

Holders of Electricity Supply licences, licence exempt suppliers, Law Enforcement Organisations, Prosecutors, consumers and their representatives and other interested parties

*Promoting choice and value for
all gas and electricity customers*

Phone: 020 7901 7000
Email: Paul.Fuller@ofgem.gov.uk

Date: 2 November 2012

Dear Colleagues,

Decision on the criteria for authorising the disposal of electricity meters under Schedule 6, Paragraph 6 and Schedule 7, Paragraph 11 of the Electricity Act 1989

In certain circumstances where an electricity meter has been damaged or interfered with, electricity suppliers are permitted to disconnect the premises and remove the electricity meter. Before suppliers can dispose of or destroy such meters, they need the approval of Ofgem¹ and/or the National Measurement Office (NMO)².

Ofgem and the NMO consulted jointly in March 2012 on a proposed general authorisation for suppliers to dispose of or destroy 'relevant meters'³. Following consideration of the key issues raised in response to that consultation, Ofgem and NMO have decided to grant a general authorisation as set out in Annex 1. This will enable suppliers to dispose of electricity meters without seeking permission from Ofgem and the NMO on a case-by-case basis. The finalised authorisation is broadly in line with that consulted on in March 2012 apart from some drafting changes in relation to the reporting requirements. The reasons for this decision in light of views of respondents are set out in this letter.

Background

Under the Electricity Act 1989 ('the Act'), electricity suppliers have statutory powers⁴ to disconnect premises and remove an electricity meter where there is sufficient evidence (on the balance of probabilities) that a person has committed a specific offence under the Act by damaging or interfering with an electricity meter.

In addition, the Act requires authorisation to be given before relevant meters, which have been removed under these powers, are disposed of or destroyed. Paragraph 6 of Schedule 6 to the Act gives Ofgem the responsibility for authorising the disposal of *damaged meters*. Paragraph 11 of Schedule 7 to the Act gives the NMO, as an Executive Agency of the Department of Business, Innovation and Skills (BIS), the responsibility for authorising the

¹ In this document any references to Ofgem are to be treated as references to the Gas and Electricity Markets Authority

² In this document any references to the National Measurement Office are to be treated as references to the Secretary of State for Business, Innovation and Skills

³ An electricity meter removed by a electricity supplier pursuant to Paragraph 6 of Schedule 6 to the Electricity Act 1989 or an electricity meter removed by an authorised supplier pursuant to Paragraph 11 of Schedule 7 to the Electricity Act 1989

⁴ For further information on these powers, please see Ofgem's guidance on the use of disconnection powers in cases of meter tampering:

[http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/Open%20Letter%20on%20Theft%20Disconnections%20\(Final\).pdf](http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/Open%20Letter%20on%20Theft%20Disconnections%20(Final).pdf)

disposal of *meters that have been interfered with*. Further details of the relevant provisions of the Act are set out in Annex 2.

In March 2012, Ofgem and the NMO jointly consulted on a proposed general authorisation, under which suppliers would be permitted to dispose of or destroy relevant meters without seeking individual approval from either body, providing certain conditions were met⁵.

The joint Ofgem and NMO March 2012 Consultation

We received seven responses to the joint Ofgem and NMO consultation published in March 2012 ('the March 2012 consultation'). These responses were from suppliers, meter asset providers and trade associations. Responses have been published alongside this decision letter.

All respondents supported the intent of the proposed general authorisation. However, several respondents raised particular issues in relation to the specific conditions attached to that authorisation. We have considered each of these issues and the remainder of this section sets out our decision in respect of each issue raised.

Notifying the removal of all relevant meters to the police

Three respondents stated that the police should not have to be notified of every relevant meter removed. They cited, among other things, an anecdotal lack of interest from the police in taking possession of relevant meters and a lack of evidential value of some relevant meters, eg where the meter itself has been bypassed.

