

Modification proposal:	Supply Point Administration Agreement (SPAA) Change Proposal (CP) 13/239 'TRAS Arrangements: TRAS Product'.		
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:	09 October 2013	Date of Implementation:	To be confirmed by SPAA Ltd

Background to the modification proposal

On 31 October 2012 the Authority directed the modification of the Gas Suppliers Licence to introduce new rules regarding the prevention, detection and investigation of gas theft³. In particular, the new licence condition⁴ requires Gas Suppliers to be a party to, comply with, and maintain the "Theft Arrangement" directed by the Authority to help improve the detection, prevention and investigation of theft.

The Authority subsequently issued a direction pursuant to the modified Gas Suppliers licence to implement the Theft Arrangement, via a service known as the Theft Risk Assessment Service ('TRAS')⁵.

On 15 March 2013 we consented to implementation of SPAA Change Proposal CP12/226: 'Provisions for the Theft Risk Assessment Service (TRAS)'⁶. In consenting to the implementation of CP12/226 we agreed that the SPAA provides an efficient and robust means for Gas Suppliers to collectively discharge these new obligations.

While the original direction gives a deadline of 31 March 2014 for the TRAS to be in effect, it has become apparent that this date will not be met. We have therefore, via the SPAA Executive Committee, invited Gas Suppliers to submit a revised timetable and a recommendation for a practicable target date for commencement of the TRAS.

The change proposal

Although CP12/226 introduced new SPAA Schedule 34, this was drafted as a skeleton schedule to be populated as and when required during the further development of the TRAS arrangements.

CP13/239 seeks to include within the SPAA a new Product⁷ – the TRAS Product – which contains a list of 'Relevant Information' data items, which could be of use to the eventual TRAS provider in identifying sites where theft of gas is suspected. It is not itself intended to be a final version but to assess Gas Suppliers' capability to send particular data items to the eventual TRAS, allowing prospective service providers to base their offers on the

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 Tackling Gas Theft: New requirements for gas suppliers – Decision Document. Ofgem Ref 137/12. See: www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/Tackling%20Gas%20Theft%20-%20New%20requirements%20for%20gas%20suppliers%20-%20Final.pdf

⁴ Standard Licence Condition 12A: 'Matters relating to Theft of Gas'

⁵ www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=149&refer=Markets/RetMkts/Compl/Theft

⁶ www.ofgem.gov.uk/ofgem-publications/63491/cp12-226d-2.pdf

⁷ A 'SPAA Product' is not formally defined, but refers to a document listed under Schedule 6 as coming under SPAA governance. A product is therefore owned and maintained by SPAA Parties, but cannot place direct obligations upon them. Therefore the enforcement of provisions within a Product requires complementary rules to be placed within the main body or a schedule of the SPAA.

availability of that data. Changes would also be made to Schedule 34 which, amongst other things, would require Suppliers to adhere to the TRAS Product.

CP13/239 is therefore intended to facilitate the Request for Proposal (RfP) stage of the procurement process.

It is intended that further changes will be raised and implemented on or before 31 March 2014 (or any later date that Ofgem determines) once the preferred bidder is known, to complete the TRAS Arrangements and facilitate the go live of the TRAS. At that stage it is envisaged that the list of data items that constitute *Relevant Information* will be narrowed down, to include only those which the TRAS service provider needs in order to fulfil its contractual obligations, i.e. generate leads on suspected cases of theft.

Respondents' views

CP13/239 was considered at the SPAA Change Board on 18 July 2013 Change Board. The change proposal was accepted by a majority in excess of the 65% of weighted votes as required under SPAA voting rules⁸.

The outcome of the Change Board vote was subsequently appealed to the SPAA Forum by Scottish Power. Scottish Power stated that whilst it was fully supportive of the concept of the TRAS, it was concerned that the breadth of data items to potentially be shared with the TRAS without each being individually justified, may not comply with the data protection principles, as set out in the Data Protection Act 1998 ('DPA').

The SPAA Forum considered the appeal at its meeting on 23 August 2013. Scottish Power reiterated its concerns, adding that until the completion of their internal Privacy Impact Assessments ('PIAs') Suppliers will be unable to confirm, with any degree of certainty, what data items they can make available to the TRAS. Scottish Power is therefore concerned that the TRAS could be left in a position where it is unable to meet its contractual obligations or the service is otherwise undermined.

However, some other Forum members were of the view that most of the potential service providers are likely to have significant experience with the provisions of the DPA. As such, bidders will be expected to provide information as part of their bids on how privacy will be safeguarded and even assist Suppliers in the completion of PIAs.

