



Making a positive difference
for energy consumers

Electricity and gas suppliers,
consumers,
Consumer organisations and
representatives and other
interested parties

Telephone: 020 7901 7000
Email: NonDomesticRetail@ofgem.gov.uk

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Dear colleagues,

Decision on review of non-domestic objections

This letter sets out our decision to retain the rules relating to switching objections for non-domestic consumers and our next steps. A summary of the issue, the work we carried out, and the results of our analysis are set out below. Further details of our analysis are provided in the accompanying Impact Assessment (IA).

We have concluded that the benefits of the current regime for business consumers outweigh its costs; therefore we are not making any changes to the existing objections provisions in the Gas or Electricity Supply Licences. However, in light of the Competition and Market Authority (CMA) recent findings on microbusinesses' barriers to market engagement,¹ we may consider investigating objections further in future, in relation to a narrower definition of microbusinesses.

Our analysis highlighted that there are some areas with residual consumer detriment, particularly with respect to microbusiness consumers. During our investigations, we found a number of concerns around compliance with Standard Licence Conditions (SLCs) which may be causing consumer detriment. This letter requests that suppliers review their compliance processes in these areas and announces our programme of enhanced monitoring.

Background

In our Forward Work Programme for 2015-16,² we committed to a review of objections. As a follow-up to our 2011 review,³ the current investigation responds to our commitment to revisit the objections policy and ensure it operates in the best interests of consumers.

Consumers who search for the best energy deal and switch are an important driver of competition between energy suppliers. As part of the existing switching process, gas and electricity suppliers are generally prohibited from objecting to a customer changing supplier, but may object in specific circumstances set out in the relevant SLCs. For non-domestic consumers, suppliers are permitted to object to the customer transfer where there is a provision in the contract that allows them to prevent the transfer and they may

¹ CMA, '[Energy Market Investigation: Final Report](#)', June 2016, Section 16.80.

² [Ofgem, 'Forward Work Programme 2015-16', March 2015.](#)

³ [Ofgem, 'The Retail Market Review: Non-domestic Proposals'](#), November 2011.

rely on this term at the time of the transfer request.⁴ The most common contract terms relied upon are those related to a customer being in a fixed term contract (78% of our sample across all business consumer sizes) or when a customer is in debt (18%). For the purpose of our review, we have focused on these types of objections.

As part of the upcoming programme of changes to move towards faster and more reliable switching,⁵ we have considered whether objections in both the domestic and non-domestic markets should be part of a redesigned switching process, or whether suppliers should develop other ways of managing risk.⁶ This letter sets out our decision in relation to non-domestic markets. We have also published our decision in relation to domestic markets.⁷

The review process

Our review aims to determine the role of objections in non-domestic retail energy markets and in particular to understand:

- (i) The impact of objections on consumer engagement,⁸ switching and competition more broadly.
- (ii) Whether objections represent an effective tool for management of risks in the non-domestic market, ie if they deliver consumer net benefits in terms of lower prices and better quality of service.

To inform our work, in February 2015, we published an open letter to seek initial views on abolishing objections in both the domestic and non-domestic markets, or other ways of enabling consumers to benefit from competition.⁹ We considered responses carefully and identified areas where further data was necessary to inform our policy conclusion. As a result, in November 2015, we issued a Request For Information (RFI) to seek more detailed information from non-domestic suppliers.¹⁰ Our RFI focused on:

- a sample of objections from each supplier
- suppliers' objections processes
- tariffs paid on different types of contracts
- information on debt and debt recovery
- hedging strategies and the types of contracts offered to consumers.

We requested data on business consumers of different sizes (ie microbusinesses¹¹ and larger industrial businesses) for both gas and electricity. The data submitted fed into our IA and other analysis which helped to inform our policy decision.¹² We supplemented the information received from the RFI submissions through bilateral meetings with stakeholders,¹³ as well as separate discussions to clarify some of this data.

⁴ A supplier can also object if: (i) it agrees with the customer that the transfer was initiated in error, (ii) in the case of electricity, if not all of the related meter points are being transferred together, or if there are outstanding charges in respect of Green Deal charges, and (iii) in the case of gas, transitional provisions exist for contracts formed before 2004.

⁵ Ofgem, [Smarter Markets Programme](#), February 2015.