Ofgem and the NMO have discussed this issue with a representative of the Association of Chief Police Officers (ACPO)⁶. We continue to consider that it is appropriate for the police to be notified of every meter removed. This is because the Act creates specific criminal offences of damaging or interfering with electricity meters. The Act also gives suppliers the power to disconnect premises and remove a meter where they have enough evidence to prove, on the balance of probabilities, that one of these criminal offences has been committed. Given that a crime is likely to have been committed when a relevant meter is removed, the police and/or other relevant authorities should be notified to ensure that they can investigate further and take steps to preserve the meter as primary evidence. The police and/or other relevant authorities, rather than suppliers, must decide what constitutes relevant evidence.

The destruction or disposal of a meter may therefore prejudice a criminal investigation, an Ofgem investigation into whether a supplier is exercising their disconnection powers lawfully or a civil claim brought by a consumer (eg for breach of contract). It is important that appropriate safeguards are put in place to ensure such primary evidence is not disposed of or destroyed inappropriately. We consider that the conditions of the general authorisation, as consulted on, fulfil this requirement by requiring the police to be notified before the meter is disposed of or destroyed. We are therefore not amending the criteria in this regard.

Notifying 'other Relevant Authorities' of the removal of relevant meters

Some respondents requested clarification as to which 'other Relevant Authorities' should be notified in order to comply with the general authorisation. Some respondents also asked if Ofgem and the National Measurement Office were relevant authorities in this context.

We consider that, in general, Ofgem and the NMO are not relevant authorities for the purposes for complying with the requirements of the general authorisation. As was stated

⁵<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/Draft%20criteria%20for%20authorising%20the%20disposal%20of%20electricity%20meters.pdf>

⁶ <http://www.acpo.police.uk/>

in the March 2012 consultation, the Crown Prosecution Service (in England and Wales) and Crown Office and Procurator Fiscal Service (in Scotland) are other relevant authorities the Supplier would need to notify where applicable. However, the general authorisation does not preclude suppliers from notifying other relevant authorities of the removal of a meter, as appropriate. If current practice, guidelines, regulations or legislation dictates that some other relevant authority should be notified in certain circumstances then suppliers should continue to do so under the general authorisation.

The definition of 'notify'

Some respondents were concerned that the process of notifying the removal of relevant meters could be cumbersome. They cited, among other things, a need to report a crime to the police every time a meter is removed and obtain a crime reference number or some other form of acknowledgement from the police. This could be burdensome for both suppliers and the police or other relevant authorities.

As set out above, we consider this reporting to be necessary. However, we are keen to ensure that the regulatory burden is minimised. We have been liaising with ACPO ensure this balance is correct and set out the following clarifications in relation to compliance with the general authorisation:

- It is not necessary for the supplier to report the removal of the relevant meter to the police as a crime, eg to obtain a crime reference number. We do expect, as a minimum, that suppliers notify an appropriate member of the police.
- We expect suppliers to keep a record of their notifications to the police and any other relevant authorities, and any relevant correspondence received in response to such notifications. If a supplier does not receive a response within six months of the original notification⁷, they would be able to dispose of the relevant meters.
- If the police or other relevant authorities indicate that they intend to take possession of the meter but fail to do so, we would expect the supplier to make further enquiries to resolve the situation. If the supplier continues to get no response, then it may be appropriate for them to seek authorisation for disposal from Ofgem and/or the NMO on a case by case basis.
- Suppliers are not required to notify on a case by case basis. Given the volumes of meters involved, it may be preferable for notifications to be made in bulk form. We have provided an example of what a notification to the police *could* look like in Annex 3. This example would support bulk notification of meter removals and contains a sample paragraph making clear that a crime is not being reported. In this example, the notification is addressed to the Director of Intelligence, a position within each police force in England and Wales.
- Police forces in Scotland, with its different legal system and devolved responsibilities, may wish to be notified in a different manner to those in England and Wales⁸. We understand that the ACPO representative from England and Wales who we have been liaising with will be making contact with ACPOS in this regard.