The resolution to overturn the earlier Change Board decision on CP13/239 was rejected. The SPAA Parties' recommendation to the Authority is therefore that it consents to CP13/239 being implemented and that it have effect as soon as possible following receipt of that decision.

The Authority's decision

After considering the views of the Change Board and the SPAA Forum contained in the Change Report dated 23 September 2013 we have concluded that:

⁸ In accordance with clause 9 of the SPAA.

- implementation of the change proposal will better facilitate the achievement of the relevant objectives of the SPAA⁹, and
- consenting to the modification being made is consistent with the Authority's principal objectives and statutory duties.

Reasons for the Authority's decision

In line with the assessment made within Change Report we have assessed CP13/239 against SPAA objective (d) and (f) of the SPAA, as set out below. We consider that this proposal is neutral to the other SPAA objectives.

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

Standard Licence Condition ('SLC') 12A 'Matters relating to Theft of Gas' came into effect on 7 January 2013. This requires Suppliers to, amongst other things, take all reasonable steps to detect, prevent and investigate theft of gas. More specifically, SLC 12A.8 requires the licensee to be a party to, comply with, and maintain the TRAS. To the extent that the implementation of CP13/239 would facilitate the procurement of the TRAS, we consider that it would further SPAA relevant objective (d).

We have noted and have sympathy with the comments raised by those Suppliers who questioned the scale of data that may be made available to the TRAS, which led some to oppose the implementation of CP13/239. However, we also note that these concerns have been subject to extensive discussion and that some amendments have been made to the drafting of Schedule 34, which sets the rules around the *Relevant Information*, if not to the list of data items itself.

We have also given careful consideration to the status of the *Relevant Information* and the provisions around it. In particular, we note that the list of data items is simply to inform the potential TRAS service provider of what may be available, rather than setting an expectation that it will be transmitted in its entirety.

We agree with those respondents who suggested that bidders are not only likely to be familiar with the requirements of the DPA, but would wish to avoid the risk and costs associated with handling excessive or unnecessary data. We would expect that the extent to which bidders can justify their interest in each individual item of data and give assurances as to its subsequent safeguarding and use will form an important part in the selection of the preferred candidate. It is therefore likely that the eventual list of data items which forms the *Relevant Information* will be a much narrower subset than that currently set out in the TRAS Product.

The current status of the *Relevant Information*, together with the Suppliers ongoing prerogative to withhold data at its discretion is captured in the drafting of Schedule 34, which states:

"For the avoidance of doubt, the data items that constitute Relevant Information are indicative of those items the TRAS provider may reasonably require and will only be confirmed once validation by the appointed TRAS provider has occurred. The provision of Relevant Information by any individual Party will only be required after formal implementation of the TRAS and once it is satisfied it can meet the requirements under the Data Protection Act".

⁹ As set out in Standard Licence Condition (SLC) [30.5 of the Gas Suppliers Licence](#).

Schedule 34 also states, for the avoidance of any doubt, that where any inconsistency exists between that schedule and the Gas Suppliers licence, or between the schedule and the DPA, the licence or, as the case may be, the DPA shall prevail. Whilst we consider this statement may be useful in removing any possible ambiguity, we would also note that primary legislation such as the DPA will always take precedence over an industry code such as the SPAA.

Given the interim nature of CP13/239, we are satisfied that it will not, of itself, cause any conflict between the SPAA and the principles of the DPA. However, we agree that these issues must be given careful consideration in the subsequent refinement and use of the *Relevant Information*. We agree with the suggestion that a risk based approach should be taken to the provision of information. For instance, only the least sensitive information should be available for the 'first pass', with potentially further data items being released on a proportionate basis in order to improve the accuracy and value of leads.

We are concerned that Gas Suppliers may continue to take differing views on the extent to which the provision of certain data items may be consistent with the DPA and interpret their future SPAA obligations accordingly. We therefore encourage SPAA parties to resolve any ambiguity and differences of opinion prior to the commencement of the TRAS. If necessary, this could include the procurement of further legal advice.

It is also our intention to discuss the anticipated future refinements to the TRAS Product with the Information Commissioners Office ahead of consenting to any further change. It is hoped that this will give Gas Suppliers comfort that the revised SPAA schedule is consistent with the data protection principles. In the event that Suppliers exercise their prerogative to withhold data, we will seek confirmation of the alternative manner through which they intend to discharge their licence obligations in respect of theft arrangements.

(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 CP13/239 will also better facilitate relevant objective (f).

Decision notice

In accordance with Standard Condition 30 of the Gas Suppliers Licence, the Authority consents that change proposal CP13/239: 'TRAS Arrangements: TRAS Product' be made.

Maxine Frerk
Partner, Retail Markets and Research

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