⁶ These are: (i) contractual risks, where a customer leaves a fixed term contract before its end which brings additional costs in relation to the selling of (unconsumed) energy that was bought in advance, and (ii) credit risks, where a customer with outstanding debt leaves their current supplier.

⁷ Ofgem, [Decision on review of domestic and non-domestic objections](#), July 2016

⁸ With an understanding of how this changes according to the customer size.

⁹ Responses to our call for evidence can be found on our '[Supplier objections](#)' webpage.

¹⁰ Twenty-three suppliers, with a combined market share of 98% for electricity and 78% for gas.

¹¹ In line with the definition [SLC 7A.14](#).

¹² Paras 1.23-1.43 of the Impact Assessment.

¹³ This included several suppliers, consumer and industry representatives, and one third party intermediary. It was carried out over the period October 2015 to May 2016.

Our decision

Our IA found that the current objections regime delivers significant net benefits to business consumers, compared to a market without objections. As a result, we have decided that retaining objections is in the interests of business consumers.

However, our analysis also concluded that there are some areas with residual consumer detriment. This is with regard to microbusiness consumers and may be a result of non-compliance with existing SLCs.

In light of these conclusions, we will consider how best to address these findings within our overall compliance monitoring approach. We expect suppliers to review the compliance of their objections policies, particularly with respect to the SLCs in the key areas we identify below. In addition, we expect suppliers to review compliance with their broader obligations in terms of key communication they have to provide to microbusinesses both at point of sale and throughout the switching journey as non-compliance with these may indirectly give rise to objections.¹⁴

In light of the decision of the CMA to introduce price transparency measures for a subset of microbusinesses,¹⁵ and the effects this will have on this segment of the market, we may consider reviewing objections under a narrower definition of microbusinesses in future.

Retaining non-domestic objections

To inform our decision, we conducted our analysis in line with Ofgem's IA guidance.¹⁶ We evaluated the current regime of objections against the alternative of the same market where there are no objections. In conducting our analysis, we took into account the nature of energy as an essential service, as well as its unique characteristics in comparison to other sectors. We looked to quantify costs and benefits where possible but, when this was not possible, we made qualitative assessments. Our estimates conclude that there are quantified net benefits from keeping the current objections regime of £83.5-683m per year. One of the reasons for this large net benefit is that the benefits of the objections regime are felt by all consumers, whereas the costs affect only those who are objected to, or those deterred from switching by the presence of objections. Given the magnitude of these net benefits, we believe the unquantified costs are unlikely to change our overall conclusion to retain the current objections regime.

We set out the main costs and benefits below.

Quantified benefits

- We found that consumers benefit from lower bills as a result of suppliers being able to object to debt. Objecting to an indebted customer's request to transfer is an effective way for suppliers to manage bad debt and credit risk. Without objections, we consider that firms would expect to make a larger provision for bad debt, and this would be reflected in higher prices for all consumers. We quantified this as being the largest benefit (£40-409m per year).

¹⁴ For example, poor provision of contractual terms and conditions at point of sale can give rise to consumers wanting to exit their contract soon after agreeing them and this can lead to objections. SLC 7A sets the requirements for suppliers supplying energy to microbusiness in relation to notification of contract terms and conditions.

¹⁵ The CMA apply their price transparency remedy to a 'Relevant Segment' of the market. In the [Energy Market Investigation: Final Report](#), this is defined as non-domestic electricity consumers with single meter points meeting all of the following criteria: falling under profile classes 1 to 4; consumption threshold equal to or below 50,000kWh per year; and on simple meters. For non-domestic gas consumers, this applies to consumers with small supply points only, which will include microbusiness consumers with consumption levels of less than 73,200kWh per year.

¹⁶ Ofgem, '[Impact Assessment Guidance](#)', October 2013

- Consumers also benefit from lower bills because suppliers are able to object to transfer requests when businesses are still in their fixed term contract. Being able to object to those transfer requests allows suppliers to hedge their wholesale energy purchases for the duration of the contract, reducing wholesale price risk. We estimate the benefit of this reduced risk premium to be between £61.5-302.5m per year.

Non-quantified benefits

- We found that the objections regime provides a degree of protection for new, independent suppliers, which in turn facilitates increased competition and choice for business consumers. Without objections, competition in the non-domestic market may be restricted because smaller suppliers do not have the requisite capital to protect themselves against the risk of contracts being broken and debt left unpaid.
- We also found that objections provide protection for suppliers when supplying new businesses with no financial track record. These new businesses subsequently benefit by being able to enter into energy contracts more easily, given the absence of a duty to supply in the non-domestic market.

