

Modification proposal:	Supply Point Administration Agreement (SPAA) Change Proposal (CP) 12/224: 'Theft of Gas Code of Practice'.		
Decision:	The Authority's ¹ decision is that this change proposal be made. ²		
Target audience:	SPAA Parties and other interested parties		
Date of publication:	20 February 2013	Date of Implementation:	1 March 2013

Background to the modification proposal

Theft of gas increases the costs paid by consumers and can have serious safety consequences. It also leads to a misallocation of costs among suppliers, which can distort competition and hamper the efficient functioning of the market. Suppliers and gas transporters also have significant powers to investigate theft and take action where theft is identified. This includes the power to disconnect and to levy charges. It is important that these powers are used responsibly.

In October 2010, Ofgem published an open letter providing guidance on the use of disconnection powers in relation to theft of gas and electricity.³ In this letter we noted the work to develop industry-wide, agreed processes for tackling energy theft, which included a common approach to theft disconnections and the need to ensure that customers' interests are protected. We welcomed and committed to support these developments whilst noting the potential to introduce new licence conditions to address these issues if the industry did not make improvements in these areas swiftly.

In March 2012, Ofgem completed its review of the gas theft arrangements and set out a package of reforms. Ofgem has now implemented some of these reforms through amendment to the gas supply licence and directing the implementation of the Theft Risk Assessment Service.

Our March 2012 document set out principles for an incentive scheme and signalled our support for other complementary measures to improve the arrangements for tackling gas theft. One of these suggested complementary measures was as an industry code of practice on conducting theft investigations.

In signalling our continued support for the development of a code of practice on theft investigations, we recognised both the work that had already gone into drafting a gas theft code of practice as well as the key role such a code could play in developing the detailed arrangements for investigating suspected gas theft.⁴

The change proposal

CP12/224 seeks to introduce a Mandatory SPAA Schedule which sets out obligations, best practice and provides information on the regulatory framework for suppliers and gas transporters in detecting, investigating and preventing theft of gas.

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

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

³ [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)

⁴ Our March 2012 concluded that a code of practice on theft investigations did not need to be mandated as part of the proposed new gas supply licence conditions given the work and commitment already shown by the industry in this area.

The 'Theft Code of Practice' outlines the relationship between suppliers and gas transporters where theft of gas is suspected and/or confirmed. It sets out a number of obligations and minimum service standards that parties are expected to meet and reporting measures to support this.

Respondents' views

CP12/224 was considered at the SPAA Change Board on 20 December 2012.

All voting members, six of whom represented both Domestic and Industrial and Commercial (I&C) Suppliers and one who represented Gas Transporters, were in favour of CP12/224 being implemented. This equated to 100 per cent of the weighted votes cast by relevant parties. The threshold for a change proposal being accepted by relevant SPAA parties is 65%.⁵

Parties also voted on and accepted the proposed implementation date of 1 March 2013.

The Authority's decision

After considering the views of the Change Board and the Change Report issued to Ofgem on 16 January 2013 we have concluded that:

- implementation of the change proposal will better facilitate the achievement of the relevant objectives of the SPAA⁶, and
- consenting to the modification being made is consistent with the Authority's principal objectives and statutory duties.

Reasons for the Authority's decision

We have considered the change proposal and taken into account the unanimous vote of the SPAA Change Board. We also note the views of respondents to the SPAA consultation.

We agree with the Proposer and the Change Board that the implementation of this proposal would better facilitate the SPAA relevant objectives, in particular objectives (b) and (d). We consider that it will also better facilitate relevant objective (f) which is specifically targeted at theft and was introduced by Ofgem on 7 January 2013.⁷

(b) the furtherance of effective competition between Gas Suppliers and between relevant agents

We consider that introduction of minimum standards of investigation for all SPAA parties will improve the rigour with which theft of gas is investigated. This, together with the clarity provided by the development and documentation of best practice and clarity on the existing regulatory framework, should improve the overall performance of the industry in detecting gas theft. Undetected gas theft leads to the misallocation of costs among suppliers which could contribute to distorting competition and the efficient functioning of the market. We therefore consider that CP12/224 better meets this relevant objective.

⁵ The SPAA change control procedures are set out in clause 9 of the agreement.

⁶ As set out in Standard Licence Condition (SLC) 30.5 of the Gas Suppliers Licence.

⁷ As set out in a separate letter dated 19 February 2013 we have corrected SLC30.5 so that the relevant objective on the "securing of compliance with SLC 12A of the gas supply licence" is set out in SLC 30.5(f) rather than SLC30.5(e).

(d) so far as is consistent with sub-paragraphs (a), (b) and (c), the efficient discharge of the licensee's obligations under this licence

With the inclusion of SLC 12A "Matters relating to Theft of Gas" into the Gas Supply licence on 7 January 2013, we agree that CP12/224 is likely to better facilitate relevant objective (d). SLC 12A requires suppliers to, amongst other things, take all reasonable steps to detect, prevent and investigate theft of gas, behave towards the customer in a manner which is fair, transparent, not misleading, appropriate and professional. SLC 12A also requires the supplier to take into account whether the customer is vulnerable and sets out a range of specific customer protection measures. Having reviewed the Theft Code of Practice, we consider that it complements SLC 12A and provides important additional detail on how the licence requirements should be interpreted and on how consumers should be treated.

(f) the securing of compliance with SLC 12A of the gas supply licence ("Matters relating to Theft of Gas")

For the reasons set out under relevant objective (d), we consider that CP12/224 also better facilitates relevant objective (f).

Further comments

We welcome the effort and engagement by suppliers and gas transporters to develop the Theft Code of Practice. This has been a significant undertaking and has demonstrated co-operation, a willingness to share best practice and to commit to new obligations to better protect consumers' interests.

We note the views of the development working group that further iterations of the code⁸ would be likely to have additional benefits. We support this view and continue to consider that this is an important area where regulation should be further developed. On that basis we are committed to supporting the continued development of the Theft Code of Practice.

Work is progressing on modifications to the governance and funding arrangements to help facilitate non-domestic suppliers acceding to the SPAA.⁹ Ofgem is also considering whether to require non-domestic suppliers to accede to and comply with the SPAA as part of Phase 2 of our Code Governance Review. Prior to any changes to require non-domestic suppliers to comply with all or part of the Theft Code of Practice we would welcome them incorporating it, on a voluntary basis, as part of their arrangements for tackling gas theft. We would also welcome the engagement of non-domestic suppliers in the continued development of this code.

Decision notice

For the reasons set out above, and in accordance with Standard Condition 30 of the Gas Suppliers Licence, the Authority consents that change proposal CP12/224: 'Theft of Gas Code of Practice' is made.

Colin Sausman

Partner, Retail Markets and Research

Signed on behalf of the Authority and authorised for that purpose.

⁸ For example, documenting where the exchange of personal data may be permissible under data protection legislation, and extending the scope to consider shipperless sites.

⁹ SPAA change proposals CP12/209 and CP12/217