The definition of 'disposal'

Many respondents asked for clarification as to what forms of disposal will be permitted under the authorisation. Concerns were raised that disposing of a relevant meter meant

⁷ And has satisfied the other conditions of the general authorisation, including maintaining appropriate records of the notification

⁸ The Scottish equivalent of ACPO is the Association of Chief Police Officers in Scotland (ACPOS): <http://www.acpos.co.uk/>

destroying the meter or disposing of the meter in a landfill rather than returning the meter to its owner, being re-used or being disposed of in an environmentally-friendly manner.

Ofgem and NMO's general, non-binding view is that the expression, 'destroy or otherwise dispose of'⁹ is likely to include the following¹⁰:

- Returning the meter to its owner, such as a Meter Asset Provider;
- Re-using the meter where the seals have not been tampered with;
- Re-certifying and re-using the meter where the seals have been tampered with; or
- Re-cycling the meter in an environmentally-friendly manner.

Disposal of gas meters and smart metering equipment

One respondent suggested that with the advent of smart metering, other equipment such as the communications hub¹¹ could be tampered with or damaged and therefore should be subject to a similar evidence retention requirement. One respondent also suggested that similar consideration should be given to the disposal of meters under the Gas Act.

While we acknowledge the respondents' suggestions, the Act specifically refers to authorising the disposal of electricity meters rather than any other metering equipment, and there is no corresponding provision in the Gas Act. Therefore, gas meters and other smart metering equipment (apart from the electricity meter itself) falls outside the scope of this authorisation. We note the ongoing work market participants are undertaking in relation to electricity and gas theft in general, and we encourage market participants to consider the above issues as part of this wider work.

The drafting of the general authorisation

Some respondents suggested amendments regarding the drafting of the general authorisation. We accept that the reporting requirements in the general authorisation, as consulted on, could have implied that reporting has to precede the disposal of meters, which could cause an unnecessary delay. We have therefore removed this requirement of the proposed general authorisation as set out in the March 2012 consultation. Instead, we will rely on our existing powers to collect information from suppliers in this regard.

We have also amended the requirement to send an annual signed written statement to Ofgem and the NMO to be both a backwards-looking reporting requirement and a forward-looking undertaking. This undertaking also requires suppliers to permanently retain records (previously part of requirement one) to reflect the forward-looking nature of this requirement. These drafting changes are reflected in the final text of the general authorisation.

Conclusion and next steps

Having considered responses to the March 2012 consultation, Ofgem and the NMO have decided to proceed with issuing a general authorisation for suppliers to dispose of or destroy relevant meters. The text of the final authorisation can be found in Annex 1. Provided the conditions of the general authorisation are met, suppliers are able to dispose of relevant meters without seeking individual approval from Ofgem or the NMO. Suppliers

⁹ As set out in Paragraph 6 of Schedule 6 and Paragraph 11 of Schedule 7 of the Act.

¹⁰ Ultimately a matter for the courts to interpret what 'destroy or otherwise dispose of,' means. Suppliers will need to take their own legal advice in this regard.

¹¹ The device that houses communications equipment which enables communication of data between meters and the central data and communications function: <http://www.decc.gov.uk/assets/decc/consultations/smart-meter-imp-prospectus/226-smart-metering-imp-comm-business.pdf>

are still able to seek approval from Ofgem and/or the NMO in individual cases if they wish to do so.

We also remind suppliers that, irrespective of this general authorisation, they should remain aware of their wider obligations in relation to the prevention and discouragement of the theft of electricity¹². Suppliers also need to ensure that they disclose information obtained under or by virtue of relevant statutory provisions (such as relevant statutory disconnection powers) in accordance with section 105 of the Utilities Act 2000¹³.

We will continue to engage with suppliers and other interested parties to assess the effectiveness of the general authorisation in light of experience of its implementation. We welcome any feedback suppliers or other stakeholders may have in this regard.