Quantified costs

- Our analysis of supplier submissions found that there is a cost to business consumers when their transfer is delayed resulting in the business paying higher rates until their transfer can take place. We determine that this costs business approximately £5m per year.
- Business consumers also face a cost as a result of transfer requests being permanently blocked. This cost is the loss of potential savings through not moving onto a better energy deal. We calculated that this costs businesses approximately £13m per year.

Non-quantified costs

- We believe that the biggest risk of the objections regime is the impact it may have on consumers' ability to switch and the resulting effect this has on competition in the non-domestic market.

Enhanced compliance monitoring

Existing conditions define when suppliers can object and the measures they should take if they do so.¹⁷ Further conditions provide protections for microbusinesses,¹⁸ including the Standards of Conduct (SoC).¹⁹

While we are not making any changes to the existing licence provisions, our analysis has highlighted areas of consumer detriment, especially in relation to compliance with consumer protection measures for microbusiness consumers.

For example, our data indicates that the rate of objections is much higher for microbusinesses compared to larger businesses; 30% and 12% respectively.²⁰ Furthermore, microbusinesses tend to see fewer objections withdrawn compared to larger businesses, 4% as opposed to 13%.²¹ In light of these key findings, we carried out further analysis on the ability of microbusinesses to get better energy deals, which we detail below.

¹⁷ Ofgem [Electricity and Gas Supply Licence Conditions](#), 14.2 & 14.3. Supply Licence Conditions also require that suppliers' comply with rules set out in industry codes, including Master Registration Agreement (MRA) and Supply Point Administration Agreement (SPAA).

¹⁸ Ofgem [Electricity and Gas Supply Licence Conditions](#), SLC 7A.

¹⁹ Ofgem [Electricity and Gas Supply Licence Conditions](#), SLC 7B.

²⁰ Excluding multiple objections raised for the same customer, which could be a result of multiple transfer requests being submitted on the part of the gaining supplier or third party intermediary.

²¹ An objection is withdrawn by a supplier when the customer has successfully resolved the reason for the objection or the initial objection was raised in error.

When analysing the reasons for higher rates of microbusinesses objections, we found that 83% were objected to for reasons relating to fixed term contracts, including termination procedures. The second most frequent reason for microbusiness objections was for debt (13%). The high rate of objections related to being in a fixed term contract indicates that microbusiness, even when engaged enough to attempt to switch supplier, may not be aware of their precise contractual terms and conditions. As such, if their transfer to a new supplier is delayed or blocked, consumers may end up paying higher tariff rates.

Microbusinesses' objections rates could be partly driven by customers trying to leave a contract whose terms and conditions are not satisfactory because of compliance failure with SLC 7A on information provided at the point of sale.²² One reason for the fewer number of objections withdrawn could be because the letters sent by suppliers to microbusinesses that explain the reason for objections are ineffective. As part of our broader non-domestic compliance monitoring work, it is our intention to consider enhancing our compliance monitoring in both of these areas.²³

Our IA highlighted that there are a number of changes taking place in the market that affect how the market functions and could lead to different benefits and costs of the objections regime in future. One set relate to changes introduced relatively recently and are still in the process of taking effect, and the other to potential future changes, ie CMA remedies on microbusinesses.

In recent years, our work has focused on improving microbusiness engagement and a number of protections were introduced to facilitate this.²⁴ Our review did not include an assessment of supplier compliance with our rules, but our IA highlighted that recent policy changes introduced by Ofgem may not have taken effect on the market yet.

Further compliance concerns arose regarding our SoC with respect to debt objections and termination notices. As such, we will enhance our monitoring of non-domestic industry compliance, taking into account the findings of our work on objections. Below, we highlight areas in which we may address compliance concerns.

Objections for debt

As a general principle, we expect that contractual terms that allow suppliers to prevent a customer transfer (in so far as they apply to microbusinesses) are made in accordance with the SoC.²⁵ Our review highlighted that some supplier practices and contractual terms did not meet our expectations.

