The supplier has to send the terms to the customer before the fixed-term contract ends. Suppliers have told us they may also charge OOC rates to customers with a poor credit rating. OOC rates are not defined in legislation or in our licence conditions.

P

Profile Class

Where half-hourly metering is not installed, profile classes are used to provide an electricity supplier with an expectation as to how electricity will be consumed through the day. Domestic consumers are class 1 and 2. Non-domestic consumers are classes 3-8.

R

Retention contract

A new fixed-term contract agreed with an existing customer at the end of a fixed-term period. The consumer has explicitly opted in to another fixed-term, as opposed to being rolled over.

S

Standard licence condition (SLC)

The legally binding conditions that gas and electricity suppliers must meet to supply to domestic and non-domestic customers, in accordance with the Gas Act (1986) and Electricity Act (1989).

Switching

The process of changing gas or electricity supplier, or changing to a new tariff with the same supplier.

T

Termination procedure

The process of ending an energy supply contract.

Appendix 6 - feedback questionnaire

1.1. Consultation is at the heart of good policy development. We are keen to consider any comments or complaints about how this consultation has been conducted. We're keen to hear your answers to these questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?

1.2. Please add any further comments and send your response to:

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