Yours faithfully

Colin Sausman
Partner, Retail Markets and Research
Ofgem

David Moorhouse
Assistant Director, Utilities Regulation
National Measurement Office

¹² Standard condition 12.1 of the Electricity Supply Licence

¹³ For these purposes, it is noted that one of the exceptions to the statutory restrictions on disclosure covers the disclosure of information 'in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings'. Suppliers will therefore need to reach their own views on whether their notifications to the police and other relevant authorities would fall within this exception

Annex 1 – General authorisation and Conditions

General authorisation by the Gas and Electricity Markets Authority and the Secretary of State¹⁴ for the purposes of sub-paragraph 6(4) of Schedule 6 and sub-paragraph 11(4) of Schedule 7 to the Electricity Act 1989

Whereas:

1. The Gas and Electricity Markets Authority ('the Authority') has the function under sub-paragraph 6(4) of Schedule 6 to the Electricity Act 1989 of authorising the destruction or disposal of a Relevant Meter removed by an Electricity Supplier.
2. By virtue of section 95 of the Energy Act 2008, the Secretary of State has the function under sub-paragraph 11(4) of Schedule 7 to the Electricity Act 1989 of authorising the destruction or disposal of a Relevant Meter removed by an Authorised Supplier.
3. The Authority and the Secretary of State consulted jointly in March 2012 on a proposed general authorisation for suppliers to dispose of or destroy relevant meters. We received seven responses to the consultation from suppliers, meter asset providers and industry bodies. All respondents supported the intent of the proposed general authorisation. However, several respondents raised particular issues in relation to the specific conditions attached to that authorisation. We have considered all the responses made in relation to the proposed general authorisation and have amended its conditions where we consider it to be appropriate.

Now therefore:

4. The Authority and the Secretary of State hereby issue a general authorisation in respect of the destruction or disposal of Relevant Meters in accordance with the conditions set out in the Schedule.
5. The general authorisation shall take effect on and from the date specified below and shall continue until revoked or amended by the Authority and the Secretary of State following consultation with suppliers and other relevant persons.

Dated the 2nd November 2012

Signed on behalf of the Authority by

Signed on behalf of the Secretary of State by

¹⁴ As the NMO is an Executive Agency of BIS, throughout this document the term 'Secretary of State' denotes the Secretary of State for Business, Innovation and Skills

SCHEDULE

Conditions for general authorisation

A Relevant Supplier may destroy or otherwise dispose of a Relevant Meter if:

(a) where Condition 1 applies:

- (i) Requirements 1 to 5 of Condition 1 have been complied with before the Relevant Meter is destroyed or otherwise disposed of; and
- (ii) The Relevant Supplier has complied with, or is satisfied that it will be able to comply with and ensures that it subsequently complies with, Requirement 6 of Condition 1;

or

(b) where Condition 2 applies,

- (i) Requirements 1 to 5 of Condition 2 have been complied with before the Relevant Meter is destroyed or otherwise disposed of; and
- (ii) The Relevant Supplier has complied with, or is satisfied that it will be able to comply with and ensures that it subsequently complies with, Requirement 6 of Condition 2.

Condition 1

Condition 1 applies where:

1. the Relevant Supplier has removed a Relevant Meter and notified the relevant police force and (where applicable) any other Relevant Authorities of why the Relevant Meter was removed (the 'Notification'); and
2. after 6 months of the date of the Notification a police force or (where applicable) another Relevant Authority has not taken possession of that meter as evidence, or otherwise indicated that they intend to do so or are still considering the issue.

Requirements of Condition 1

1. The Relevant Supplier takes all appropriate records of when the Relevant Meter was removed, the identity of that meter, and the steps taken to comply with the other requirements of Condition 1.
2. The Relevant Supplier has photographic evidence and other appropriate records to justify the removal of the Relevant Meter.
3. The Relevant Supplier has notified the relevant police force and (where applicable) any other Relevant Authorities of why the Relevant Meter was removed.
4. The Relevant Supplier has retained the Relevant Meter for 6 months from the date it notified the relevant police force and (where applicable) any other Relevant Authorities in accordance with requirement 3.
5. After 6 months from the date the Relevant Supplier notified the relevant police force and (where applicable) any other Relevant Authorities in accordance with requirement

3, the police force or (where applicable) another Relevant Authority has not taken possession of that meter as evidence or otherwise indicated that they intend to do so.