Some suppliers told us that they apply no minimum or a very low minimum duration for outstanding debt when they consider whether to object on these grounds. We encourage suppliers to review their internal procedures in relation to their definition of outstanding debt. Where this relates to an objection, this may be susceptible to an assessment of 'fairness' under the SoC. When considering what is fair, we believe it is important that a consumer has been given reasonable opportunity to pay after receipt of the bill. It is also important that, where this term is relied upon for an objection, the debt requirements before switching have been made clear to the consumer in their principal terms and conditions, in line with the requirements of SLC 7A.

²² SLC 7A sets the requirements for suppliers providing energy to microbusinesses in relation to notification of contract terms and conditions, information on bills and notification of the termination period. Non-compliance with these provisions would be particularly harmful for microbusinesses compared to domestic consumers, as there is no cooling-off period for business contracts. Under the EU Directive on Consumer Rights (2011/83/EC), which came into effect 13 June 2014, domestic consumers have 14 calendar days to change their mind on a purchase, including an energy contract.

²³ Ofgem [Electricity and Gas Supply Licence Conditions](#), SLC 14.3

²⁴ Executive summary of our IA.

²⁵ The non-domestic SOC (SLC 7B) also covers customer transfer. Therefore, any contract term relied upon for an objection must be 'fair'

Change of tenancy flags

During our review, suppliers and a third party intermediary (TPI) told us that some incumbent suppliers do not check the validity of change of tenancy²⁶ (CoT) flagged transfer requests before raising an objection. We were also told that some TPIs will deliberately make false change of tenancy claims when submitting a transfer request so that their customer can attempt to break a contract and switch to a new provider.

Suppliers are reminded that they are required to verify transfer requests with a CoT flag before raising an objection. We are concerned about the practices that some suppliers and TPIs may be taking with respect to CoT flags and will keep this aspect of the objections regime under review.

Termination notices

Additionally, business consumers that want to move to a new supplier at the end of their fixed term contract are required to submit a termination notice to their current supplier before being able to switch. When we analysed supplier responses to our information request we found that 18% of microbusiness objections were because termination procedures had not been correctly followed, for example, the notification window had not been respected or the proposed transfer date was before the end of the fixed term contract. Our findings also prompted some concern with respect to how suppliers treat termination notices from customers and internal errors in processing notices.

We would therefore like to remind suppliers of the changes we introduced in April 2015, which simplify the termination process for consumers, and oblige suppliers to issue a statement of renewal terms. Since 30 April 2015:

- The maximum notice period for terminating a microbusiness contract has been reduced from 90 to 30 days.²⁷
- Suppliers must include the current prices, new prices and personalised annual consumption of customers on renewal letters for fixed term contracts to make comparisons easier.
- Suppliers must take all reasonable steps to acknowledge termination notices within five working days of receipt.

High rates of objections

Our analysis found that some suppliers had a significantly higher rate of objections than the industry average. We will take note of these cases as part of our compliance monitoring activities and consider our next steps in relation to those cases.

Enhanced data monitoring

As a result of our review, we also intend to enhance our monitoring of trends in non-domestic switching and objections. We will seek to improve the quality of data and information that we currently require from electricity distribution network operators (DNOs and iDNOs) and Xoserve for gas. This includes, for example, provision of data which more closely reflects our definition of microbusinesses. We will also consider requiring that non-domestic suppliers send us more detailed switching and objections information as part of our regular monitoring activities.

²⁶ A change of tenancy flag indicates to the incumbent supplier that the customer is a new owner or occupier of the premises and the incumbent supplier should have no valid grounds to object to the transfer of the customer to another supplier.

²⁷ There are a number of changes that have been more recently introduced by the CMA as part of their remedies. These are described in table 2.1 of our Impact Assessment.

Our next steps

In light of our findings we will consider the following areas for compliance monitoring:

- How suppliers communicate terms and conditions to business consumers, as well as their communication with a customer when an objection is raised.
- Suppliers' policies with respect to debt objections.
- Suppliers' policies and processes for termination of contracts.
- The high rate of objections seen for some suppliers.
- Whether suppliers are following the rules set out for change of tenancy flags.

We will also improve our monitoring activities to:

- Receive industry data that is better aligned to our definition of microbusiness.
- Have fuller market coverage of switching and objection activities, including by considering whether to place a requirement on suppliers to provide more detailed switching and objection information to Ofgem.

Yours sincerely

Anthony Pygram
Partner, Consumers & Competition
Ofgem