6. Immediately after the end of each calendar year the Relevant Supplier provides Ofgem and the National Measurement Office with a signed written statement, by a person authorised to act on behalf of the Relevant Supplier, to the effect that:

(a) Condition 1 applied during that year;

(b) the Relevant Supplier has complied with requirements 1 to 5 of Condition 1; and

(c) the Relevant Supplier undertakes to permanently retain all appropriate records of when each Relevant Meter was removed, the identity of each meter, and the steps taken to comply with Requirements 1 to 5 of Condition 1.

Condition 2

Condition 2 applies where:

1. the Relevant Supplier has removed a Relevant Meter and notified the relevant police force and (where applicable) any other Relevant Authorities of why the Relevant Meter was removed (the 'Notification'); and
2. within 6 months of the date of the Notification a police force or (where applicable) another Relevant Authority has taken possession of that meter as evidence or otherwise indicated that they intend to do so or are still considering the issue.

Requirements of Condition 2

1. The Relevant Supplier takes all appropriate records of when the Relevant Meter was removed, the identity of that meter, and the steps taken to comply with the other requirements of Condition 2.
2. The Relevant Supplier has photographic evidence and other appropriate records to justify the removal of the Relevant Meter.
3. The Relevant Supplier has notified the relevant police force and (where applicable) any other Relevant Authorities of why the Relevant Meter was removed.
4. Within 6 months of that date the police force or (where applicable) another Relevant Authority has taken possession of that meter as evidence or otherwise indicated that they intend to do so.
5. The Relevant Supplier has retained the Relevant Meter until the police force or (where applicable) another Relevant Authority has confirmed that the meter is no longer required as evidence.
6. Immediately after the end of each calendar year the Relevant Supplier provides Ofgem and the National Measurement Office with a signed written statement, by a person authorised to act on behalf of the Relevant Supplier, to the effect that:
 - (a) Condition 2 applied during that year;
 - (b) the Relevant Supplier has complied with requirements 1 to 5 of Condition 2; and

(c) the Relevant Supplier undertakes to permanently retain all appropriate records of when each Relevant Meter was removed, the identity of each meter, and the steps taken to comply with Requirements 1 to 5 of Condition 2.

Definitions

"Electricity Supplier"	has the meaning given in section 64(1) of the Electricity Act 1989;
"Authorised Supplier"	has the meaning given in section 64(1) of the Electricity Act 1989;
"Relevant Authority" / "Relevant Authorities"	includes (but is not limited to), where applicable, in Scotland, the Crown Office and Procurator Fiscal Service and in England and Wales, the Crown Prosecution Service;
"Relevant Supplier"	means in respect of Paragraph 6 of Schedule 6 to the Electricity Act 1989 the Electricity Supplier which removed a Relevant Meter pursuant to Paragraph 6 of Schedule 6 to the Electricity Act 1989 or in respect of Paragraph 11 of Schedule 7 to the Electricity Act 1989 the Authorised Supplier which removed the Relevant Electricity Meter pursuant to Paragraph 11 of Schedule 7 to the Electricity Act 1989;
"Relevant Meter(s)"	means an electricity meter removed by an Electricity Supplier pursuant to Paragraph 6 of Schedule 6 to the Electricity Act 1989 or an electricity meter removed by an Authorised Supplier pursuant to Paragraph 11 of Schedule 7 to the Electricity Act 1989.

Annex 2 – Relevant provisions of the Act

Paragraph 6 of Schedule 6 to the Electricity Act 1989 (damage to meters etc):

(1) A person who intentionally or by culpable negligence damages or allows to be damaged—

- (a) any electric line or electrical plant provided by an electricity distributor; or
- (b) any electricity meter provided by an electricity supplier,

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where an offence has been committed under sub-paragraph (1) by the occupier of any premises (or by the owner of the premises if they are unoccupied when the offence is committed) in relation to any electric line or electrical plant provided by an electricity distributor for making or maintaining a connection to the premises, the distributor may disconnect the premises.

(3) Where an offence has been committed under sub-paragraph (1) in relation to an electricity meter provided by an electricity supplier which is situated on any premises, by the occupier (or by the owner of the premises if they are unoccupied when the offence is committed), the supplier may disconnect the premises and may remove the meter.

(4) A meter removed under sub-paragraph (3) shall be kept safely by the supplier until the Authority authorises its destruction or disposal.

(5) The distributor or supplier shall not be under any obligation to reconnect (and in the case of a supplier to restore the supply to) any premises disconnected under sub-paragraph (2) or (3) until—

- (a) the offender is no longer the occupier or, as the case may be, the owner of the premises; or
- (b) the matter in consequence of which the premises were disconnected has been remedied.

Paragraph 11 of Schedule 7 to the Electricity Act 1989 (interference with meters):

(1) If any person intentionally or by culpable negligence—

- (a) alters the register of any meter used for measuring the quantity of electricity supplied to any premises by an authorised supplier; or
- (b) prevents any such meter from duly registering the quantity of electricity supplied,

he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where any person is prosecuted for an offence under sub-paragraph (1) above, the possession by him of artificial means for causing an alteration of the register of the meter or, as the case may be, the prevention of the meter from duly registering shall, if the meter was in his custody or under his control, be prima facie evidence (or in Scotland sufficient evidence) that the alteration or prevention was intentionally caused by him.

(3) Where an offence under sub-paragraph (1) above has been committed, the supplier may discontinue the supply of electricity to the premises until the matter has been remedied and remove the meter in respect of which the offence was committed.

(4) Where an authorised supplier removes a meter under sub-paragraph (3) above, he shall keep it safely until the Authority¹⁵ authorises him to destroy or otherwise dispose of it.

¹⁵ The effect of section 95 of the Energy Act 2008 is that this function has been transferred to the Secretary of State and this reference to the Authority is to be treated as a reference to the Secretary of State. The relevant Secretary of State is the Secretary of State for Business, Innovation and Skills and, in practice, this function has been delegated to the National Measurement Office (an Executive Agency of the Department for Business, Innovation and Skills)

Annex 3 – Example text of a notification of meter removal to the police

To: Director of Intelligence (name of relevant police force).

Pursuant to rules put in place by the Gas and Electricity Markets Authority and the Secretary of State for Business, Innovation and Skills (the Rules), we are writing to inform you that under the powers under the Electricity Act 1989, over the last month we have removed electricity meters from the below listed premises that are located within your force:

(List addresses and date of removal)

The meters at the above addresses were removed on the basis that we have sufficient evidence, on the balance of probabilities, to prove that an offence has been committed under:

- paragraph 6 of Schedule 6 to the Electricity Act 1989; and/or
- paragraph 11 of Schedule 7 to the Electricity Act 1989.

The purpose of this notification is to ensure that the police are in a position to consider whether to investigate these potential offences further.

[*Where applicable:* However, it is not our intention that this letter be construed as a request that these matters be recorded for crime reporting purposes. Whilst the meters have been removed on the above grounds, we are not requesting that the police should take steps to investigate these matters further. However, we appreciate that it is ultimately a matter for the police to consider whether potential offences should be investigated.]

In line with the Rules, and to facilitate your consideration of whether to investigate any of the potential offences further, the meters will now be retained for a period of 6 months from the date of this letter and are available for your inspection and further retention if required. After that period, the meters will be disposed of although photographic evidence will still be available if required. Any separate criminal offences, or any other issues of concern around the recovery of the meter have already been notified to the local police and meters associated with any such incident will be retained separately.